



USCIS should approve H-1B visas for 6 years, suggests Cato Institute's David Bier

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The United States Citizenship and Immigration Services (USCIS) recently revoked a memo, issued during the Donald Trump administration, to ensure smoother H-1B visa extension. The Trump-era memo required immigration officers to treat each visa extension request as a new application. This caused an increase in additional documentation which subsequently increased administrative burden and costs for sponsoring employers.

The latest policy guidance instructs officers to defer to previous approvals while extending work visas such as H-1B. However, the officers may not defer to a prior approval when there is a material error, material change, or new material facts that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility.

While the new memo came as a huge relief for foreign workers with temporary work visas, David J. Bier, a research fellow at the Cato Institute, a libertarian think tank headquartered in Washington, D.C., believes much more can be done to further improve the US immigration system.

Even though the Immigration Act of 1990 has authorized H-1B visa holders to receive status for up to six years, the department of labor (DOL) and the USCIS regulations limit labor condition applications (LCAs) and petition approvals to no more than 3 years. Last year, H-1B workers and employers had to file more than 320,000 extension requests.

In response to invitations to the public for comments on improvements to the legal immigration system, Bier said that filing for an extension after 3 years is an "unnecessary and expensive burden." Bier argued that employers and workers suffer unjust costs and potential delays in the visa extension process and the agencies are burdened with additional reviews of materials that they have already reviewed and approved.

"USCIS should replace the 3-year limit on initial H-1B petition approvals with a 6-year limit, and DOL should revert to its earlier regulation allowing a 6-year approval of LCAs," he wrote.

Due to the recent policy guidance update, Bier suggests that there is no longer any basis for defining "coming temporarily" to mean less than six years now that Congress has explicitly stated otherwise. In the fiscal year ending September 2020, more than 3.19 lakh H1-B visas were

issued to those born in India, according to an annual report on characteristics of H-1B specialty occupation workers.