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USCIS to Suspend Premium Processing for H-1B Cap Cases

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Last week, **USCIS** announced that beginning on April 3rd, 2017, they will no longer be accepting **H-1B** petitions filed under the premium processing service. This service allowed for petitioners to pay an extra fee in order to guarantee the adjudication of their case within fifteen (15) calendar days of receipt. The fact that USCIS will suspend premium processing for H-1B cases on April 3rd means that no cap-subject cases filed this year will be eligible for premium processing (April 3rd is the first day USCIS will accept such cases). USCIS has stated, however, that H-1B cases will be eligible for expedited processing in accordance with their standard “expedite criteria” available on their [website](#).

USCIS indicated that the suspension will allow them to catch up on old cases that have been pending for more than 240 days; however, cap-subject cases this year should expect adjudication delays and standard processing times ranging from 4-6 months.

The decision by USCIS to suspend premium processing for cap-subject cases may affect employers’ ability to accurately predict their workforce availability beyond October 1, 2017 due to almost certain adjudicatory delays. For example, if cap-subject cases this year were to be processed with premium processing, it would be entirely plausible that an employer would know by mid-May whether or not a specific H-1B employee would be eligible to begin work in such status on October 1, 2017. However, with no premium processing, cap-subject cases could easily still be pending past October 1, 2017, resulting in uncertainty as to whether they will be able to continue working for the employer, or whether they may need to stop immediately upon finding out that their case has been denied by USCIS.

More so, the premium processing suspension will result in more unpredictability with regards to international travel, especially for those beneficiaries who will be applying for changes of status from F-1/OPT to H-1B. Employees may find themselves stuck in the United States waiting for USCIS to adjudicate their H-1B petition prior to traveling abroad (either for work or for pleasure). And, of course, with the controversy surrounding the travel ban and the Department of State refusing to issue visas to nationals from certain countries, USCIS’ choice to suspend premium processing for H-1Bs will only result in more unpredictability and volatility for skilled H-1B employees from certain countries.

The bottom line is that without assurances that cap-subject cases will be adjudicated by a certain date, the H-1B skilled labor force may be thrown into a temporary state of disarray as employees wait in limbo to see whether their cases will be approved by USCIS. International travel plans, once again, will be affected by this policy which will serve to create even more uncertainty for employers seeking to employ skilled H-1B employees.

In times such as these, international travel for H-1B hopefuls between April 3 and October 1 (and even beyond) carries certain risks and caution should be exercised accordingly, such as by consulting with an experienced immigration attorney to plan for any such travel.

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