

USCIS Will Suspend Premium Processing for all H-1B Petitions (Including FY18 H-1B Cap Petitions) Starting April 3, 2017

As employers are well aware, the Fiscal Year 2018 H-1B cap season is in full gear. In order to be considered for one of the 85,000 coveted H-1B visas, employers must file their H-1B cap petitions during the first five business days of April (April 3rd – April 7th, 2017) requesting that employment commence on October 1, 2017. Employers historically have had the option of paying an extra \$1,225 fee to request premium processing for their H-1B cap petitions if they are selected in the H-1B lottery. This guarantees a response (not necessarily an approval) from the U.S. Citizenship and Immigration Services (“USCIS”) within 15 calendar days.

On March 3, 2017, USCIS announced that it will temporarily suspend premium processing for all H-1B petitions starting April 3, 2017, the first day that FY18 H-1B cap petitions may be filed. The suspension will apply to both cap-subject and cap-exempt H-1B petitions and may last up to 6 months or longer. USCIS will continue to premium process H-1B petitions if premium processing is sought before April 3, 2017. The temporary suspension of premium processing is intended to assist in reducing overall H-1B processing times.

According to USCIS’s most recent processing time reports, H-1B petitions filed without a request for premium processing are being processed in approximately five to twelve months’ time, depending on the basis for filing and the Service Center adjudicating the petition. The beneficiary of an H-1B cap petition cannot commence working for the H-1B petitioning employer in H-1B status until the H-1B petition is approved. Given the lengthy processing times, it is possible that an H-1B cap petition will not be approved prior to the requested October 1, 2017 start date. If this occurs, employers must verify that their H-1B beneficiaries are otherwise authorized to work if they intend to employ or continue to employ them on or after October 1, 2017.

While premium processing is suspended, H-1B employers may submit a request to expedite an H-1B petition if they meet the the expedite criteria. These criteria are: severe financial loss to the company or person, an emergency situation, a humanitarian reason, a nonprofit organization whose request is in furtherance of U.S. cultural and social interests, a Department of Defense or national interest situation, a USCIS error, or a compelling interest of the USCIS.

If you have questions about FY18 H-1B cap petitions, the suspension of premium processing for H-1B petitions, or other general questions about employment-based immigration, please contact one of the immigration specialists in Koley Jessen’s Employment, Labor and Benefits Practice Group.