

USCIS Outright Denials of Requests for Immigration Benefits Could Increase

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On Friday, July 13th, the U.S. Citizenship and Immigration Services (USCIS) posted a [policy memorandum](#) providing guidance to USCIS adjudicators on their discretion to deny an application, petition, or request without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID). According to this updated policy—which rescinds a prior policy memorandum published in 2013 that effectively limited denials without RFEs or NOIDs—adjudicators may now deny applications, petitions or requests whenever they feel that the required initial evidence was not submitted or that the evidence of record fails to establish eligibility.

This is being done to prevent “frivolous or meritless claims that slow down processing for everyone,” said USCIS Director L. Francis Cissna, who went on to state that this policy will “discourage frivolous filings and skeletal applications used to game the system.” According to the July 13th memo itself, the new policy “is intended to discourage frivolous or substantially incomplete filings used as ‘placeholder’ filings and encourage applicants, petitioners, and requestors to be diligent in collecting and submitting required evidence.”

In practice, this may mean a number of things. Firstly and most importantly, legitimate requests should be as complete and thorough as possible in documenting the reasons why and how the benefit seeker qualifies under the law for the benefit sought. Secondly, it is possible that even legitimate, good-faith applications, petitions and requests may receive denials rather than a chance to rectify any misunderstandings or mistakes, or address subjective concerns or interpretations of the facts in evidence by the adjudicating officer.

Over the past year, the USCIS has appeared to significantly increase the number of RFEs issued. While the USCIS is claiming that this is due to “frivolous and meritless claims,” we have certainly seen more push-back on both nonimmigrants attempting to avail themselves of legal options for working and living in the United States, and intending immigrants wishing to permanently reside in the United States. Multiple articles across various new agencies have followed this issue (e.g., Reuters at <https://www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8>; Quartz Media at <https://qz.com/1176576/h1b-visa-under-trump-is-already-harder-to-get/>, etc.), and the number and quality of the Requests for Evidence issued in response to the most recent round of H-1B visa petitions has confirmed that the USCIS continues to appear motivated to discourage applications for immigration benefits.

It is now more important than ever to submit the most complete application, petition or request possible the first time around, as benefit seekers may not be given a chance to address any specific agency concerns before receiving a denial that will remain on their record indefinitely.

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