



September 21, 2018

L. Francis Cissna
Director, U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: Request for Relief for FY 2019 H-1B Cap Cases

Dear Director Cissna:

The American Immigration Lawyers Association (AILA) and NAFSA: Association of International Educators write to express our concerns regarding the ongoing suspension of premium processing service and its impact on FY 2019 H-1B cap-subject petitions for F-1 students in a cap-gap extension period. This issue is of particular concern as U.S. businesses will be forced to suspend the employment of these individuals indefinitely, if their petitions are not adjudicated by September 30, 2018. Accordingly, we respectfully ask USCIS to immediately lift the premium processing suspension for FY 2019 H-1B cap-subject petitions for beneficiaries who are in a cap-gap extension period, or alternatively, publish a notice in the Federal Register extending the cap-gap work authorization period for at least 90 days beyond September 30, 2018, or until all FY 2019 H-1B cap cases can be adjudicated.

Given the time-sensitive nature of many employment arrangements, USCIS's premium processing service is a popular option among U.S. businesses as it offers a predictable adjudication time frame of just a few weeks, rather than a half year or more, which is standard with regular processing.¹ Therefore, premium processing allows U.S. businesses to ensure that critical projects are appropriately staffed to meet ongoing business demands, while allowing foreign workers to make more concrete plans for their future, rather than waiting in limbo for months with their lives on hold. The suspension of premium processing has a negative impact on thousands of U.S. businesses, disrupting their ability to plan and deliver on projects and contractual commitments, and ultimately to compete in a highly-competitive global economy.

Although it is not uncommon for USCIS to temporarily suspend premium processing as workloads demand, until FY 2018, USCIS typically limited premium processing suspensions to just a few short weeks. However, on August 28, 2018, USCIS announced that the suspension of premium processing for H-1B cap-subject petitions, originally expected to be lifted on

¹ See <https://egov.uscis.gov/processing-times/>.

September 10, 2018, will now be extended for another five months, until at least February 19, 2019.² The suspension of premium processing has been expanded to include all H-1B petitions filed at the Vermont and California Service Centers, except cap-exempt filings. The suspension also does not apply to H-1B petitions requesting a “continuation of previously approved employment without change,” filed with the Nebraska Service Center.

USCIS states that the suspension is necessary to allow it to, among other things, “[b]e responsive to petitions with time-sensitive start dates; and [p]rioritize adjudication of H-1B extension of status cases that are nearing the 240-day mark.”³ H-1B cap-subject petitions for F-1 students who are in a cap-gap extension period align with these adjudication priorities. First, these petitions are time-sensitive because if they are not adjudicated by September 30, 2018, U.S. businesses will be forced to suspend the employment of these individuals indefinitely, until USCIS reaches a decision on the H-1B petitions. These petitions are also comparable to those seeking an extension of H-1B status, as F-1 students in a cap-gap extension period are in lawful status and are often currently engaged in a training program for the H-1B sponsoring employer.

Without the option of premium processing, U.S. employers seeking to extend the employment of a cap-gap beneficiary through the filing of an H-1B petition have no reliable means to mitigate the very real risk that they will be forced to suspend the beneficiary’s employment.⁴ At present, it is taking USCIS up to 7.5 months to process an H-1B petition.⁵ This is vastly differently from what Congress intended when it passed the Immigration Services and Infrastructure Improvements Act in October 2002, declaring that “a petition for a nonimmigrant visa under section 214(c) of the Immigration and Nationality Act should be processed not later than 30 days after the filing of the petition.”⁶ Compounding the problem, petitioners are unable to file an H-1B petition with USCIS on behalf of a prospective employee more than 6 months from the intended start date of employment.⁷

Recognizing USCIS’s aim to reduce overall H-1B processing times and to allocate resources accordingly, we respectfully ask the agency to lift the premium processing suspension for FY 2019 H-1B cap-subject petitions for cap-gap beneficiaries, or alternatively, publish a notice in the Federal Register extending the cap-gap work authorization period for at least 90 days beyond October 1, 2018, or as long as it takes to adjudicate all FY 2019 cap cases without interruption of cap-gap employment.

² See *USCIS Extends and Expands Suspension of Premium Processing for H-1B Petitions to Reduce Delays*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays> (last updated Aug. 28, 2018).

³ *Id.*

⁴ Although USCIS has indicated that petitioners may file a request for expedited processing, the expedite process is unpredictable and is not a sufficient alternative to premium processing.

⁵ See <https://egov.uscis.gov/processing-times/>.

⁶ Public Law 103-313, 114 Stat. 1262, Title II, Sec. 202(b) (Oct. 17, 2000).

⁷ Under 8 CFR § 214.2(h)(9)(i)(B), an H-1B petition “may not be filed or approved earlier than 6 months before the date of actual need for the beneficiary’s services or training”

Thank you for taking our views on this matter into consideration. Should you have any questions, please do not hesitate to contact Betsy Lawrence, AILA Director of Government Relations, at blawrence@aila.org or (202) 507-7621.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NAFSA: ASSOCIATION OF INTERNATIONAL EDUCATORS

cc: Ms. Tracy Renaud, Acting Deputy Director, USCIS
Mr. Todd Young, Acting Chief of Staff, USCIS
Ms. Julie Kirchner, CIS Ombudsman, DHS
Ms. Stacy Shore, Deputy CIS Ombudsman, DHS
Ms. Elissa McGovern, Chief of Policy, Office of the CIS Ombudsman, DHS