

## USCIS Reverses Policy on Temporary Visa Extensions

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On Monday, October 23, 2017, U.S. Citizenship and Immigration Services (USCIS) reversed a long-standing policy regarding non-immigrant extension petitions. Historically, as memorialized in an April 23, 2004 USCIS policy guidance, USCIS officers adjudicating a non-immigrant H-1B, L-1, TN-1, or O-1 visa petitions were instructed to give deference to the findings of a previously approved petition, as long as the key elements underlying the petition were unchanged and there was no evidence of a material error or fraud related to the prior determination.

The updated policy guidance rescinds the previous policy and, under the new policy, USCIS officers will apply the same level of scrutiny to both initial petitions and extension petitions for virtually all non-immigrant classifications. Under this new policy, which takes effect immediately, the burden of proof in establishing eligibility for the visa petition extension is on the petitioner employer, regardless of whether USCIS previously approved a petition. The USCIS officer's determination is based on the merits of each case, and may request additional evidence if they believe the employer has not submitted sufficient evidence to establish eligibility.

Employers and their employees holding a non-immigrant status should likely expect greater scrutiny of their extension requests and an increased likelihood of receiving requests for evidence and even notices of intent to deny.

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