

12 June 2008

Mr. Jonathan Scharfen, Acting Director  
U.S. Department of Homeland Security  
US Citizenship and Immigration Services  
20 Massachusetts Ave., N.W.  
Washington D.C., 20536

*Re: Clarification Regarding I-140 Premium Processing*

Dear Mr. Scharfen:

We are writing this letter on behalf of our clients and community of stakeholders, seeking clarification on the above referenced matter.

We appreciate the partial reinstatement of Premium Processing I-140 petitions, but would like your comments on one aspect of it, which seems contrary to current CIS practice. The new policy notes that to avail of the premium benefits, beneficiaries must meet the following four requirements in that they:

1. Are currently in H-1B nonimmigrant status;
2. Will reach the 6th year of their H-1B nonimmigrant stay in 60 days;
3. Are only eligible for a further H-1B extension under AC21 §104(c)2 upon approval of their Form I-140 petition; and
4. Are ineligible to extend their H-1B status under AC21 §106(a)3.

We respectfully submit that item 1 above is contrary to existing Service interpretation. Currently, an otherwise eligible beneficiary may seek H-1 "extension" beyond six years even if they are not in H-1 status. A gap in their H-1 status does not deprive them of the benefits of AC21 as soon as they become otherwise eligible for AC21 benefits.

To illustrate, let us take the example of a beneficiary who is in the sixth year of H-1, but there is a gap of three months in the time when they will become eligible for their 7<sup>th</sup> year extension and their current H-1 expiration. Under extant practice, such a beneficiary could move outside the United States of America and in time obtain their H-1 "extension" even if there is gap in the status. Thus, they could conceivably be back in three months on H-1 extension when they become so eligible under AC21.

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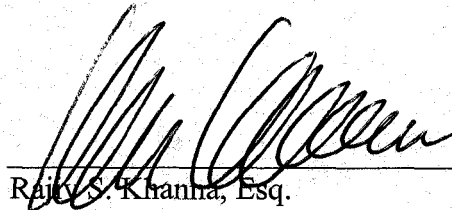
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Thus, Service, consistent with its current practice should eliminate item 1 above. Even those beneficiaries who had to leave the United States of America or are in a status other than H-1 should be permitted the benefit of premium processing as long as they otherwise qualify under the announced policy.

Thank you for your time and attention to this matter.

Law Offices of Rajiv S. Khanna, P.C.

By:



Rajiv S. Khanna, Esq.



# USCIS Update

June 11, 2008

## **USCIS to Offer Premium Processing For Certain Form I-140 Petitions**

*Service Begins June 16, 2008*

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today that on June 16, 2008, it will begin accepting Premium Processing Service requests for Forms I-140 (Immigrant Petition for Alien Worker) filed on behalf of certain alien workers who are nearing the end of their sixth year in H-1B nonimmigrant status.

Premium Processing Service offers 15 calendar-day processing for designated employment-based petitions and applications upon request. There is a nonrefundable fee of \$1000 for this service. During the 15-day period, USCIS will issue either an approval or denial notice, a notice of intent to deny, a request for evidence, or open an investigation for fraud or misrepresentation. USCIS previously designated certain classifications under Form I-140 for Premium Processing Service in the May 23, 2006 issue of the Federal Register. See 71 FR 29662.

USCIS is limiting Premium Processing Service for Form I-140 petitions that are filed on behalf of aliens:

- Who are currently in an H-1B nonimmigrant status;
- Whose sixth year will end within 60 days;
- Who are only eligible for a further extension of H-1B nonimmigrant status under section 104(c) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21); and
- Who are ineligible to extend their H-1B status under section 106(a) of AC21.

Section 104(c) of AC21 permits applicants to extend their stay in H-1B nonimmigrant status in increments of up to three years, provided they are the beneficiary of an approved Form I-140 and an immigrant visa is not immediately available. Section 106(a) of AC21 permits applicants to extend their stay in H-1B nonimmigrant status in increments of up to one year, provided the Form I-140 petition or underlying labor certification has been pending for at least 365 days.

For more details on Premium Processing Service for the Form I-140 petitions described in this announcement, visit the USCIS web site at

[http://www.uscis.gov/files/article/premiumproc\\_factsheet\\_i140\\_061108.pdf](http://www.uscis.gov/files/article/premiumproc_factsheet_i140_061108.pdf).

More information on Premium Processing Service in general can be found on the USCIS web site at [www.uscis.gov](http://www.uscis.gov), or by calling the USCIS National Customer Service Center at (800) 375-5283.