

Immigration Alert: USCIS to Reintroduce Premium Processing for Most Employment-Based Immigrant Visa Petitions

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U.S. Citizenship and Immigration Services (USCIS) has announced that beginning June 29, 2009, it will accept requests for expedited case adjudication via “Premium Processing” service for most I-140 Immigrant Petition for Alien Worker submissions. Premium Processing results in USCIS reviewing a petition within 15 calendar days, as opposed to the current processing times of 4-21 months. Premium Processing requires the payment of an additional government filing fee of \$1,000 and is requested by the filing of Form I-907, which can be done concurrently with the Form I-140 or anytime thereafter.

In the first preference category, the expedited processing service will be made available for EB-1 Outstanding Professor/Researcher and Extraordinary Ability petitions. For now, the EB-1 Multinational Manager and Executive category will not benefit from Premium Processing.

In the second preference category, Premium Processing will be an option for EB-2 Advanced Degree and Exceptional Ability petitions, but for now will not include EB-2 National Interest Waiver petitions.

Petitions in all third preference categories will be eligible for Premium Processing, including EB-3 Professionals, Skilled Workers, and Other Workers.

The benefit of Premium Processing is that the initial review of a petition will occur within as few as 15 calendar days from the date of the request. After initial review, USCIS can either approve the I-140 or issue a Request for Evidence (RFE). When an RFE is issued, case processing is halted by USCIS until the requested information is received, at which point the 15-day “clock” for case adjudication is reset at 15 days. In the rare circumstance where a case is not adjudicated within the 15-day period, USCIS must return the \$1,000 Premium Processing fee.

Premium Processing service for a petition that is currently pending with USCIS can be an attractive option, especially for:

1. foreign nationals in H-1B nonimmigrant status, who will be eligible to receive a three-year extension of H-1B status beyond the normal limit of six years upon approval of the I-140.
2. foreign nationals whose priority date is current but are awaiting I-140 approval to proceed with immigrant visa processing at a U.S. Consulate abroad or adjustment of status to permanent residency here in the U.S. but have chosen not to file the Form I-485 adjustment application until the Form I-140 is approved. In these two circumstances, only an approved I-140 will permit the foreign national to move forward with the permanent residency process.

We remind clients who have already filed a Form I-485 that using Premium Processing to speed up the adjudication of the Form I-140 will not necessarily result in an expedited grant of permanent residency, because the Premium Processing will have no effect on a pending Form I-485, Application to Adjust Status to Permanent Residency.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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