



GMS Flash Alert

Immigration Edition

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United States - Changes in USCIS Procedures Resulting from COVID-19

On March 20 and 27, 2020, the U.S. Citizenship and Immigration Services (USCIS) announced three procedural changes as a result of the ongoing COVID-19 pandemic:

- (1) Effective immediately and until further notice, premium processing service will be temporarily suspended for all Forms I-129, *Petition for Nonimmigrant Worker*, and I-140, *Immigrant Petition for Alien Workers*.¹
- (2) For petitions and applications dated March 21, 2020 and beyond, the USCIS will accept electronically reproduced original signatures on all forms requiring an original "wet" signature for the duration of the COVID-19 National Emergency in the United States.²
- (3) For some requests for evidence (RFEs) and notices of intent to deny (NOIDs), the USCIS has granted an extension period on response deadlines.³

WHY THIS MATTERS

The USCIS's regular processing timeline varies from a few months to in excess of six months for certain visa categories.⁴ Due to the lengthy adjudication timeline under regular processing, employers typically use the premium processing service to expedite adjudication for non-immigrant and immigrant petitions requiring notice of urgent approval.

With the temporary suspension of premium processing service, employers should identify foreign national employees requiring I-129 filings well in advance of their current visa expiry (or in the case of new-hires, well in advance of their employment start date), in order to file the requisite I-129 petition with the USCIS at the earliest possible time. Employers should also consider filing I-140 petitions for foreign national employees early, to avoid disruption in work authorization and immigration status.

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Temporary & Immediate Suspension of Premium Processing

Premium processing is an optional service offered by the USCIS that allows for expedited processing of certain employment-based visa petitions and applications.⁵ Under this expedited service, the USCIS must approve, deny, or issue an RFE on the application within 15 calendar days of receiving the premium processing request.

The USCIS announced on March 20, 2020 that, **effective immediately, premium processing service for all Form I-129 and I-140 petitions will be temporarily suspended until further notice** due to the COVID-19 pandemic. This temporary suspension includes petitions for the following non-immigrant and immigrant status:

- **Non-Immigrant I-129 Petitions:** E-1, E-2, H-1B, H-2B, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, R-1, TN-1 and TN-2.
- **Immigrant I-140 Petitions:** EB-1, EB-2 and EB-3.

The USCIS has clarified that the suspension in premium processing service includes new premium processing requests for all H-1B petitions, including H-1B cap-subject petitions for FY2021, petitions from previous fiscal years, and H-1B petitions that are cap-exempt. The USCIS further clarified that the notice to suspend all premium processing service supersedes the agency's previous announcement stipulating a two-phased premium processing timeline for FY2021 H-1B cap-subject petitions.

With the suspension in effect, the USCIS will not accept any new requests for premium processing, and will reject any Form I-907 *Request for Premium Processing Service* and return the \$1,440 filing fee for all premium processing requests that were mailed before March 20, but not yet receipted by the agency. The USCIS will continue to process petitions with previously-accepted Form I-907 within the 15-calendar-day premium processing service timeline, but it will only send batch-printed notices – the USCIS will not send notices using pre-paid envelopes, even if pre-paid envelopes have been included in the initial petition filings.

At this time, no date has been provided as to when premium processing service will resume. The USCIS has indicated that it will notify the public with a confirmed date for resuming premium processing when that is available.

USCIS's Flexibility on "Wet" Signature Requirement

The USCIS generally requires original "wet" (i.e., handwritten) signature for petitions and applications for immigration benefits, unless specified otherwise in the form instructions.

Due to the ongoing COVID-19 National Emergency declared by President Trump on March 13, 2020, the USCIS announced that it will temporarily accept electronically-reproduced original signatures in lieu of "wet" signatures for the duration of the National Emergency. This flexibility in the USCIS's signature requirement is applicable to all benefit forms and documents (including Form I-129) dated March 21, 2020 and beyond.

The USCIS has clarified that "electronically-reproduced original signature" refers to any document that is scanned, faxed, photocopied, or similarly reproduced, provided that the copy must be of an original document containing an original handwritten signature.

USCIS Grants Additional Time for RFEs & NOIDs

In order to help minimize the negative immigration consequences for those seeking immigration benefits during the COVID-19 pandemic, USCIS announced on March 27 an extension period on response deadlines for some RFEs and NOIDs.

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For applicants and petitioners who receive an RFE or NOID dated between March 1 and May 1, 2020, the agency will accept responses submitted within 60 calendar days after the original response deadline set forth in the RFE or NOID. This 60-day extension does not affect applications for extensions of stay or employment authorization. Thus, these applications must continue to be filed timely.

KPMG NOTE

While the flexibility in the USCIS’s “wet” signature requirement would certainly facilitate the filing of petitions and applications for immigration benefits during the COVID-19 pandemic, employers and foreign nationals who submit documents bearing an electronically-reproduced original signature must retain the original documents containing the “wet” signature. USCIS may request the original documents at any time during the course of adjudicating the application or petition for immigration benefits.

The extension period for RFE and NOID deadlines provides some relief to employers and foreign nationals who may struggle in meeting them as many businesses shift to working remotely or temporarily shut down during this time.

Our office is tracking these matters closely, and will keep GMS *Flash Alert* readers informed of any further developments.

FOOTNOTES:

- 1 To read USCIS’s March 20, 2020 news release on the temporary suspension of Premium Processing, [click here](#).
- 2 To read USCIS’s March 20, 2020 news release on its flexibility with accepting reproduced original signatures, [click here](#).
- 3 To read USCIS’s March 27, 2020 news release on the extension period for RFEs and NOIDs, [click here](#).
- 4 To check USCIS’s current processing time for I-129 and I-140 petitions, [click here](#).
- 5 For an overview of USCIS’s premium processing service, [click here](#).

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