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USCIS Increases Scrutiny of Certain Nonimmigrant Extension Requests

Legal Update

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By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

Under updated policy guidance, U.S. Citizenship and Immigration Services (USCIS) is instructing its officers to apply the same level of scrutiny to both initial petitions and extension requests for certain nonimmigrant visa categories. The guidance applies to nearly all nonimmigrant classifications filed using Form I-129, Petition for a Nonimmigrant Worker.

The agency noted that previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy, USCIS said.

USCIS explained that as before, adjudicators must thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought. The updated guidance instructs officers to apply the same level of scrutiny when reviewing nonimmigrant visa extension requests, even where the petitioner, beneficiary and underlying facts are unchanged from a previously approved petition. "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 as the burden of proof to establish eligibility for an immigration benefit always lies with the petitioner," USCIS said, adding that the adjudicator's determination "is based on the merits of each case, and officers may request additional evidence if the petitioner has not submitted sufficient evidence to establish eligibility."

We advise employers and employees to treat nonimmigrant extension applications as no longer routine and to include the same documentation as required in an initial petition. We also advise allowing more time to file such applications; 180 days before the current petition expires is recommended. Nonimmigrants may want to consider accelerating permanent residence processing. Litigation of extension petitions may

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be possible in some cases. Contact your Fredrikson & Byron attorney for advice and help in specific situations.

The USCIS announcement is [here](#).