



ALERTS

USCIS Final Rule Expands Premium Processing For Certain Backlogged Cases

April 1, 2022

Highlights

To reduce backlog in the processing of certain cases, the USCIS issued a final rule to expand premium processing

The expansion of the premium processing service will include Form I-140, I-539 and Form I-765

There are distinct processing fees and timeframes, depending on the application being sought

Due to the COVID-19 pandemic, the U.S. Citizenship and Immigration Services (USCIS) experienced significant delays in processing work permits. Certain applications have been pending for an extended period awaiting adjudication; before the pandemic, work permits (Form I-765) were issued within three to six months of filing and now processing times are ranging from eight to 12 months.

In an effort to reduce backlogs and provide relief to certain work permit holders, on March 29 the USCIS issued a [final rule](#) expanding the premium processing service to additional categories. The rule can be effective no earlier than May 31, 2022, and additional implementations will be in a phased manner.

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By paying the current fee of \$2,500, the USCIS guarantees a response within 15 calendar days. Premium processing is an expedited service that is available for certain employment-based petitions, including temporary workers (Form I-129, Petition for a Nonimmigrant Worker) and certain employment-based immigrant visa petitions (Form I-140, Immigrant Petition for Alien Worker).

The final rule expands the categories for premium processing to include Form I-539, Application to Extend/Change Nonimmigrant Status; Form I-765, Application for Employment Authorization; and additional classifications under Form I-140. The USCIS also intends to begin implementing, through a phased approach, premium processing availability of Form I-539, Form I-765 and Form I-140 in fiscal year 2022.

Processing Fees and Timeframes

The final rule sets the premium processing fees and timeframes as follows:

- Form I-140 requesting EB-1 immigrant classification as a multinational executive or manager or EB-2 immigrant classification as a member of professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW). **Fee:** \$2,500. **Timeframe:** 45 business days.
- Form I-539 requesting a change of status to F-1, F-2, J-1, J-2, M-1, or M-2 nonimmigrant status or a change of status to or extension of stay in E-1, E-2, E-3, H-4, L-2, O-3, P-4, or R-2 nonimmigrant status. **Fee:** \$1,750. **Timeframe:** 30 business days.
- Form I-765 requesting employment authorization. **Fee:** \$1,500. **Timeframe:** 30 business days.

Of note, the rule that provides the USCIS with authorization to expand premium processing directs the agency to ensure that regular (non-premium) processing times for these case types are not adversely affected by the expansion of premium processing. The aim is to keep premium processing from becoming the default choice and the USCIS from directing all of its resources to premium processing at the expense of regular processing.

The USCIS announcement regarding the expansion of premium processing also established new “cycle time” goals for common case types, including work authorization requests that are more reasonable. These cycle processing timelines remain future objectives and not a reflection of current processing times.

What Should You Do?

The hope is that the USCIS expeditiously announces the implementation of this phased approach. In the interim, employers and individuals should monitor their pending cases and prepare for upgrades once the premium processing service becomes available.

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