

## IMMIGRATION ALERT:

### U.S. Citizenship and Immigration Services Suspending H-1B Premium Processing

U.S. Citizenship and Immigration Services (“USCIS”) announced that they will temporarily suspend the H-1B premium processing program starting April 3, 2017 for approximately six months. Premium processing is a service provided by USCIS which enables H-1B petitioners/beneficiaries to request an “expedite” on their case by paying an extra government filing fee of \$1,225. By paying the additional fee, H-1B petitioners/beneficiaries are guaranteed a government response in 15 calendar days. This service has been a critical tool for employers, as normal H-1B processing times have been extremely long—ranging from six months to a year in some cases.

It is critical that employers and employees plan to file premium processing before the April 3, 2017 suspension if needed. In particular, premium processing should be considered on an urgent basis in the following situations:

- **Employees changing to H-1B status from another status.** For example, cap-exempt J-1 doctors changing to H-1B status should look to premium process their H-1B petitions prior to the April 3, 2017 deadline. The reason is they will be unable to commence work until the H-1B petition is approved, and that can take six months or more without premium processing.
- **Employees currently outside of the U.S. waiting to commence employment in the United States.** Employees outside of the U.S. cannot apply for a visa and enter the U.S. to commence work until their H-1B petitions have been approved. If employers have H-1B petitions pending, or are planning to file H-1B petitions for employees currently outside of the U.S., who are scheduled to start working in the next six to eight months, they should premium process the H-1B petitions for these employees.
- **Employees with an expired H-1B I-94, and whose H-1B extensions have been pending less than two months.** H-1B employees are entitled to an automatic 240-day extension of their work authorization when they timely file an H-1B extension. However, some H-1B extensions have been taking more than 240 days to process, so premium processing may be needed in order to maintain work authorization past the 240-day mark. Please note that this is a complex circumstance and counsel should be consulted when evaluating this issue.
- **Employees with expiring driver’s licenses.** Some states make it difficult for employees without an H-1B approval notice to obtain or extend an existing driver’s license. Therefore, if employees need to extend their driver’s licenses in the next six to eight months, it is important that they evaluate the premium processing option so that they maintain their ability to drive in the U.S.
- **Employees who need to travel and do not have a valid visa.** Employees without a currently valid H-1B approval notice are unable to obtain visas at U.S. Consulates abroad. Therefore, if H-1B employees have critical travel planned over the next six to eight months and they do not have valid visas, they should request premium processing on their cases.
- **Employees who have a valid visa, but for convenience would like to apply for a new visa while they are traveling abroad.** As discussed above, employees without a currently valid H-1B approval notice are unable to obtain visas at a U.S. Consulate abroad. Therefore, if employees wish to apply for a new visa in the next six to eight months, they should request premium processing on their cases.

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We encourage you to reach out to your employees in H-1B status who may be affected by the premium processing suspension. Please also contact the immigration practice group for immigration related questions.

If you have any questions regarding this LEGALcurrents®, please do not hesitate to contact any member of our firm's Immigration Practice Area at (585) 232-6500. ■



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