

# Visa or extension applications will not be denied outright, under new USCIS policy

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MUMBAI: The US Immigration and Citizenship Services (USCIS) has announced a series of policy updates, which will gladden the Indian diaspora and also those aspiring to work in the US.

Among these updates, USCIS has rescinded a Trump-era (July 2018) memo that permitted immigration officers to deny benefit requests (say a visa application, or an extension application) outright, instead of first seeking further evidence or issuing a notice of intent to deny (NOID).

It has reinstated a June 2013 policy memo. In doing so, USCIS states that companies and foreign nationals should generally be given an opportunity to correct innocent mistakes and unintentional omissions, through the submission of additional evidence without needing to re-submit a full application.

The immigration agency has also clarified the criteria for expedited processing which could help several individuals and extended the validity period to two years for employment authorisation documents (EADs) for green card applicants.

Improving America's legal immigration system and elimination of unnecessary barriers are top priority for the immigration agency, under the Biden administration. "We are taking action to eliminate policies that fail to promote access to the legal immigration system, and will continue to make improvements that help individuals navigate the path to citizenship, and that modernize our immigration system," said Secretary of Homeland Security Alejandro N. Mayorkas.

Speaking to TOI, Rajiv S. Khanna, managing attorney at Immigration.com said, "These policy changes are a firm step in the right direction. The earlier policy, that an application to USCIS could be denied just because the adjudication officer subjectively determined the case to be fatally deficient, was a cause of nightmares for the applicants and for immigration lawyers. A reversion back to asking for evidence, gives stakeholders a sense of repose that their cases (which are expensively filed and are crucially important), will not be dismissed upon the whim of an adjudication officer."

Expedited processing is a special-situation service that USCIS considers for benefit requestors who urgently need their request for immigration benefits adjudicated. USCIS reviews such requests on a case-by-case basis.

Mitch Wexler, partner at the Fragomen, a global immigration law firm states, "USCIS has also clarified criteria for whether an immigration case can be accorded expedited treatment, due to severe financial loss. A company seeking to expedite adjudication of a case may demonstrate a severe financial loss, if it is at a risk of failing, losing a critical contract or being required to lay off employees."

"Further, an individual may be able to demonstrate severe financial loss by establishing a job loss, but their need to obtain employment authorization alone, without other compelling factors, would not warrant expedited treatment," explains Wexler.

Khanna illustrates: The new policy clarifies that for individuals, a job loss may be sufficient to establish severe financial loss. For

example, the inability to travel for work that would result in job loss might warrant expedited treatment. This happens in cases where a driving license is not renewed due to a lack of work authorization.

Under the new policy, non-profit organisations can also request for expedition of their applications, even if premium processing, which comes with a \$ 2,500 fee, is otherwise available for such cases. This will cut costs for non-profit organisations.

The validity period for green card applicants who apply for an employment authorisation document (EAD) will now be two years, for both the initial and the renewal EAD.

Florida-based immigration attorney Ashwin Sharma, told TOI, “This is an excellent idea that will reduce USCIS's workflow, which is particularly logical considering the fact that USCIS earns little to no fees for this case category. This option has been suggested by several stakeholders over the years, and its implementation will also reduce the likelihood of a gap in the applicant's employment, which has plagued many of late.”