

USCIS Should Lower Employment Barriers Amid Pandemic

By **Susan Cohen** (May 8, 2020, 3:22 PM EDT)

The safeguarding of our economy at this time of crisis is second in importance only to the safeguarding of our population.

It is vital to avoid policies or regulations that contribute to depressing employment. This is especially the case for foreign workers employed in critical capacities. This is important for society at large and all the more so during this pandemic.

Tens of thousands of doctors, nurses and other health professionals are employed on temporary visas. Approximately 23% of home health aides are foreign born. Hospitals, pharmaceutical and biotech companies rely on foreign biochemists, biophysicists, immunology researchers, biomedical engineers, data scientists, statisticians and computer scientists, especially as efforts are devoted to discovering treatments and vaccines for the novel coronavirus.

In recent weeks, registrations submitted to the National Institutes of Health of new COVID-19 clinical trials have doubled from just over 500 to well over 1000.

Hospitals and life sciences companies are dependent on the H-1B temporary work visa program to employ vital professional health care workers. In the U.S., 25% of all doctors are foreign-born. And according to a 2013 report from the Partnership for a New American Economy from 2013, of the top 10 patent producing universities, 79% of drug or drug compound patents had a foreign-born inventor.

The U.S. Department of Homeland Security, through its immigration agency, U.S. Citizenship and Immigration Services, should make two immediate changes to facilitate employment authorization for those who are eligible to work.

Reform the 240-Day Rule

Temporary work visas, such as the H-1B visa, can last for three years and then be extended for three or more years if employers file visa extension requests with USCIS.

Regulations allow employing visa holders for a period of 240 days — eight months — beyond the date of expiration of their original visa status if the employer files an extension. But the processing times for H-1B visa extensions are averaging 10 months under the Trump administration.



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At the 240-day mark, employers such as hospitals and pharmaceutical companies must remove these workers from their payroll and the employees must cease all work until their work authorization is restored by USCIS.

This 240-day rule is unreasonable. It harms the U.S. economy by forcing foreign workers to step out of the workforce for no reason other than the USCIS' bureaucratic inefficiency. The rule should be modified immediately to allow continued employment following timely extension requests until such time as USCIS adjudicates the extension request, no matter how long it takes the agency to get around to making a decision.

The health and economic crisis we are facing makes it ever more urgent for the DHS to quickly amend the 240-day rule, without a notice and comment period. Expedited rulemaking is permissible when quickly implementing a regulation is in the public interest.

For example, the DHS recently announced that it is using expedited rulemaking to relax restrictions on H-2A agricultural guest workers to address the coronavirus-related food shortage.

The agency should similarly reform unnecessary and harmful rules like the 240-day rule at this time of unprecedented job loss and risks to public health.

Restore Premium Processing

The same reasoning justifies immediate restoration of the USCIS premium processing program, which allows USCIS to decide immigration applications within 15 days, upon payment of an additional filing fee of \$1,440. USCIS must refund the money if it cannot meet the 15-day deadline.

USCIS recently suspended premium processing for all visa petitions, stating that it was doing so in response to the pandemic. Right now, the visa petitions of thousands of foreign skilled workers, including desperately needed health care workers, are relegated to a very slow queue.

If employers' visa requests could be approved quickly, they could deploy their newly approved workers right away.

Even though the U.S. government demands that employers pay higher and higher filing fees to USCIS (now up to \$2,460 in total filing fees for a new H-1B petition), the agency typically takes an average of 9 months for H-1B petitions, an unconscionably long time.

By way of comparison, in 2015 the average H-1B processing time was 2 to 3 months. The Trump administration's open hostility towards the H-1B visa program is a major cause of the adjudication delays, as the agency is dragging its feet on most of the petitions, and issuing unjustified denials and requests for additional evidence, to try to force employers to give up on their petitions.

All employers are entitled to receive timely decisions on these expensive visa petitions. But as a result of the lengthy USCIS processing timelines, employers' only option to receive a timely decision is either to submit an additional filing fee of \$1,440 for an expedited decision in 15 days or to request an expedite pursuant to narrow and limited expedite criteria.

The premium processing service should immediately be restored to allow timely decisions on all temporary work visa requests.

Conclusion

To address the country's twin health care and economic crises, USCIS should quickly adapt its regulations and policies to facilitate increased employment. For each employer that has a job for a foreign worker to do, for everyone's sake, the sooner a foreign worker can be deployed, the better.

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