

USCIS Current Issues





Introductions & Objectives



Today's Speakers



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Objectives



1. Provide stakeholders with current information regarding USCIS
 2. Review changes within USCIS Policy and Procedures
 3. Review Best Practices for Student and Employment-Based USCIS Petitions
 4. Provide stakeholders with resources
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The top half of the slide features a solid orange background with a large, faint, stylized graphic of two human figures. The figures are composed of simple curved lines and circles, suggesting movement or interaction. Below this graphic is a white horizontal band.

USCIS Hot Topics

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Processing Times



OPT

- Published online processing times group all OPT applications (pre-, post-, STEM, card replacement) together.
- Generally, pre- and post-completion OPT applications are taking 2-5 months to be processed, STEM OPT is taking 120-150 days, and replacement card requests are taking about 1 month to be processed.
- Students and DSOs cannot make inquiries until published timeframe has passed, regardless of OPT application type.

Processing Times

H-1B

- Regular processing timeline is fluctuating. At the moment, the posted time line is 2-4 months.
- Premium processing has a stated processing time of 15 business days.
- Decisions on RFE responses will also come in 15 days if premium processed.

Change of Status/Extension of Status (I-539)

- Change of status applications to F/M generally taking 5.5-10 months, depending on Service Center.
- Extension of stay is taking 3.5-5.5 months.
- Students must maintain previous status throughout length of change of status application
- REMEMBER: I-539 process now requires biometrics. I-539A is an addendum to the I-539 for co-filers. An individual biometric check (\$85) needs to be included for each person included in the I-539 application.

OPT Hot Topics



- New Form I-765 went into effect on 8/25/20. Make sure applicants use the accurate form to prevent rejection at lockbox.
- EAD cards are now being processed by USCIS instead of a vendor. This means longer processing times.
- I-20s with wet signatures are required to be kept by applicants. Students should send a photocopy of the I-20 with the wet signature.
- On October 2, 2020, the I-765 petition fee (non-DACA) will increase to \$550.
- On August 28, 2020 SEVP sent out a Broadcast Message that it will begin notifying students on OPT/STEM OPT over the maximum number of unemployment days. They will have 15 days to update employer information in the SEVP Portal/with P/DSO or their record will be terminated.

Additional Topics: COVID-19



- USCIS will reuse previously submitted biometrics in order to process valid Form I-765 extension requests due to the temporary closure of Application Support Centers (ASC). Please note that biometrics appointments are rarely issued for Optional Practical Training.
- USCIS instituted a 60 calendar day grace period for receiving responses to Request for Evidence (RFEs), Notice of Intent to Deny (NOIDs), Notices of Intent to Revoke, Continuations to Request Evidence, Notices of Intent to Rescind or Terminate regional investment centers, and filing date requirements for Form I-290B, notice of appeal or motion, if the issuance or decision date is between March 1, 2020 and July 1, 2020, inclusive.

Additional Topics: COVID-19



Flexibility with I-9 Processing

On March 20, 2020 DHS announced employers taking physical proximity precautions due to COVID-19 can delay the requirement to review the employee's identity and employment authorization documents in the employee's physical presence, with the following guidelines:

- Employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within 3 business days.
- Employers should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field.
- Once normal employer operations have resumed, the documents must be physically inspected within 3 business days of reopening. The employer should add "documents physically examined" with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.
- Employers who use this option must provide written documentation of their remote onboarding and telework policy for each employee.
- These provisions may be implemented by employers for a period of 60 days from the date of the notice (March 20, 2020) OR within 3 business days after the termination of the National Emergency, whichever comes first.
- Email address has been changed to i-9central@uscis.dhs.gov as of April 24, 2020.

