

Well That Escalated Quickly...How Filing an H-1B Extension Could Lead to Removal Proceedings

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Two recent USCIS policy updates underscore the hyper-aggressive tact the Department of Homeland Security (DHS) is taking with its adjudications through USCIS.

One memo clarifies that USCIS has the authority to deny filings w/o the need to send a Request for Further Evidence (RFE) or Notice of Intent to Deny (NOID). USCIS routinely (even more routinely lately with H-1B filings) sends an RFE if they feel additional information or documentation is needed. Now, under this new policy, USCIS may deny cases w/o providing the petitioner the opportunity to address any specific concerns about the filing.

The other memo confirms the conscription of USCIS into the enforcement world---a role usually reserved for Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP). This new policy memo authorizes USCIS to place an individual into removal proceedings if denying the non-immigrant petition will result in the foreign national having no status. For example, if an H-1B extension is filed for an individual, and the current H-1B status expires, and then the H-1B extension is denied w/o an RFE or NOID, USCIS may then place that individual into removal proceedings.

While not being afforded the opportunity to address an issue with USCIS before it chooses to deny a filing is unsettling, the notion that the person will subsequently be placed into removal proceedings is absolutely frightening. Individuals who have been here for years could be placed into removal proceedings w/o any opportunity to respond to a request for clarifying info from USCIS.

Without any warning, a non-immigrant extension filing such as an H-1B filing could lead to being placed into removal proceedings.

Individual case strategies become more important as the immigration landscape continues to dramatically shift.

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