

# First phase of premium processing of H-1B cap applications to aid int'l pupils get work visas

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In good news for Indians with job offers in the US, the country's citizenship and immigration services (USCIS) announced on Tuesday night the opening of premium processing for H-1B cap applications for the next fiscal year.

The first phase of premium processing for fiscal 2020 (year commencing October 1, 2019) will be open to cases that require a change of status. This will include international students currently holding F-1 student visas and working under an optional training programme (OPT), where the employer has sponsored them for H-1B work visas.

The second phase of premium processing for fiscal 2020 will include all other H-1B cap applications. Filing of H-1B cap applications for fiscal 2020 commences next month from April 1. The earliest that a beneficiary (employee), allotted the work visa, can begin work is October 1. Owing to the large number of applications for the annual H-1B quota of 85,000 (which includes a Masters cap of 20,000 reserved for those with a US degree); typically the quota is reached within the first few days of April. USCIS then runs a random lottery to select the applications for further processing, which lately is taking up considerable time and leading to delays.



**THE PATH AHEAD**

**Starting April 1,** sponsoring employers for **H-1B** cap applications relating to change in status (from F-1 student visa to work visa) can file for the premium processing request concurrently with the H-1B application

USCIS will commence premium processing of **phase 1** (change of status cases) by **May 20, 2019**

Premium processing for all other H-1B cap cases (such as hiring of expat workers) will commence earliest by **June 2019**

Against a fee of **\$1,410**, premium processing offers adjudication of the application with 15 days and ensures certainty

After this, the H-1B visa is either granted or the application is denied. In this backdrop, premium processing is a boon. Against a filing fee of \$1,410 per application paid by the sponsoring employer, USCIS commits to processing the application within 15 days. Starting April 1, for H-1B cap applications relating to change of status, employers can concurrently file the request for premium processing. A release by USCIS points out that the first phase of premium processing will commence later, but will definitely be available before May 20. Premium processing for all other fiscal 2020 capsubject H-1B petitions will not begin until at least June.

“Our two-phased approach to premium processing will make the process more effective and efficient for employers and USCIS,” L Francis Cissna, director, USCIS, has stated. USCIS has also announced the launch of a data hub on its website, which will make public certain details of H-1B sponsoring employers and filings.

As reported by TOI in its edition of October 29, Indian STEM students (those in the Science, Technology, Engineering and Mathematics stream) dominate the OPT scene. They held 50,507 or 56% of the total STEM-OPT authorisations in fiscal 2017. “Opening up of premium processing at an early date will immensely benefit those international students whose OPT expires prior to October 1, 2019,” Emily Neumann, a Texas-based partner at immigration law firm, Reddy & Neumann, told TOI.

She explained that regulations allow for what is referred to as a ‘cap-gap’ extension of the OPT for those students selected in the H-1B lottery who have requested a change of their immigration status to H-1B. They can continue working until September 30, based on the presumption that the H-1B petition would be approved by October

1. It permits a smooth transition from the end of F-1 status to the beginning of H-1B status.

"However, in recent years, many cap-gap students did not receive adjudication of their H-1B applications by October 1 and were forced to stop work until the application was approved. With premium processing, sponsoring employers who need top talent coming out of US universities can ensure that they receive approvals in time to facilitate transition to H-1B status on October 1, without any gap in work authorisation," Neumann said.

"Similarly, for employees who are coming from outside the United States, even though the premium processing will begin in June, it offers a great deal of comfort in knowing where a case stands. If the application is denied, which is quite common these days, there will be enough time to appeal or litigate it before the October 1 start date," Rajiv S Khanna, managing attorney at Immigration.com told TOI. For fiscal 2019, for which the H-1B cap applications were filed in April 2018, USCIS had inordinately delayed premium processing, opening it up in phases only from January 28, 2019. This had led to delays and the recent announcement comes as a pleasant surprise, said Snehal Batra, managing attorney at NPZ Law Group.

Spouses of H-1B workers hold an H-4 visa. Spouses of those who were on the green track route were permitted to obtain work authorisations (EAD), a programme that is set to be rescinded. "H-4 EAD holders will also benefit, particularly if their current status and employment authorisation are set to expire towards the end of this year. Now, they will have the option to change status to H-1B in a timely fashion," states Neumann.

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