Additional Topics: COVID-19



E-Verify Update: E-Verify is extending the timeframe to take action to resolve Social Security Administration (SSA) Tentative Nonconfirmations (TNCs) due to SSA office closures to the public. E-Verify is also extending the timeframe to take action to resolve Department of Homeland Security (DHS) TNCs in limited circumstances when an employee cannot resolve a TNC due to public or private office closures. **You must notify your employee about their TNC result as soon as possible.**

New Temporary Policies

- Employers are still required to create cases for their new hires within three business days from the date of hire.
- Employers must use the hire date from the employee's Form I-9 when creating the E-Verify case. If case creation is delayed due to COVID-19 precautions, select "Other" from the drop-down list and enter "COVID-19" as the specific reason.
- Employers may **not** take any adverse action against an employee because the E-Verify case is in an **interim case status**, including while the employee's case is in an extended interim case status.

Customer Support and Account Access

- E-Verify Contact Center representatives are still available.
- Employers will still be able to access their E-Verify accounts

Email address has been changed to e-verify@uscis.dhs.gov as of April 24, 2020.



USCIS Employment-Based Updates/Changes

Employment-Based Updates/Changes



- I-485 in-person interviews reopened June 4th
- October 2nd, 2020: USCIS fees will be changed, forms will be updated, and premium processing time will increase.
 - H-1B increase to \$555, O-1 to \$705, TN to \$695 (in-country), I-140 to \$545, I-485 to \$1130, but now EAD and Advanced Parole will be charged separately (\$550 and \$590, respectively).
 - I-129 will be divided into separate forms based on status requested instead of one form used now.
 - Premium processing will now guarantee a response within 15 *business* days instead of 15 calendar days.

Employment-Based Updates/Changes



- On August 19, 2020: Due to backlogs in EAD production, USCIS is allowing employers to use the I-797 as evidence of employment authorization, though not as evidence establishing identity.
- On June 18, 2020: USCIS rescinded policy guidance on third-party worksites from 2018, specifically on contracts that were not guaranteeing employer-employee relationship for a full three year validity period of a requested H.
- As DOL is currently issuing electronic PERMs through 09/30 (subject to change), then any PERMs issued electronically up to that date may be used for I-140 filings.
- Though there is a ban (with some exceptions) to H-1B entry, please assure your employees that they are still being adjudicated by USCIS.



Best Practices

OPT Best Practices

- Understand 30-day (OPT) and 60-day (STEM) timelines for I-20 recommendations
- Understand application receipt deadlines
- Avoid application fee problems
- Check I-797 receipts EARLY for EAD card errors
- Check edition date on I-765 and always download the current I-765 directly from USCIS website

H-1B Filing Best Practices



- Submit everything on the required list of initial evidence/RFE
- Make sure employee's degree and experience match up with job requirements; answer any possible questions about this when you file. Don't wait for an RFE!
- Justify to USCIS how the position is specialized, specifically citing OOH if need be, in letter of support
- Check the version of your forms and fee amounts on the checks
- Do not rely of past leniencies from the USCIS

I-140 Best Filing Practices

- Make sure you include proof of ability to pay, not just CFO letter.
 - For EB-1s, USCIS is looking for a “preponderance of evidence”; 50% or more of the petition must support at least 2 prongs from listed criteria
 - Any employment experience should be backed up with letters from previous employers.
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Engagement with CIS Ombudsman



USCIS processes all immigration benefit requests and issues policy/regulatory updates.

USCIS and CIS Ombudsman are two different entities. Both are under DHS but on their organizational chart, they are independent and equal entities.

Who is the CIS Ombudsman's Office?

- The CIS Ombudsman liaises between applicants and USCIS when there are unusual issues during and after the adjudication process (i.e. cases out of processing timelines)
- Make recommendations to USCIS about systemic/ongoing issues, outreach efforts, and work on case specific inquiries
- Small staff of 12 handling about 12,000 cases a year; case volume has gone up
- Follow the same expedite criteria as USCIS; DSOs/students must follow proper protocols before engaging with USCIS Requests that USCIS expedite issues with regards to employment authorization.
- Generally requests for assistance with EAD card reissuance problems are handled within 10-20 days.

Updates with CIS Ombuds



What *can* the CIS Ombudsman's Office help with?

- USCIS issues only - cannot help with SEVP or DOS
- Cases outside of processing time
- Lost EAD reissuance
- EAD correction/errors - this data is very helpful for CIS Ombudsman's to track and help USCIS better their protocols
- Incorrect denials and MTR requests
- USCIS application withdrawal issues

What *can't the* CIS Ombudsman's Office help with?

