

5 New USCIS Clarifications for Individuals With H-1B Status

Insights for Employers Alert | 1 min read

Jul 30, 2024

U.S. Citizenship and Immigration Services (USCIS) has published a new FAQ to provide clarity and potentially encourage entrepreneurship among individuals with H-1B status. This FAQ contains a number of helpful updates and clarifications, including the following:

- 1. Once an I-140 immigrant petition is approved on behalf of an individual with H-1B status, their priority date is locked in.** The only way the individual can lose their priority date is if the I-140 approval is revoked on certain grounds, such as agency error, fraud, or willful misrepresentation of a material fact.
- 2. Once an I-140 immigrant petition has been filed on an individual's behalf and has been approved for at least 180 days, USCIS will not revoke the approval solely because the employer withdraws that approval.** The priority date and ability to extend H-1B beyond six years remain unaffected.
- 3. Individuals with H-1B status are not required to be the beneficiary of an approved Form I-140** for the entire time they are waiting for an immigrant visa to become available.
- 4. If H-1B employment is terminated, either voluntarily or involuntarily, the individual can typically take one of several actions to remain in a period of authorized stay in the United States beyond 60 days,** including filing for a change of nonimmigrant status, filing for adjustment of status, filing for a compelling circumstances EAD card, or be the beneficiary of a nonfrivolous petition to change H-1B employers.
- 5. A company may qualify as an employer and petition for H-1B status on an individual's behalf** if the H-1B beneficiary has a controlling interest (more than 50 percent ownership or majority rights).

The full FAQ can be found [here on the USCIS website](#).

If you have questions or would like to schedule a consultation to discuss these important immigration programs, please contact [please contact our immigration services team](#).

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