

USCIS May Reopen H-1B Petitions Denied Under Three Rescinded Policy Memos

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U.S. Citizenship and Immigration Services today announced it may reopen and/or reconsider adverse decisions on Form I-129, Petition for a Nonimmigrant Worker, made based on three rescinded policy memos. USCIS will generally use its discretion to accept a motion to reopen filed more than 30 days after the decision, if filed before the end of the validity period requested on the petition or labor condition application, whichever is earlier, and the decision was based on one or more policies in the rescinded H-1B memoranda below.

On June 17, 2020, USCIS issued [Policy Memorandum 602-0114 \(PDF, 379.71 KB\)](#), which officially rescinded two prior policy memoranda:

- HQ 70/6.2.8 (AD 10-24), “Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements (Reference AFM Chapter 31.3(g)(16)),” issued, Jan. 8, 2010; and
- [PM-602-0157 \(PDF, 124.09 KB\)](#), “Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites,” issued Feb. 22, 2018.

On Feb. 3, 2021, USCIS issued [Policy Memorandum 602-0142.1 \(PDF, 290.6 KB\)](#), which officially rescinded:

[PM-602-0142 \(PDF, 258.68 KB\)](#), “Rescission of the December 22, 2000 ‘Guidance memo on H1B computer related positions’,” issued March 31, 2017.

Both Policy Memorandum 602-0114 and Policy Memorandum 602-0142.1 state that they apply to *“any pending or new [H-1B Petitions], including motions on and appeals of revocations and denials of H-1B classification.”*

A petitioner may request that USCIS reopen and/or reconsider adverse decisions based on the three rescinded policy memos by properly filing [Form I-290B, Notice of Appeal or Motion](#), accompanied by the appropriate fee. In addition, USCIS has the discretionary authority to accept and consider untimely motions under certain circumstances as explained in the form instructions and permitted by regulation.

Petitioners who received an adverse decision on an H-1B petition based on the now-rescinded policy memoranda should consider whether there is time remaining in the validity period requested on the previously filed H-1B petition and the relevant labor condition application.

Additionally, USCIS recently extended through March 31, 2021, COVID-19 related accommodations that affect the deadlines for filing motions and appeals.

USCIS will generally process motions based on filing order, and consistent with current policy guidance.

USCIS reminds petitioners that even when a motion to reopen or reconsider is filed, accepted, and processed by USCIS, petitions will remain subject to all remaining and relevant eligibility requirements during any reopening or reconsideration.