

TRUMP-ERA POLICIES POTENTIALLY AFFECTING USCIS PROCESSING TIMES AND BACKLOGS

PROCEDURAL CHANGES THAT COULD AFFECT PROCESSING TIMES

POLICY	POTENTIAL/ ACTUAL IMPACT ON PROCESSING	STATUS (current as of Jan. 18, 2023)
USCIS requires biometrics for all applicants submitting Form I-539, Application to Extend/Change Nonimmigrant Status	Added new step of biometric collection to all requests for change or extension of status, thus potentially lengthening process.	<i>Partially in Effect:</i> Biometric requirement suspended for applications involving E, H-4, or L-2 status
USCIS begins requesting biometric information for Form N-565 applicants seeking Naturalization/Citizenship replacement documents	Added new step of biometric collection to requests for citizenship replacement documents, thus potentially lengthening process.	<i>Fully in Effect.</i>
DHS proposes rule to expand biometric data collection	Proposed rule would have required all individual petitioners and beneficiaries for any benefit to appear for biometric collection, and would expand the types of biometrics to be collected, adding a major step to many processes and considerably increasing the volume at Application Support Centers (ASCs).	<i>Not in Effect:</i> rule withdrawn on 5/10/21
USCIS expands required in-person interviews for certain permanent residency applicants	Mandated interviews for all adjustments of status for employment-based and asylee/refugee relatives, adding an administratively lengthy step.	<i>Not in Effect:</i> Policy Manual update allows officer discretion in waiving interviews, thus effectively returning the policy to its pre-Trump era state.

<p>USCIS no longer waives interviews for employment-based and fiancé-based adjustment cases</p>	<p>Removed employment-based and fiancé(e)-based adjustment cases from the list of cases in which interview could be waived, thus increasing time to complete processing and adding to administrative workload.</p>	<p><i>Not in Effect:</i> Although employment-based and fiancé-based adjustment cases continue not to be listed in the Policy Manual among those for which an interview may be waived, an update to the Manual adds the statement, “if USCIS determines that an interview of an applicant in any other category not listed above is unnecessary, then USCIS may waive the interview” thus effectively returning the policy to its pre-Trump era state.</p>
<p>USCIS expands interview requirements for refugee/asylee adjustment of status</p>	<p>Added 8 new situations in which refugees/asylees applying for adjustment of status should be referred for interview, increasing time to complete processing and adding to administrative workload.</p>	<p><i>Fully in Effect.</i></p>
<p>USCIS to require I-730 petitioners to appear for interview</p>	<p>Required petitioners to appear for interviews on refugee/asylee relative petitions. This added an extra interview to the process for many, increasing time to complete processing and adding to administrative workload.</p>	<p><i>Not in Effect:</i> Policy revoked on 12/10/21</p>
<p>USCIS revises interview waiver guidance for Form I-751, Petition to Remove Conditions on Residence</p>	<p>Shifted emphasis from a policy that regarded interview waivers as the norm to one that regarded such waivers as the exception, thus encouraging an additional step in the process for many cases.</p>	<p><i>Fully in Effect.</i></p>
<p>USCIS shifts to requiring citizens residing abroad to file Form I-130 online except in very limited circumstances</p>	<p>USCIS stopped accepting at its international offices family-based petitions from petitioners residing abroad, except for certain military members, thus</p>	<p><i>Fully in Effect.</i></p>

