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Premium Processing Suspension for H-1B Cap Cases to Continue Into 2019 and Expand to Include Other H-1B Cases

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Today, USCIS announced that the temporary suspension of Premium Processing (expedited processing) for H-1B Cap Petitions will be extended beyond September 10, 2018 and will likely last until February 19, 2019. For many H-1B Cap Cases, this will mean that, although the foreign nationals may remain in the U.S. while the change of status to H-1B is pending, they will no longer be eligible to work as of October 1, 2018. Considering that those affected are graduates from U.S. universities, it may be quite a financial strain to remain in the U.S. without employment for approximately five (5) months.

In addition to extending the suspension of Premium Processing for H-1B Cap cases; USCIS announced that they will be expanding the Premium Processing suspension for all H-1B cases beginning September 11, 2018, except for the few H-1B cases that are filed for "Continuation of previously approved employment without change with the same employer" or for Cap Exempt employers, including research institutions. Any new H-1B petitions involving a new employer or a change in job duties will be subject to the suspension of Premium Processing. Since individuals should not travel internationally while a petition is pending at USCIS; it will be important to coordinate filing and travel during this period. It is entirely possible that many holiday plans will be disrupted due to this suspension of Premium Processing.

USCIS is advising that it will continue to process all cases that are filed Premium Processing prior to September 11, 2018. Further, USCIS reminds stakeholders that Petitioners can submit expedite requests for pending H-1B cases by submitting documentary evidence that meets one or more of the below criteria:

- Severe financial loss to company or person;
- Emergency situation;

- Humanitarian reasons;
- Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States;
- Department of Defense or national interest situation (These must come from an official U.S. government);
- USCIS error; or
- Compelling interest of USCIS.

USCIS reviews all expedite requests on a case-by-case basis at the discretion of the Service Center leadership.

USCIS believes that this temporary suspension will allow them to reduce overall processing times by processing long-pending petitions that have been held in abeyance due to the high volume of incoming petitions. Further, USCIS will be able to prioritize cases that are approaching the 240 day mark. Specifically, the regulations allow an H-1B visa holder to continue working for 240 days while a timely filed H-1B extension is pending at USCIS. However, we would note that when the original suspension to September 10, 2018 was announced, the same rationale was given.

Please work with your Proskauer lawyer to determine how this will affect your foreign employee population and what steps you should be taking to ensure compliance with U.S. Immigration law.