

One Minute Memo®



Premium Processing Resumes for Fiscal Year 2018 H-1B Cap Petitions

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Seyfarth Synopsis: On September 18, 2017, U.S. Citizenship and Immigration Services (USCIS) announced that effective immediately it would resume premium processing for H-1B petitions filed subject to the Fiscal Year (FY) 2018 cap.

USCIS temporarily suspended premium processing of all H-1B petitions on April 1, 2017 with the stated goal of addressing significant backlogs in case processing. Over the last few months, the agency incrementally reinstated premium processing service for lower-volume filings including certain H-1B petitions that are not subject to the H-1B cap as well as H-1B petitions filed on behalf of physicians under the Conrad 30 waiver program. On September 18, 2017, the agency reinstated and will immediately accept premium processing requests for pending H-1B petitions that were filed under the Fiscal Year 2018 cap. This includes H-1B petitions filed under the annual quota of 20,000 U.S. Master's degree petitions as well as those filed under the general H-1B cap of 65,000 petitions. Unfortunately, premium processing service remains suspended for H-1B petitions that are filed to extend an employee's status or change employers.

When a petition is filed under premium processing, the petitioner includes an additional filing fee of \$1,225. This additional filing fee requires USCIS to adjudicate the petition within 15 days of receiving the request. Petitions are either approved or a Request for Evidence (RFE) is issued by USCIS within that 15-day time period. Premium processing requests can be filed with the initial filing of a petition, or at a later date by referencing the petition's receipt number. Since the quota of H-1B cap petitions has already been reached, this service is only available to currently pending H-1B cap cases for FY 2018.

With the reinstatement of this service, Employers should carefully review their pending H-1B cap lists and strongly consider submitting a premium processing request for any pending FY 2018 cap cases in which the beneficiary has an expired F-1 Optional Practical Training (OPT) employment authorization card and is relying on "Cap Gap" for work authorization through September 30, 2017. Any beneficiary relying on "Cap Gap" whose H-1B petition is still pending on October 1, 2017 will lose employment authorization until his or her H-1B petition is approved. Employers should also consider prioritizing premium processing requests for employees in a different status who are facing imminent expirations of work authorization as well as those with upcoming international travel plans that require an H-1B visa stamp for reentry.

Summary

Premium processing of FY 2018 cap H-1B petitions has resumed. Your contacts at Seyfarth Shaw LLP will work with you to determine which cases should be considered for immediate premium processing upgrades. In addition, we will continue to monitor USCIS announcements with regard to reinstatement of premium processing for other types of H-1B petitions.

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