	potentially making the process more cumbersome for those families.	
<u>USCIS will transfer some green card and naturalization cases to field offices</u>	USCIS announced plans to transfer some naturalization and permanent residence applications to field offices with lower volumes. The stated purpose was “to reduce processing times,” but could result in applicants needing to travel significant distances to attend interviews.	<i>Unclear:</i> There have been no recent announcements of such transfers.
<u>CBP Further Restricts Canadian L-1 Applications at the Border</u>	CBP refused to accept L-1 renewal petitions from Canadian citizens at the border or airport pre-clearance, thus moving more workload to USCIS.	<i>Fully in Effect.</i>
<u>USCIS makes unannounced Form I-730 processing changes, referring certain petitions to ICE</u>	Required USCIS adjudicators to refer to ICE I-730 petitions for beneficiaries with prior removal orders to decide whether to pursue enforcement action before USCIS will adjudicate the I-730, thus potentially significantly slowing the adjudication process. (That being said, this policy could take some cases out of the queue if ICE does pursue enforcement.)	<i>Fully in Effect.</i>
<u>USCIS announces "last in-first out" processing for affirmative asylum interviews</u>	USCIS announced it would interview the most recent affirmative asylum applicants first, thus further lengthening the wait for those with long-pending applications.	<i>Fully in Effect.</i>
<u>USCIS issues guidance on changing from B-1 or B-2 status</u>	Required that applicants seeking to change to F-1 or M-1 student status request an extension of the prior status if the prior status expires more than 30 days before the school start date or if the school	<i>Partially in Effect:</i> In July 2021, USCIS announced guidance that "eliminates the need for individuals who have applied for a change of status (COS) to F-1 student to apply to change or extend their

	start date was deferred because USCIS did not make a decision on the change of status in time. This added a new step to the process, requiring more applications to be adjudicated, even when the need for the application was caused by slow adjudications at USCIS.	nonimmigrant status while their initial F-1 COS application is pending." The guidance is silent on changes of status to M-1 student, so presumably that portion of the Trump-era guidance is still in effect.
USCIS releases instructions on filing Form I-589 asylum applications with the Asylum Vetting Center	Changed filing locations for certain asylum applications from local USCIS offices to a centralized "vetting center," thus adding a step to processing.	<i>Fully in Effect.</i>

SUBSTANTIVE CHANGES THAT COULD AFFECT PROCESSING TIMES

POLICY	POTENTIAL/ ACTUAL IMPACT ON PROCESSING	STATUS (current as of Jan. 18, 2023)
USCIS ceases deference to past decisions for nonimmigrant petition extension requests	USCIS stopped giving deference to previous petition determinations, including H-1B and L-1 extension requests, rescinding a 2004 memo. Instead, extension petitions were to be reviewed with the same level of scrutiny as initial petitions, thus lengthening the time it takes to adjudicate.	<i>Not in Effect:</i> An April 2021 Policy Memo generally returns the adjudication process to the prior standard for deference.
USCIS updates Policy Manual guidance on discretionary factors considered for adjustment of status	Expanded analysis required for approval of adjustment of status, thus potentially increasing adjudication time and potential	<i>Fully in Effect.</i>

	for back-and-forth with Requests for Evidence (RFEs).	
DHS memo implementing EO 13768 on "Enhancing Public Safety in the Interior"	Eliminated categorical exercises of prosecutorial discretion, thus requiring individualized consideration of parole for people in pre-designated categories and requiring more administrative resources.	<i>Not in Effect/Under Litigation:</i> Policy revoked by Biden Administration. SCOTUS has granted certiorari on a challenge to the revocation by a group of states.
USCIS changes intake process for Form I-914, rejects incomplete forms	Changed intake process for T status applications to a more complete review, with USCIS rejecting forms that contain any blank spaces, thus lengthening the initial review process and increasing the number of times an application must go back and forth.	<i>Not in Effect:</i> In April 2021, USCIS announced that it had reverted to the prior policy of reviewing at intake for only proper signature, fee, and supporting documents.
USCIS rejects certain application forms for incompleteness if any fields are left blank	Changed intake process for asylum and other applications to a more complete review, with USCIS rejecting forms that contain any blank spaces, thus lengthening the initial review process and increasing the number of times an application must go back and forth.	<i>Not in Effect:</i> In April 2021, USCIS announced that it had reverted to the prior policy of reviewing at intake for only proper signature, fee, and supporting documents.
USCIS issues final rule on public charge inadmissibility grounds / State Department acts on 'Public Charge' changes, including issuing Interim Final Rule / New Form I-944, Declaration of Self-Sufficiency, required for adjustment of status applications / USCIS releases new forms, Form I-945 and I-356, to formalize the public charge bond process / USCIS publishes revised forms consistent with the final rule on the public charge ground of inadmissibility / DHS changes	Expanded what must be considered in adjudicating whether an applicant or beneficiary is likely to become a public charge, thus potentially lengthening adjudication time and back-and-forth for further evidence.	<i>Not in Effect:</i> In March 2021, the Biden Administration filed a joint stipulation with the Supreme Court to dismiss a challenge to the rule, thus effectively ending it. In February 2022, DHS issued a Notice of Proposed Rulemaking to codify the agency interpretation (issued in guidance) that governed public charge analysis before the Trump-era rule. In September 2022, DHS issued the final rule on the public charge ground of

