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New Data Show H-1B Denial Rates Reaching Highest Levels



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I write about globalization, business, technology and immigration.



U.S. Citizenship and Immigration Services (USCIS) Director L. Francis Cissna of the US Citizenship and Immigration Services at a White House press briefing on December 12, 2017. (Photo by Mark Wilson/Getty Images) GETTY

When U.S. Citizenship and Immigration Services (USCIS) introduced its [H-1B Employer Data Hub](#) skeptics assumed the agency hoped to generate negative attention toward companies and H-1B visa holders. However, it turns out analyzing the data in the hub reveals something USCIS might not have

anticipated – evidence the agency is denying H-1B petitions at such a high level compared to previous years that it is clear to attorneys USCIS has acted without proper legal authority in restricting H-1B visas.

“Denial rates for H-1B petitions have increased significantly, rising from 6% in FY 2015 to 32% in the first quarter of FY 2019 for new H-1B petitions for initial employment,” according to a National Foundation for American Policy (NFAP) [analysis](#) of USCIS data in the H-1B Employer Data Hub. “Between FY 2015 and FY 2018 the denial rate for new H-1B petitions quadrupled from 6% to 24%. To put this in perspective, between FY 2010 and FY 2015, the denial rate for initial H-1B petitions never exceeded 8%, while today the rate is 3 or 4 times higher.”

Table 1: Denial Rate of Initial H-1B Petitions

FISCAL YEAR	DENIAL RATE
FY 2019*	32%
FY 2018	24%
FY 2017	13%
FY 2016	10%
FY 2015	6%
FY 2014	8%
FY 2013	7%
FY 2012	5%
FY 2011	7%
FY 2010	8%
FY 2009	15%

Source: USCIS H-1B Employer Data Hub, National Foundation for American Policy.

*Through first quarter of FY 2019.

Attorneys and employers believe denials have increased because USCIS and its adjudicators have raised the standard of proof for approving an H-1B petition without any new law or regulation that would permit the agency to do so legally, notes the NFAP analysis. In April 2017, Donald Trump issued the “Buy American and Hire American” [executive order](#), which attorney Vic Goel, managing partner of Goel & Anderson, said in an interview has been used to “upend years of established practice, including rescinding long-standing policies on what occupations qualify for H-1B visas.”

The statistics on H-1B denials, particularly the spike upwards in denials since 2017, raise both legal and policy questions. “One thing that is clear to me is that the data backs up what employers have been saying for the last two years: USCIS has raised the legal standard they use to decide whether enough evidence has been presented with petitions to approve them, without any legal authority to do so and without any notice to the public,” said William Stock, a founding member of Klasko Immigration Law Partners, LLP, who reviewed the data at my request. “The rise in the denial rate for continuing employment, where existing H-1B workers whose petitions have been approved before, show that adjudicators are applying a new standard to people whose petitions have already been approved before.”

Jonathan Wasden has filed a series of lawsuits against USCIS on behalf of employers affected by H-1B denials. “In litigation the government denies they are doing anything new or different, and professes to be applying the same rules they have always utilized,” he told me. “The numbers are the polygraph test results. The agency has systematically rewritten the rules on H-1B visas. The proof is most readily seen in the IT consulting companies’ denial rates, but you can also see it in traditional ‘on site’ employers’ continuing employment denial rates.”

Table 2: Denial Rate of Continuing H-1B Petitions

FISCAL YEAR	DENIAL RATE
FY 2019*	18%

FY 2018	12%
FY 2017	5%
FY 2016	4%
FY 2015	3%
FY 2014	3%
FY 2013	3%
FY 2012	3%
FY 2011	3%
FY 2010	5%
FY 2009	6%

Source: USCIS H-1B Employer Data Hub, National Foundation for American Policy.

*Through first quarter of FY 2019.

USCIS [defines](#) an “initial” petition as “new employment,” usually a case that counts against the H-1B annual limit, or “new concurrent employment.” The agency defines a “continuing” petition as “continuing employment [with the same employer], change of employer and amended petitions.”

“In the first quarter of FY 2019, USCIS adjudicators denied 18% of H-1B petitions for ‘continuing’ employment, often for a company’s existing employees, compared to denying only 3% of H-1B petitions for continuing employment in FY 2015 (and only 5% as recently as FY 2017),” according to the National Foundation for American Policy. “Between FY 2009 and FY 2017 the denial rate on H-1B petitions for continuing employment never exceeded 6%. Yet in FY 2018, due to new USCIS policies, the denial rate increased to 12%, before continuing upwards to 18% in the first quarter of FY 2019.”

The NFAP analysis noted all 27 of the top employers of H-1B visa holders (USCIS released a list in February) experienced an increase in denials for H-1B petitions for continuing employment between FY 2015 and the first quarter of FY 2019. It’s difficult to explain how several companies that had H-1B denial rates for

continuing employment of 2% or 3% in FY 2015 were faced with denial rates of over 30% in FY 2019. Almost every top employer on the USCIS list witnessed increases in their denial rates for H-1B petitions for continuing employment between FY 2018 and the first quarter of FY 2019. Amazon, for example, saw a denial rate of 17% on 228 H-1B applications for continuing employment decided during the first quarter of FY 2019, noted the NFAP analysis.

Companies and attorneys say the human cost of the high denial rates is international students persuaded to study and make their careers in other countries, businesses pushing more work and plans for growth to Canada and elsewhere, and men and women with pending green card applications who have worked for years in the U.S. being forced to leave America. Recall that [only about 20%](#) of the full-time graduate students at U.S. universities in computer science and electrical engineering are U.S. students.

An H-1B visa is typically the only practical way for a high-skilled foreign national, including an international student, to work long-term in the United States. The data on high denial rates for H-1B visas show that when the president and others in his administration use the term “merit-based” immigration, they do not actually mean welcoming more high-skilled foreign nationals to immigrate to or work in the United States. They simply mean fewer immigrants, including refugees, family-based and, ironically, even employment-based immigrants.



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I am the executive director of the National Foundation for American Policy, a non-partisan public policy research organization focusing on trade, immigration and related... [Read More](#)
