

High Denial Rates of L-1 & H-1B Petitions Compromise American Global Competitiveness



A [National Foundation for American Policy \(NFAP\) Policy Brief](#) published this month, analyzed data reported by United States Citizenship and Immigration Services (USCIS), and found a rising trend in the issuance of Requests for Evidence (RFEs) and denials of visa petitions for L-1 (intra-company transferees) and H-1B professionals over the past four years. The brief concludes that a significant increase in denial rates and RFEs during the past four years have made it far more difficult for skilled foreign nationals to work in America. As a result, companies are increasingly considering moving more work out of the United States to ensure more predictability and avoid the difficulties of the U.S. immigration system that hamper performance in a highly competitive global marketplace.

The brief reports that USCIS adjudicators have significantly increased denials, as well as time-consuming RFEs, even though there has been no change in the law or relevant regulations during that time. Additionally, given the time and financial resources involved, employers are already selective about who they sponsor. Therefore, the high rate of denials and RFEs involve a pool of applicants who employers screened to meet the standard for approval, thus making the increase in denials difficult to justify. This dramatic increase raises questions about the training, supervision and procedures of USCIS adjudicators, and casts doubts over the U.S. government's commitment to maintaining a stable business climate for companies competing in a global economy.

The brief also highlights reports of project delays and contract penalties suffered by companies doing business in the United States due to lost time resulting from this increase in denials and RFEs. Such delays and penalties cost these companies millions of dollars and place them at a marked disadvantage with competitors that operate exclusively outside the United States. The brief finds that denying employers the ability to transfer in key personnel, or gain entry for a skilled professional harm innovation and job creation in the United States, encouraging employers to keep more resources outside the country to ensure predictability.

Among the findings contained in the brief are some particularly troublesome facts:

- Denial rates for L-1B petitions—used to transfer employees with “specialized knowledge” into the United States—rose 214 % from FY 2007 to in FY 2008, despite no change in the law or relevant regulations. Denial rates remained high between FY 2009 and FY 2011. In addition, 63% of L-1B petitions in FY 2011 were subject to a RFE.
- Denial rates for L-1A petitions—used to transfer executives and managers into the United States—almost doubled from FY 2007 to FY 2011.
- Denial rates for H-1B petitions increased 263 % from FY 2007 to FY 2009, and remained higher than in the past for FY 2010 and FY 2011.

- Country specific data on new (initial) L-1B petitions indicate that USCIS is more likely to deny a petition from an Indian-born professional than nationals of other countries.

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, nonpartisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The organization's reports can be found at www.nfap.com.

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