



U.S. Citizenship
and Immigration
Services

MEMORANDUM FOR SERVICE CENTER DIRECTORS
REGIONAL DIRECTORS
OFFICE OF INTERNATIONAL AFFAIRS

FROM: William R. Yates
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Department of Homeland Security

DATE: **August 08, 2004**

SUBJECT: Procedures for Handling H-1B Petitions Filed on Behalf of F-1 and J-1 Non-immigrants Affected by Federal Register Notice of July 23, 2004: Questions and Answers

Several questions have arisen since publication of the Federal Register notice ("the notice") extending the duration of status of certain F-1 and J-1 non-immigrants unable to change status to that of an H-1B nonimmigrant because of the fiscal year 2004 statutory cap of 65,000. The purpose of this memorandum is to provide guidance to USCIS Service Centers regarding the procedures for handling these petitions and concurrent change of status requests.

Q1. If an eligible F-1 or J-1 nonimmigrant remains within their respective 60- or 30-day grace period, is he or she eligible for a change of status to H-1B nonimmigrant with an effective date of October 1, 2004?

A. Yes. If the F-1 or J-1 nonimmigrant alien is still within their 60- or 30-day grace period at the time of filing the request for change of status (COS) to H-1B nonimmigrant effective October 1, 2004, the request for change of status is considered timely filed.

Also, as long as the alien was in status on the date that the COS application was originally filed, the alien may benefit from the notice even if duration of status had expired before the issuance of the Federal Register notice, or has expired after the issuance of the notice, provided the application is still pending with USCIS, including those applications that may be considered by USCIS pursuant to a Motion to Reopen as discussed in this memorandum.

Q2. Many petitions for H-1B nonimmigrant status have been approved by USCIS with an effective employment start date of October 1, 2004 for F-1 and J-1 non-immigrants who are currently in the United States. However, many concurrent change of status requests for these same F-1 and J-1 non-immigrants have been denied by USCIS. What remedies are available to petitioners and beneficiaries in this situation?

- A. Any change of status request denied by USCIS prior to July 23, 2004 based upon unavailability of H-1B status due to the annual cap is a correct decision. However, in light of the Federal Register notice applicants may file a motion to reopen/reconsider the change of status denial with USCIS. Such motions must contain the applicable fee of \$185, and must be received by USCIS no later than August 23, 2004.

Q3. Motions to Reopen (MTR) ordinarily take 4 to 8 months under ordinary circumstances. Will any priority be given to these MTRs so that they can be completed by October 1?

- A. Yes. Because October 1 is less than two months away, Service Centers will identify these Motions to Reopen and will adjudicate these requests expeditiously such that all are adjudicated by October 1.

Q4. If a Motion to Reopen is already pending on one of these cases (on a different basis), does a separate one need to be filed with respect to the Federal Register notice?

- A. No. The petitioner should supplement the pending motion, with all pertinent case identifying information included, and the Service Center will adjudicate it as described in the preceding question.

Q5. If the original underlying petition was filed premium processing, can the new application for Change of Status based upon that petition be handled under the same premium-processing fee?

- A. No. The premium-processing fee covered the expeditious processing of the original request. Action on that request was completed. However, as stated above, USCIS will give priority to any motions filed if the original change of status request was denied based upon unavailability of H-1B status, due to the annual cap. If the original petition remains pending then the petitioner may elect premium processing by filing Form I-907, Request for Premium Processing with the appropriate fee. If the petition has been denied the petitioner may either file a new petition or file a Motion to Reopen with appropriate fee.

Questions regarding this memorandum may be directed to Joseph J. Holliday at USCIS Headquarters, Office of Service Center Operations, or Kevin J. Cummings at USCIS Headquarters, Office of Program and Regulation Development, through appropriate channels.