

Mobility: immigration alert

July 2022

United States

USCIS extends COVID-19 related flexibilities and permanently allows for electronic signatures

Executive summary

On 25 July 2022, U.S. Citizenship and Immigration Services (USCIS) announced that it is extending the flexibilities for responding to requests, notices, and decisions issued in connection with certain immigration benefits and programs. To summarize, in certain circumstances USCIS will consider a response received within 60 calendar days of the due date before taking any action on a case, thereby effectively extending the response time. This flexibility will apply if the issuance date listed on USCIS's request, notice, or decision is between 1 March 2020 and 23 October 2022, inclusive.

The items to which flexibility will be given include, but are not limited to, the following:

- ▶ Requests for Evidence
- ▶ Notices of Intent to Deny
- ▶ Notices of Intent to Revoke
- ▶ Notices of Intent to Rescind

In addition, USCIS will consider Forms I-290B, Notice of Appeal or Motion, and Forms N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the *Immigration and Nationality Act*) where:

- ▶ USCIS issued a decision between 1 November 2021 and 23 October 2022; and
- ▶ the form was filed up to 90 calendar days from the date of decision, before taking any action.

Lastly, and importantly, the agency announced that it will allow for documents to be submitted with an electronically reproduced original signature on a permanent basis.

Background and analysis

Since 27 March 2020, USCIS has provided flexibility allowing for additional time for petitioners and applicants to respond to requests and notices from the agency. This policy is meant to account for barriers to obtaining information and documentation caused by the COVID-19 pandemic, and it has been extended periodically since its inception. The last announcement, made on 30 March 2022, extended the flexibility until 25 July 2022. The current announcement extends that flexibility for another three months until 23 October 2022.

We note that the flexibility policy does not require any showing of cause for the delay in responding to USCIS. As such, anyone required to respond to USCIS may take advantage of the additional time if the request, notice, or decision meets the eligibility requirements set out in the announcement. The additional 60 calendar days can be advantageous when preparing a successful response, particularly in cases involving complex facts or issues.

Since March 2020, USCIS has also allowed for submission of forms and documents containing electronically reproduced (not digital) signatures. The agency's announcement that this policy is becoming permanent is beneficial to clients as USCIS will continue to accept copies of original signatures on forms indefinitely. The agency's

website continues to mandate retention of the original documents containing the “wet” ink signature as USCIS still has discretion, at any time, to request the original documents, which if not produced, could negatively impact the adjudication of the immigration benefit.

What This Means

The announcement has several implications:

- ▶ Petitioners, applicants, and representatives who are responding to a request, notice, or decision should first review the issuance date carefully to make sure that they are eligible to take advantage of the additional flexibility afforded by the announcement.
- ▶ In future, USCIS may limit or eliminate such flexibilities. 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.
- ▶ The strategies for future immigration benefit requests ought not be prepared with the assumption that such flexibility will continue to be available at their time of adjudication.
- ▶ Individuals or entities that submit documents bearing an electronically reproduced original signature must continue to retain copies of the original documents containing the “wet” ink signature in the event it is requested by USCIS.

We will continue to monitor these areas for further developments and provide updates and analysis as they become available. Please reach out to your EY Law professional with any questions in the meantime.

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