

The following USCIS response was received as part of a collective response to several recommendations submitted by the CIS Ombudsman. The following response has been extracted from the original document received by the CIS Ombudsman for display and readability purposes.

**Recommend the expansion of the Premium Processing Service (PPS) to include employment-based change of status (I-539) applications.**

USCIS has been evaluating the feasibility, policy considerations, and statutory authority concerning expansion of premium processing. DHS has determined that a statutory change is necessary for implementation of premium processing for filings that are not clearly employment based. USCIS is considering a recommendation for a legislative change that would permit USCIS to offer premium processing to other than employment-based applications and petitions.

Meanwhile, USCIS is in the process of preparing a public notice for premium processing of forms I-140 by different sub-groups over a period of time for manageable phase-in. Once the notice is published and the new process implemented, additional processes that may be considered "employment" based will be considered for premium processing. Implementing premium processing requires careful allocation of resources that can impose a distraction from backlog reduction at this crucial time; thus, USCIS has determined to stagger rollouts of new groups for premium processing.

USCIS is considering what I-539s might be permissible to include in premium processing and whether to use any authority to do so. Currently, when an I-539 for extension of stay or change of status is filed by a dependent of a worker in a premium processing classification, and the I-539 is filed concurrently with the I-129 for the worker, USCIS seeks to adjudicate, as a courtesy and without fee, the associated I-539. However, if USCIS does not adjudicate the I-539 within the 15-day deadline for processing the I-129, USCIS does not refund the premium fee on the I-129.

In cases where the I-539 is not processed within 15 days, we do not see particular hardship visited upon the dependent in relation to "unlawful presence." As long as the I-539 is filed before the expiration of the involved dependents' existing period of authorized stay, and the current status has been properly maintained, the duration of processing within the normal I-539 processing time does not lead to any period of "unlawful presence" unless the I-539 is denied and the alien remains in the U.S. beyond that denial.

We recognize, however, that there are two potential hardships to dependents of employment based nonimmigrants arising from the unavailability of premium processing: (1) the limits on a dependent's ability to obtain driver's license in states where valid status must be demonstrated (and especially where duration of license validity is limited to duration of status), and similar limits on opportunities based on proof of immigration status; and (2) the inability of the dependent to obtain employment authorization until the I-539 is approved where such authorization is available (E, J-2, and L-2 dependents).

We are reviewing our statutory and regulatory authority as well as the policy and practical issues and will make public notice of any decision to expand premium processing in relation to the I-539 for any eligible categories.