

Mobility: immigration alert

September 2021

United States

USCIS extends flexibility for responding to agency requests

Executive summary

USCIS announced that it is further extending the flexibilities for responding to certain requests and notices.

Background

On 24 September 2021, USCIS announced that it is extending the flexibilities for applicants, petitioners and requestors to respond to certain requests and notices including:

- ▶ Requests for Evidence;
- ▶ Continuations to Request Evidence (N-14);
- ▶ Notices of Intent to Deny;
- ▶ Notices of Intent to Revoke;
- ▶ Notices of Intent to Rescind;
- ▶ Notices of Intent to Terminate regional centers; and
- ▶ Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant.

The flexibility applies if the issuance date listed on the request, notice or decision is between 1 March 2020 and 15 January 2022, inclusive. Where applicable, USCIS will consider a response to a request and notices received within 60 calendar days after the response due date in the request or notice before taking any action.

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings where:

- ▶ a decision is made anytime between 1 March 2020 through 15 January 2022; and
- ▶ the form was filed up to 60 calendar days from the date of decision, before taking any action.

Analysis

Since March 2020, USCIS has been flexible in granting more time for applicants and petitioners to respond to certain requests and decisions by USCIS. This flexibility comes in response to the COVID-19 pandemic, and it has been extended periodically since its inception. The last announcement, made on 24 June 2021, extended the flexibility until 30 September 2021. The current announcement extends that flexibility for another three and a half months until 15 January 2022.

We note that the announcement does not require any showing of cause for the delay in responding to a request from USCIS. As such, any petitioners, applicants or requestors may take advantage of the additional flexibility as long as the request, notice or decision meets the eligibility requirements set out in the announcement. Some petitioners, applicants or requestors might find the additional 60 calendar days advantageous or vital in preparing a successful response, particularly in cases involving complex facts or issues.

Note that the announcement continues to be an exercise of discretion by USCIS. There is no guarantee that USCIS will continue its flexibility in granting more time after 15 January 2022. Even if more time is granted in the future, USCIS might also narrow the types of requests, notices, decisions, or forms.



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What this means

The announcement has several implications:

- ▶ Petitioners, applicants or requestors who are responding to a request, notice or decision issued between 1 March 2020 and 15 January 2022 should first review the issuance dates carefully to make sure that they are eligible to take advantage of the additional flexibility afforded by the announcement.
- ▶ While the announcement does not require a show of cause, petitioners, applicants or requestors who want to take advantage of such flexibility should review whether it is strategically necessary or advisable to do so. As the COVID-19 pandemic situation improves, USCIS might choose to limit or not afford such flexibility. Employers with a significant number of foreign national employees who choose to rely on such flexibility should monitor the situation and adjust accordingly to make sure responses are timely filed.
- ▶ Petitioners, applicants, or requestors should not be planning their future immigration applications, petitions or requests with the assumption that such flexibility will continue to be available at their time of adjudication.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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