Affidavit of Support sponsorship forms to reflect Public Charge Rule		inadmissibility effective December 23, 2022.
POTUS issues EO 13780, extending travel ban and instructing agencies to enhance screening of certain foreign nationals	Instructed agencies to expand and enhance vetting of all visa applicants, which could lengthen all steps of processing.	<i>Not in Effect:</i> Order revoked on 1/20/2021
President issues memo implementing heightened vetting of visa applications and reporting requirements	Required DHS and DOS to develop and implement enhanced protocols for vetting applicants for all immigration benefits, thus potentially lengthening processing times.	<i>Not in Effect:</i> A February 2021 Executive Order revokes this order and, among other things, requires the agency to create a plan to address processing backlogs.
DHS announces new extreme vetting measures for refugees	Added screening procedures for refugees, thereby likely lengthening processing.	<i>Status Unclear:</i> The underlying Executive Order has been rescinded, and the announcement moved by USCIS to the Archival page of its website, but there is no record of the policy being overtly rescinded.
USCIS announces additional extreme vetting measures for "following-to-join" refugees	Added screening procedures for follow-to-join refugees, thereby likely lengthening processing.	<i>Status Unclear:</i> The underlying Executive Order has been rescinded, and the announcement moved by USCIS to the Archival page of its website, but there is no record of the policy being overtly rescinded.
DHS issues interim final rule narrowing H-1B criteria	Interim final rule expanded the number of times the H-1B process must be repeated when employee will be located at a third party site	<i>Not in Effect:</i> Final rule removes interim rule, implementing district court's vacatur of the interim rule.
USCIS changes third party placement and contract/itinerary requirements for H-1Bs	Expanded the array of evidence required where employees go to third party sites, in effect expanding the number of steps and number of times needed to apply.	<i>Not in Effect:</i> Policy rescinded in 6/20 as result of settlement of litigation.

DOD increases naturalization requirements for military service	Defense Dept added requirements, including longer periods of service, to qualify to apply for military service-based naturalization, thus lengthening the time before an application can even be logged with USCIS.	<i>Not in Effect:</i> The policy was struck down in litigation.
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VALIDITY PERIODS IMPACTING THE NUMBER OF APPLICATIONS USCIS MUST HANDLE

POLICY	POTENTIAL/ ACTUAL IMPACT ON PROCESSING	STATUS (current as of Jan. 18, 2023)
USCIS revises validity of Form I-693, Report of Medical Examination and Vaccination Record	Expanded validity period from 1 year to 2 years, thus helping reduce administrative processing time and burden on applicant.	<i>Further expanded:</i> Validity period lengthened from 2 years to 4 years.
USCIS issues policy guidance on discretionary EAD under adjustment or deferred action applications	Reduced validity period of work authorization for adjustment of status applicants from 2 years to 1 year.	<i>Not in Effect.</i> (this aspect of the overall policy document): Returns validity period of EAD for many adjustment of status applicants to 2 years.
DHS issues DACA memo rejecting initial DACA requests, restricting advance parole, and shortening renewals to one year / USCIS implements DHS guidance to reject, restrict, and shorten DACA program	Policies include shortening of the validity of DACA grants from 2 years to 1 year.	<i>Not in Effect:</i> While the overall policy remains in litigation, the DACA grants that are allowed to be issued have been returned to 2-year validity.
DHS proposes rule to establish fixed time admission for F, J and I nonimmigrants	Proposed rule would have eliminated admission of students, exchange visitors, and foreign journalists for duration of status. This would mean that these nonimmigrants would be admitted for fixed periods, and need to apply for	<i>Not in Effect:</i> Proposed rule withdrawn in July 2021.

