

Mobility: immigration alert

October 2017

United States

U.S. Citizenship and Immigration Services (USCIS) to apply the same level of scrutiny to both initial petitions and extension requests

Executive summary

On October 23, 2017, under updated policy guidance, U.S. Citizenship and Immigration Services (USCIS) instructed its officers to apply the same level of scrutiny to both initial petitions and extension requests for certain nonimmigrant visa categories, affecting nearly all nonimmigrant classifications filed using Form I-129, Petition for Nonimmigrant Worker.

The previous policy instructed officers to give deference to the findings of previously approved petitions, as long as key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. Under the new policy, however, while adjudicators may ultimately reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point.

Summary points

- ▶ Effective October 23, 2017, in adjudicating petitions for immigration benefits, including nonimmigrant petition extensions, USCIS will thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought.
- ▶ USCIS will ensure that the burden of proof in establishing eligibility remains on the petitioner, where an extension of nonimmigrant status is sought.
- ▶ The adjudicator's fact-finding authority will not be constrained by any prior petition approval and each case will be based on its own merits.
- ▶ While USCIS adjudicators may reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point.
- ▶ USCIS will not be constrained in requesting additional documentation in the course of adjudicating a petition

extension, especially for petitions that did not previously require additional supporting documents

Impact and next steps

While the policy has technically changed to apply the same level of scrutiny to both initial petitions and extension requests, in recent practice deference has not been given to prior decisions. Ongoing processing trends will be an indication of whether this updated policy will result in an actual change in practice or whether the policy is an acknowledgement of current adjudication procedures. The impact of the updated policy includes increased requests for evidence, closer scrutiny of Petitions and denials of extension petitions.



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How we can help

We recommend a conversation with one of our professionals to help evaluate and weigh any upcoming nonimmigrant petition extensions as more time may be required to draft and prepare a timely extension that will satisfy the heightened level of scrutiny implemented as a result of this policy guidance.

We understand that employers may have concerns regarding key personnel who have impending extensions. To this end, we can help your organization understand how to identify individuals who may be impacted and assist with questions or concerns as to how this may impact your business. With significant changes in US immigration policy and the potential for legislative reform comes much uncertainty and fear for affected individuals. We encourage you to stay connected to your EY Law LLP legal advisor and reach out to us directly for additional information. We can provide clear advice on what options may be available in these changing times.

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