

# Management Alert



## USCIS Suspends Premium Processing for Cap-Subject H-1B Petitions Beginning April 2, 2018

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**Seyfarth Synopsis:** USCIS recently announced that the agency will temporarily suspend premium processing for all H-1B petitions subject to the Fiscal Year (FY) 2019 cap beginning on April 2, 2018. The suspension will only apply to H-1B petitions subject to the cap. 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.

### 1. Does the suspension apply only to cap-subject H-1B petitions?

The suspension is limited to FY2019 cap-subject H-1B petitions only. H-1B petitions not subject to the cap seeking to extend status, amend status, change status, consular process, or change employers may still utilize premium processing until further notice.

### 2. How long will the suspension last?

USCIS states that the suspension will last until September 10, 2018.

### 3. 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 make it challenging to communicate with USCIS regarding updates and corrections.

#### **4. 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 have work authorization from October 1st until USCIS ultimately approves the H-1B petition. If USCIS lifts the premium processing suspension prior to September 10, 2018, your employer will have the option of submitting a premium processing request to accelerate processing of your H-1B petition.

#### **5. While premium processing is suspended for cap-subject petitions, will USCIS consider any requests to expedite processing?**

While premium processing is suspended, a petitioner may submit an expedite request if the petitioner can demonstrate one of the following:

- Severe financial loss to company or person;
- Emergency situation;
- Humanitarian reasons;
- Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States;
- Department of Defense or national interest situation (These particular expedite requests must come from an official U.S. government entity and state that delay will be detrimental to the government.);
- USCIS error; or
- Compelling interest of USCIS.

It is the petitioner's responsibility to demonstrate that they meet at least one of the expedite criteria supported by documentary evidence. USCIS reviews all expedite requests on a case-by-case basis and will grant requests at the discretion of USCIS office leadership.

#### **6. 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.

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