	extensions of stay to maintain status, thus increasing workloads at USCIS.	
DHS restricts admission periods for Chinese journalists	Final rule restricted period of admission for Chinese journalists in I status to 90 days instead of for duration of status, thus requiring multiple, sequential requests for extension of status and thereby increasing workloads at USCIS.	<i>Partially in Effect:</i> CBP issued a final rule removing the set period of stay of up to 90 days for I visa holders from the People's Republic of China and allowing the Secretary of Homeland Security to determine the maximum period of stay, no longer than one year.

CLOSURES/CUTBACKS/DOWNSIZING THAT MAY HAVE AFFECTED USCIS CAPACITY

POLICY	POTENTIAL/ ACTUAL IMPACT ON PROCESSING	STATUS (current as of Jan. 18, 2023)
USCIS reduces capacity to print green cards and employment authorization documents	The end of a contract with a private printer and hiring freezes at USCIS combined to markedly increase a backlog in production of green cards and EADs.	<i>Partially Ameliorated:</i> In May 2022, USCIS issued a temporary rule automatically extending certain existing EADs for 540 days.
COVID-19: USCIS temporarily closes offices until at least April 7th	USCIS closed local offices, including field, asylum, and application support centers, due to Covid-19.	<i>Not in Effect:</i> USCIS began reopening offices in June 2020.
COVID-19: USCIS temporarily suspends in-person services	USCIS suspended in-person services, including interviews and naturalization ceremonies, due to Covid-19.	<i>Not in Effect:</i> USCIS began resuming services in June 2020.
USCIS to close most of its international field offices / USCIS plans to close several international field offices / USCIS announces closure of Seoul office / USCIS closes field office in Moscow, Russia	USCIS announced closure of 13 international field offices, thus reducing processing capacity.	<i>Fully in Effect.</i>

USCIS eliminates certain Service Center e-mail addresses	<p>Eliminated the primary avenue for inquiring about case-specific issues at Service Centers potentially harming the public's ability to resolve issues without considerable written back-and-forth, and thus possibly lengthening the overall time it takes to adjudicate a case.</p>	<p><i>Fully in Effect.</i></p>
USCIS phases out self-scheduled Infopass appointments / USCIS announces expansion of InfoMod program	<p>Eliminated the primary avenue for addressing issues at field offices (to be replaced by a generic online system), reduced person-to-person communication, thus potentially harming the public's ability to resolve issues and potentially lengthen the overall time it takes to adjudicate a case.</p>	<p><i>Fully in Effect.</i></p>

DATA & ACTIONS DIRECTLY RELATED TO PROCESSING TIMES AND BACKLOGS

POLICY	POTENTIAL/ ACTUAL IMPACT ON PROCESSING	STATUS (current as of Jan. 18, 2023)
Increased processing delays reported	<p>April 2018 report from DHS showed USCIS backlog more than doubled from the end of FY 2016 to end of FY 2017 while case volume increased just 4%</p>	<p><i>Not in Effect:</i> USCIS released in December 2022 its Fiscal Year 2022 Progress Report, which indicated improvements in immigration backlogs/processing times.</p>
USCIS backlog of citizenship applications reportedly grows	<p>Group of mayors noted 87% growth in backlog of naturalization cases in 2016-2018 period</p>	<p><i>Not in effect:</i> USCIS released in December 2022 its Fiscal Year 2022 Progress Report, which indicated improvements in immigration backlogs/processing times.</p>

