

Mobility: immigration alert

April 2022

United States

USCIS announces new actions to reduce backlogs and expand premium processing

Executive summary

On 29 March 2022, US Citizenship and Immigration Services (USCIS) announced several initiatives to increase efficiencies in adjudications as well as reduce backlogs caused by protracted case processing times. Specifically, USCIS is expanding premium processing to additional case types, setting new agency-wide backlog reduction goals, and working to improve applicants' timely access to employment authorization documents (EADs).

Background

The COVID-19 pandemic, litigation, and employee attrition within USCIS, among other factors, have combined to create unprecedented backlogs within the agency. The 29 March announcement outlines the following efforts aimed at reducing the burdens caused by these backlogs on USCIS and its stakeholders:

- ▶ Expanding the case types eligible for premium processing services, including Form I-539, Application to Extend/Change Non-immigrant Status; Form I-765, Application for Employment Authorization; and additional classifications under Form I-140.
- ▶ Setting new internal cycle timeline goals to reduce the case backlog.
- ▶ Working towards providing further temporary relief to foreign nationals affected by delays in adjudicating requests for U.S. work authorization by extending the period of automatic extensions of the existing work authorization in EAD renewal cases.

Analysis

USCIS is adopting a phased approach to expanding premium processing.

This will begin with expanding premium processing eligibility in FY 2022 to I-140 petitions requesting EB-1 immigrant classification as a multinational executive or manager (EB-1C) or EB-2 immigrant classification as a member of professions with advanced degrees or exceptional ability seeking a National Interest Waiver (NIW).

USCIS is also planning to begin accepting premium processing requests for I-539s in the F-1, F-2, J-1, J-2, M-1, and M-2 visa categories beginning in FY 2022. DHS anticipates being unable to accept premium processing requests for I-539s in the E-1, E-2, E-3, L-2, H-4, O-3, P-4, and R-2 categories until FY 2025.

Similarly, USCIS is expected to initially prioritize premium processing for certain categories of I-765s filed by students and exchange visitors and then expand premium processing to the remaining EAD categories in FY 2025.



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The new costs and timeframes associated with the expansion are as follows:

- ▶ Expansion of premium processing to Form I-140 in the EB-1C and NIW classifications:
 - Establishes a \$2,500 premium processing fee, and
 - 45-day processing timeframe.
- ▶ Expansion of premium processing to Form I-539 to the E-1, E-2, E-3, F-1, F-2, H-4, J-1, J-2, L-2, M-1, M-2, O-3, P-4, and R-2 categories:
 - Establishes a \$1,750 premium processing fee, and
 - 30-day processing timeframe.
- ▶ Expansion of premium processing to Form I-765:
 - Establishes a \$1,500 premium processing fee, and
 - 30-day processing timeframe.

With regards to setting new internal cycle timeline goals, USCIS will focus on increasing capacity, improving technology, and expanding staffing to achieve these new goals by the end of FY 2023. As cycle times improve, applicants and petitioners will see case processing times grow shorter and receive decisions on their cases more quickly.

Finally, USCIS announced that it continues to make progress toward a temporary final rule titled "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants." Currently, many EAD holders who apply for renewals are eligible for an automatic 180-day extension of work authorization if the EAD expires while a timely-filed renewal I-765 application is pending with USCIS. However, due to the protracted case processing times, this automatic extension has been insufficient in recent years to ensure applicants remain authorized to work while awaiting the EAD, causing significant hardship to both these applicants and their U.S. employers. If enacted, USCIS expects that the rule will help ensure work authorization will not lapse while renewal applications are pending.

What this means

The expansion of premium processing is a welcome development that is expected to provide some much-needed relief to those who have been impacted by unprecedented processing delays. It is disappointing, however, that USCIS expects to need several years before the expansion is complete for all newly-eligible case types and visa categories. By FY 2025, it is possible that USCIS's case backlog reduction goals may improve case processing times to the extent that premium processing may no longer be a necessity for some applicants, but this of course remains to be seen.

We will continue to monitor developments in this area and provide updates as they are available.

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