

One Minute Memo®



USCIS Suspends H-1B Premium Processing Beginning April 3, 2017

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Seyfarth Synopsis: USCIS recently announced that the agency will temporarily suspend premium processing for all H-1B petitions beginning on April 3, 2017. USCIS indicates the purpose of the suspension is to process H-1B petitions that have been pending for many months, including in particular those approaching the 240-day automatic extension limitation, which would thereby reduce overall H-1B processing times. Please find below a list of frequently asked questions with our insights.

1. What is the effective date of the suspension?

The premium processing suspension is effective on April 3, 2017. The last day that USCIS will accept H-1B petitions filed with premium processing is Friday, March 31, 2017.

2. How long will the suspension last?

USCIS states that the suspension may last up to six months. USCIS imposed a similar suspension in the past and lifted the suspension early.

3. Does the suspension apply only to H-1Bs or other visa categories?

The suspension is limited to H-1B petitions only. This includes H-1B petitions seeking to extend status, amend status, change status, consular process, or change employers.

4. Can H-1B petitions be filed with premium processing in the month of March? If so, will USCIS continue to honor premium processing cases if they are still pending beyond April 3rd?

Yes, USCIS will accept an H-1B petition filed with premium processing on or before Friday, March 31, 2017. We anticipate that any H-1B petition filed with premium processing that is receipted on or before March 31st will receive the full benefit of premium processing, even if the adjudication continues beyond April 3rd. However, based on the posted USCIS announcement, the agency has discretion to refund premium processing fees if the agency has not taken adjudicative action on the case within the 15-calendar-day premium processing period.

5. How does this affect the H-1B cap lottery?

In previous years, companies that filed their H-1B cap petitions during the first five (5) business days of April with premium processing received electronic Receipt Notices from USCIS confirming cap lottery selection in late April and early May. The suspension of premium processing will likely result in Receipt Notices being received in the late spring or the early summer. Similarly, under premium processing, USCIS would start the 15-calendar-day processing clock sometime in mid- to late-April, resulting in adjudication by early- to mid-May. In the absence of premium processing, petitioners will likely receive decisions beginning in late May through September. In addition, companies that filed H-1B petitions with premium processing were able to easily communicate with USCIS representatives regarding case status updates and corrections to errors on the approval notice. The suspension of premium processing will prevent companies from leveraging this benefit.

6. I am in F-1 status, my Optional Practical Training (OPT) will expire before October 1st, and I require H-1B cap gap to extend my work authorization through October 1st. What happens if I do not receive a decision on my H-1B cap case by October 1st?

If you will rely on H-1B cap gap and USCIS has not issued a decision on your H-1B petition as of October 1st, you may continue to remain in the U.S. until USCIS issues a decision. However, you will not possess work authorization from October 1st until USCIS ultimately approves the H-1B petition. If USCIS lifts the premium processing suspension early, which may occur prior to the six-month mark, your employer will have the option of submitting a premium processing request to accelerate processing of your H-1B petition.

7. Can a premium processing request be submitted for a pending H-1B petition once the suspension is lifted?

Yes, once the suspension is lifted, a premium processing request may be submitted at any time.

8. I am currently in H-1B status and my status will expire this summer/fall. My employer will file an H-1B extension on my behalf. How will the suspension of premium processing affect my work authorization and ability to travel internationally?

If you are in the U.S. in valid H-1B status and your company seeks to extend your status, you will remain eligible for an up to 240-day extension of your H-1B status beyond the date of your I-94 admission record. Therefore, the premium processing suspension should not affect your continued work authorization. However, if you have international travel plans after the expiration of your current H-1B status and/or your H-1B visa stamp is expired, you will need your new H-1B approval notice to apply for a visa stamp before returning to the U.S. In this case, the premium processing suspension may require you to delay your travel plans or remain abroad until USCIS approves your H-1B petition and you secure a new visa stamp.

Finally, please note that if your H-1B petition is nearing the end of the 240-day automatic extension period, USCIS has created a mechanism for submitting expedite requests, which USCIS will review and approve at their discretion and on a case-by-case basis.

9. Are there any other issues that may come up?

Yes, in some states, you may have an issue renewing your driver's license. Some states will allow you to extend your license by presenting evidence of a timely filed H-1B extension while other states require evidence confirming that your H-1B status has been approved. You will need to check with your local motor vehicle department to explore this issue.

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