



# GMS Flash Alert

## Immigration Edition

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# United States - USCIS Suspends Premium Processing for H-1B Cap-Subject Filings

Effective April 2, 2018, U.S. Citizenship and Immigration Services (USCIS) announced that it is temporarily suspending premium processing for H-1B cap petitions until September 10, 2018.<sup>1</sup> This suspension applies only to H-1B cap-subject petitions filed for the 2019 fiscal year beginning on October 1, 2018. Other types of H-1B petitions including extensions, change of employer, and amendments, remain eligible for premium processing at this time. Petitioners filing other types of employment-based USCIS petitions such as L-1, O-1, and TN petitions among others, will retain the option of using premium processing.

## WHY THIS MATTERS

Starting April 2, 2018 and until September 10, 2018, H-1B cap-subject petitioners will be unable to file a *Request for Premium Processing Service*. During this temporary suspension, USCIS will reject any Form I-907, *Request for Premium Processing Service*, filed with an FY 2019 cap-subject H-1B petition.

- **This could pose an inconvenience for employers and H-1B beneficiaries, potentially affecting some H-1B cap-subject beneficiaries' work authorization and ability to travel internationally.**
- **Without the premium processing option, all H-1B cap-subject cases will take longer to process and for the lottery results to be released.**
- **With this delay in notification whether an H-1B petition is selected there may uncertainty especially for H-1B beneficiaries who have post-graduation or STEM EADs expiring in late April or May.**

An H-1B beneficiary who travels internationally while a change of status is still pending will be deemed to have abandoned the request for a change of status (although the underlying H-1B petition remains approvable). Therefore, for those cap-subject H-1B beneficiaries without another underlying nonimmigrant visa ("NIV") process, please note:

- **Such individuals' ability to travel internationally between April 2 and September 10 (and beyond) may be delayed.**
- **H-1B beneficiaries with a change of status request who travel abroad before the change of status is approved would have to take additional steps to assume H-1B status on October 1, and will nonetheless need to await H-1B petition approval prior to being eligible to return to the United States.**

As last year, it is anticipated that there will be **longer processing times for all H-1B cap petitions**. With Premium Processing only resuming in September, it is possible that **H-1B beneficiaries working under the H-1 "cap gap" provisions may experience a gap in work authorization** if the underlying H-1B is not adjudicated favorably prior to October 1, 2018.

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## Context

Last year, USCIS had also suspended Premium Processing Service.<sup>2</sup> Prior to last year, after the H-1B cap lottery was conducted early in April, premium processing cases were issued receipt notices first (via e-mail) typically by late April. This year (as with last year) with no Premium Processing Service available, H-1B cap applicants may need to wait until May or June to find out if their case has been selected for adjudication under the H-1B lottery.

As for this year's H-1B cap, USCIS has stated<sup>3</sup> by way of rationale for this development that:

*This temporary suspension will help us reduce overall H-1B processing times. By temporarily suspending premium processing, we will be able to:*

*Process long-pending petitions, which we have currently been unable to process due to the high volume of incoming petitions and the significant surge in premium processing requests over the past few years; and*

*Prioritize adjudication of H-1B extension of status cases that are nearing the 240 day mark.*

## Potential for "Expedited Processing" in Lieu of Premium Processing

The government has retained the option to have a FY 2019 cap subject H-1B petition be granted "expedited" review based on a set of criteria. According to USCIS, petitioners may submit a request to expedite an H-1B petition if they meet any of the "expedite" criteria (see <https://www.uscis.gov/forms/expedite-criteria>).

USCIS will expect the petitioner to demonstrate that he/she/it meets at least one of the criteria and such request should be documented and supported by evidence. USCIS warns that the decision to expedite a case is discretionary and made on a case-by-case basis. Moreover, it may be difficult to satisfy the expedite criteria for a benefit that, even if expedited, cannot go into effect until October 1, 2018.

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## KPMG NOTE

KPMG Law LLP in Canada will continue to monitor the situation, and will endeavor to keep GMS *Flash Alert* readers informed as developments occur.

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## FOOTNOTES:

1 See "USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H-1B Cap Petitions," USCIS (March 20, 2018) at: <https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions>.

2 For prior coverage, see GMS *Flash Alert* 2017-146 (October 4, 2017).

3 See "USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H-1B Cap Petitions," USCIS (March 20, 2018) at: <https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions>.

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