- I-539 expedite requests without compelling factors - not much success on this. Make sure you understand expedite criteria.

*Make sure that applications are error free – if you don't follow the process as outlined in regulations it's probably not going to go in your favor. It's easier to undo USCIS error than user error.

Updates with CIS Ombuds



USCIS Contact Center advice:

Have your students keep track of dates/times of any calls and ask for the officer ID number, in case follow up is needed or a student follows bad advice and needs a path for recourse. USCIS does record the calls and can go back and listen to them.

How can we best work with CIS Ombudsman's office?

- Follow what USCIS has put in place. Document along the way what you have done to get those resolved. Go to them when USCIS hasn't been able to resolve a resolvable issue.
- CIS Ombudsman has to be the "office of last resort"
- Educate the people you are working with on current processing times
- Student/scholar should fill out online form to report issues/request case assistance and should explicitly state that permission is given to talk to their P/DSO.

Troubleshooting Cases with USCIS & CIS Ombuds



Lost EADs

1. Open inquiry with USCIS, wait until they receive the returned card, and reissue it (free)
 - If not received within 30 days, inquire again with USCIS Service Center
 - If not received within 30 additional days, file with CIS Ombudsman's office
2. File for replacement card (new I-765 and fee)

Tools to Help Students Know about Mailing Issues

- USCIS My Case Status Online Alerts
- USPS Informed Delivery

Troubleshooting Cases with USCIS & CIS Ombuds



Incorrect EADs

- Pay attention to EADs once issued - especially end dates
- To correct:

If it is a student error:

- Student must return card, and file new Form I-765 and filing fee
- Student can work with replacement receipt from USCIS

If it is a USCIS error:

- Make copy of the card for student and send card back to Service Center with explanation of error at appropriate time
- USCIS should expedite replacement card; student will not receive a receipt and therefore cannot work while replacement is being issued
- If not received within 60 days of receipt by USCIS, file case with CIS Ombudsman

Troubleshooting Cases with USCIS & CIS Ombuds



Responding to RFEs

- Read RFEs very carefully!
- Stay in your lane (and help others stay in theirs)
- Provide what's appropriate for your school's processes; explain when it's not.

OPT Application Withdrawal Requests

- Cannot cancel in SEVIS
- Withdrawal requests to USCIS appear to not be processed in a timely manner
- Request through writing (student) and to USCIS Service Center email (DSO)
- If takes more than 30 days from date USCIS receives request to withdraw; (make sure to mail with a tracking method), file case with CIS Ombudsman

Troubleshooting Cases with USCIS & CIS Ombuds



Application Denials

- If application is denied due to your error or student error, Motion to Reopen may be appropriate depending on the circumstances
- If application is denied due to USCIS error, do not file a motion
- Contact the Service Center to re-open without motion due to USCIS error.
- Cite regulation in your favor; put on school letterhead.
 - If normal protocols fail, have student file case with CIS Ombudsman's office (don't forget to have them give you access to receive information!)



Resources



Resources



- Regulations
 - 8 CFR 214.2(f) - F-1 OPT regulations
 - 8 CFR 214.2(m) - M-1 OPT regulations
 - 8 CFR 214.2(h) - H-1B Regulations
- NAFSA Advisor's Manual AM360
- NAFSA Advisor's Manual Newsfeed
 - <https://www.nafsa.org/advisers-manual-360/archive>
- IssueNet Quarterly
- ISTA/ISCA Advising Networks
- USCIS' Expedite Criteria
 - <https://www.uscis.gov/forms/forms-information/how-make-expedite-request>
- USCIS.gov

Engaging with NAFSA



<http://issuenet.nafsa.org/>

International Students & Scholars

Report an Issue

Inform the International Student and Scholar Regulatory Practice Committee about emerging trends or government obstacles related to international students and scholars.



Report an Issue

Get Liaison Help

Submit a request to the Regulatory Ombudspersons Subcommittee for assistance with specific immigration cases at USCIS Service Centers.



Get Liaison Help