<p>COVID-19: USCIS updates stakeholders regarding significant delay in processing receipt notices at USCIS lockbox facilities</p>	<p>USCIS announced in December 2020 that a significant increase in filings, along with facility capacity restrictions during the COVID-19 pandemic, were causing “significant delays for processing receipt notices” for forms and applications filed with USCIS lockbox facilities.</p>	<p><i>Partially in Effect:</i> In June 2021, USCIS announced flexibility policies to help relieve impact of receipt notice delays.</p>
<p>Visa approvals for family preference categories fall significantly in FY 2017</p>	<p>Reuters analysis showed lowest level of approvals of family preference visas in over a decade, reportedly due to slowdown in processing and increase in denials. Increased denials may result in greater workload, as it takes more time to deny a petition than to approve it, and adds to appeals and re-applications.</p>	<p><i>Partially in Effect:</i> USCIS’ annual statistical report showed an increased number of family-based petitions processed in fiscal 2021 over fiscal 2017. However, the number of approvals and denials was not included in the report, and higher numbers of completions were reported in some of the intervening years.</p>
<p>Report that USCIS has increased rates of RFEs and denials of H-1B and L-1 petitions / Report that USCIS increases RFEs for H-1B petitions</p>	<p>National Foundation for American Policy (NFAP) found a significant increase in the rates of denials and Requests for Evidence (RFEs) in the fourth quarter of FY 2017 over the previous three quarters. And data from USCIS showed that already the rate of RFEs had increased by 45% in the second quarter of FY 2017 over the same period the prior year. Increased RFEs inherently slow the process, and increased denials may result in greater workload, as it takes more time to deny a petition than to approve it, and adds to appeals and re-applications.</p>	<p><i>Situation Reversing:</i> Data released by USCIS indicates that denial rates for H-1B petitions dropped in FY 2021, far lower than the denial rates in FY 2018, FY 2019 and in FY 2020.</p>
<p>USCIS denies H-1B petitions at higher rates</p>	<p>During FY 2019, H-1B petitions were denied at a much higher rate than</p>	<p><i>Situation Reversing:</i> Data released by USCIS indicates that denial rates for H-</p>

	<p>previously. Increased denials may result in greater workload, as it takes more time to deny a petition than to approve it, and adds to appeals and re-applications.</p>	<p>1B petitions (Form I-129) dropped in FY 2021, far lower than the denial rates in FY 2018, FY 2019 and in FY 2020.</p>
<p>Data from USCIS shows declining approvals and higher rates of requests for evidence (RFEs) for several key employer-sponsored nonimmigrant categories</p>	<p>Between FY 2015 and FY 2018, the rate of approvals fell and the rate of requests for evidence rose for the major employment-based nonimmigrant categories. H-1B employers in the IT consulting industry saw higher than average denial rates. Though the rate of RFEs and denials had been increasing for several immigration categories since the Obama Administration, there was a significant uptick in the wake of the Trump Administration's Buy American, Hire American executive order. Higher RFE and denial rates can increase workload both for USCIS and for the affected public.</p>	<p><i>Situation Reversing:</i> Data released by USCIS indicates that denial rates for H-1B petitions dropped in FY 2021, far lower than the denial rates in FY 2018, FY 2019 and in FY 2020. The data also reveals that denials decreased for O and L visa petitions, though overall the percentage of approvals remained lower than when President Trump first took office. For TN visa petitions, approvals were lower in FY21 than in FY20.</p>
<p>USCIS requests transfer of over \$200 million to ICE for immigration enforcement purposes</p>	<p>Transfer of funds from USCIS' fee account to ICE would reduce resources available for adjudications.</p>	<p><i>Not in Effect:</i> The effort was abandoned in 2020.</p>
<p>DHS amends regulation to remove 30-day processing provision for asylum employment authorization applications</p>	<p>USCIS removed a regulatory provision stating that USCIS has 30 days from the date an asylum applicant files the initial Application for Employment Authorization (EAD) to grant or deny that initial employment authorization application, thus enabling backlogs in this category.</p>	<p><i>Not in Effect:</i> In September 2022 DHS published a final rule to remove certain regulatory text governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application pursuant to the vacatur in <i>Asylumworks v. Mayorkas</i> from February 7, 2022.</p>

