Update on USCIS suspension of Premium Processing for H-1B petitions

Recent USCIS processing times for H-1B petitions have been in excess of 6-8 months - much longer than the historic norm. Employers have the option to submit petitions with a request for Premium Processing [1] (at an additional fee of $1,225). Petitions filed under Premium Processing must be considered within 15 calendar days. As a result of the steep increase in Premium Processing requests, regular processing times have worsened over time.

USCIS has announced that, to address this problem and to clear out its backlog, they will not accept H-1B petitions with a request for Premium Processing for a period of up to 6 months, effective 4/3/17. [2] USCIS has not indicated that there will be any changes to its standard Premium Processing procedures while the service remains available. In effect, this means that if USCIS cannot issue a decision, request for evidence or other notice within the 15-day period, USCIS will refund the $1,225 Premium Processing fee. USCIS will continue to adjudicate regular H-1B petitions on first-in, first-out basis.

Note that similar suspensions of Premium Processing have occurred in the past and are not necessarily an indicator of other future changes. In the past, Premium Processing suspensions did not necessarily take as long as initially announced. The stated objective of this suspension is to improve processing times. However, it is not clear how long it will take to accomplish this or what the target processing time for regular petitions will be.

Who is affected?

- Generally speaking, individuals must have a valid, approved H-1B petition in order to be employed pursuant to H-1B status. Individuals who are in the U.S. pursuant to a different immigration status, such as F-1 OPT, will need to have an approved H-1B petition in place (or other employment authorization) to remain employed beyond the expiration of their OPT. Individuals coming to the U.S. from abroad on the basis of an H-1B petition must also have an approved H-1B petition (and visa) in place. Therefore, H-1B petitions for these employees may require Premium Processing, especially if their anticipated start date is on or before 10/1/17.
- Existing employees who already hold H-1B status but are in need of an extension of their status may remain in the US and may continue their employment beyond the expiration of their current H-1B status as long as a new H-1B petition is filed before the expiration date of their current H-1B. They generally do not require Premium Processing. For more information, refer to the 240-day rule section of our website [3].
• New U-M employees who already hold H-1B status elsewhere can transfer (“port”) their H-1B status to U-M on the basis of a pending petition. They generally do not require Premium Processing to start their employment.

What about international travel?

Employees who have a pending H-1B petition for a change of immigration status should not travel internationally because doing so will cause USCIS to consider their change of status petition to be abandoned. As a result, the employee would need to travel internationally, obtain an H-1B visa and re-enter the U.S. before the H-1B approval could take effect.

Employees who already hold H-1B status are free to travel internationally while their H-1B extension/port petition is pending. However, to re-enter the US, they must hold a valid H-1B approval notice. To accommodate international travel while a petition is pending [4] but after the previous H-1B petition has expired, it may become necessary to upgrade a petition to Premium Processing. While the Premium Processing service is suspended (i.e., April 3 – October 3, 2017), this will not be an option. Therefore, one’s ability to travel MAY be affected. Should you have any questions about this, please contact the International Center adviser working on your petition for personal advisement.

What this means for hiring units?

• If your unit is hiring a new faculty or staff member who requires H-1B sponsorship to start employment before 10/1/17, we strongly recommend the petition is filed under Premium Processing. As those petitions need to be filed prior to 4/3/17, you will need to start the H-1B request [5] process as soon as possible in order to allow sufficient time for the IC to prepare the H-1B petition for receipt by USCIS no later than 4/3/17.
• Employees who already hold H-1B status and will transfer to U-M or need an extension of their status, may not need Premium Processing. Their ability to continue their employment (or to transfer to U-M) should not be impacted.
• If your unit recently requested an H-1B petition be prepared and if you would like for it to be upgraded to Premium Processing, please send an email indicating this to icfacultystaff@umich.edu [6]. Note that it often takes up to a week to obtain the necessary checks for a Premium Processing upgrade request. We will send you instructions on how to request the check, if needed.
• Note that the earliest we can file a petition is 6 months prior to the requested start date. Our office generally needs 4-6 weeks to prepare an H-1B petition, depending on caseload. We will re-prioritize current casework in order to accommodate as many new and urgent requests as possible. Please keep this in mind as you plan your H-1B sponsorship requests.

Conclusion

Remember, Premium Processing is optional. Generally, any request for an extension, amendment or change of employer does NOT require Premium Processing. Departments have chosen to use Premium Processing to accommodate international travel. If you are anticipating recruiting new faculty or staff members who require H-1B sponsorship with an effective date before 10/1/17, please act now or contact FSIS for advice.

If you have any questions, please send a message to icfacultystaff@umich.edu [6].