

Mobility: immigration alert

May 2022

United States

USCIS to implement premium processing for certain pending EB-1 and EB-2 Form I-140 petitions

Executive summary

Beginning 1 June 2022, U.S. Citizenship and Immigration Services (USCIS) will accept requests to upgrade multinational manager and executive (EB-1C) I-140 immigrant petitions to premium processing. Only petitions that were received by USCIS on or before 1 January 2021 will be eligible. USCIS will then extend premium processing to EB-1C petitions pending since 1 March 2021 (or earlier) as well as EB-2 National Interest Waiver (NIW) I-140 petitions pending since 1 June 2021 (or earlier), beginning 1 July 2022.

Background and analysis

On 29 March 2022, USCIS announced several initiatives to increase efficiencies in adjudications as well as reduce backlogs caused by protracted case processing times. These initiatives included expanding the case types eligible for premium processing services, including additional classifications under Form I-140.

The filing fee to upgrade a pending EB-1C or NIW I-140 to premium processing is \$2,500, the same fee that applies to other classifications of I-140s that are already eligible for premium processing. This fee will guarantee a response from USCIS, which may be an approval, denial, request for evidence, or notice of intent to deny, within 45 days of receiving the upgrade request; if USCIS fails to meet that deadline, then a refund of the fee may be requested.

Any premium processing requests submitted in connection with these pending I-140 petitions prior to 1

June and 1 July, respectively, will be rejected by USCIS and returned to the requester. It is also important to note that USCIS will not accept a premium processing request filed concurrently with a new EB-1C or NIW at this time, presumably because the agency's resources must initially be dedicated to reducing the existing backlog before there will be capacity to adjudicate new filings within the premium processing timeframe.

What this means

The phased, limited expansion is a welcome development for foreign nationals sponsored in the EB-1C and NIW categories, as well as their sponsoring employers, many of whom have already waited many months, if not years, to complete this initial step in the permanent residence process. As USCIS makes progress in reducing its case processing backlogs, the expectation is that the agency will be able to further expand premium processing and, in some cases, render premium processing unnecessary in order to satisfy its stakeholders' needs.

We will continue to monitor these areas for further developments and provide updates and analysis as they become available. Please reach out to your EY Law professional with any questions in the meantime.



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