

Congress of the United States

Washington, DC 20515

April 10, 2023

The Honorable Ur Jaddou, Director
U.S. Citizenship and Immigration Services
5900 Capitol Gateway Drive
Camp Springs, Maryland 20748

Dear Director Jaddou,

As Members of Congress representing Silicon Valley, we write to inquire about the efforts of U.S. Citizenship and Immigration Services (USCIS) to ensure high-skilled immigrants can remain in the U.S. after losing their jobs, and thus their employment-based visas, in the ongoing wave of tech-sector layoffs. This group of immigrants possesses skills that are highly valuable in today's knowledge-based economy and forcing them to leave the U.S. is harmful to our nation's long-term economic competitiveness.

This issue is of great importance to our constituents because layoffs in the tech sector have accelerated in recent months. The number of tech jobs lost since the beginning of 2023 has already surpassed the total number of layoffs in 2022. With the collapse of Silicon Valley Bank causing further disruptions in the tech sector, we fear this trend will continue.

Some of us wrote to you about this issue on December 22nd to urge USCIS to extend the grace period for laid-off H-1B holders from 60 to 120 days. In your January 25th response, you stated that extending the grace period would require a lengthy rulemaking process that would take too long to benefit immigrants who are currently at risk of losing their legal status. **While we understand that such a change may take time, we nonetheless urge USCIS to pursue an extension of the grace period**, either as a standalone regulatory change or as part of a broader effort to reform the H-1B program. We believe extending the grace period will strengthen our country's ability to retain immigrant talent in the future.

In your letter you also highlighted a fact sheet, initially published by USCIS on December 19th and updated regularly thereafter, which lists options for laid-off H-1B holders. The fact sheet recommends that individuals who are unable to find a new employer to sponsor their H-1B visa should apply for other nonimmigrant visas, including B-1/B-2 visitor visas, H-4 dependent spouse visas, and F-1 student visas. While we're grateful to USCIS for publishing this fact sheet, we're concerned that individuals are still struggling to maintain legal status after losing their jobs due to layoffs.

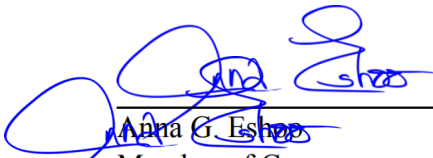
To better understand the actions USCIS has taken to respond to recent layoffs, we respectfully request that you provide answers to the following questions by May 5, 2023. Your answers will inform our legislative efforts to ensure laid-off H-1B holders can remain in the U.S. and continue contributing their talents to our country.

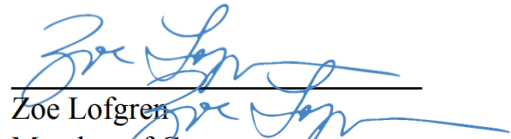
1. **Over the past six months, approximately how many H-1B visa holders have successfully maintained legal status after losing their jobs and how many have departed the country or accrued unlawful presence?** We ask that you share any relevant data with us so we can better understand the impact of the layoffs.


2. **What are the approval and denial rates, broken down by visa category, for newly unemployed H-1B holders who have applied for the nonimmigrant visas listed in the December 19th USCIS fact sheet?** Considering unemployed H-1B holders only have a limited 60-day window to secure a new visa, we request that you release this data publicly so these individuals can make informed decisions about which visas to apply for.
3. **Approximately how long does it take for USCIS to process visa applications submitted by newly unemployed H-1B holders?** While individuals are legally allowed to remain in the U.S. as their visa applications are pending, we're concerned about the potential consequences of processing times that exceed the 60-day grace period. In such cases, immigrants will be required to depart the country immediately if their visa applications are denied. This situation not only causes significant distress for the affected individuals but could also result in them accruing unlawful presence if it takes an extended period of time to get their affairs in order before departing the country. This could be held against them if they apply for a visa in the future.
4. **What guidance, if any, has USCIS issued to adjudication officers in response to ongoing layoffs in the tech sector?** We are specifically interested to know whether USCIS has instructed adjudicators to prioritize retaining immigrant talent when reviewing the visa applications of laid-off H-1B holders.
5. **Are newly unemployed H-1B holders penalized when applying for B-1/B-2 visitor visas?** Because B-1/B-2 visas are intended for short-term visits to the U.S., we're concerned that adjudicators will deny visas to laid-off H-1B holders, many of whom have lived in the U.S. for years, on the grounds that these individuals do not have sufficient ties to their home countries to demonstrate that they intend to leave the U.S. once their visas expire.


Thank you in advance for your cooperation, and we look forward to receiving your timely responses to our questions.


Most gratefully,


 Anna G. Eshoo
 Member of Congress
 Anna G. Eshoo
 Member of Congress


 Zoe Lofgren
 Member of Congress
 Zoe Lofgren
 Member of Congress


 Ro Khanna
 Member of Congress


 Jimmy Panetta
 Member of Congress


 Kevin Mullin
 Member of Congress



U.S. Citizenship
and Immigration
Services

May 15, 2023

The Honorable Anna G. Eshoo
U.S. House of Representatives
Washington, DC 20515

Dear Representative Eshoo:

Thank you for your April 10, 2023 letter regarding the efforts of U.S. Citizenship and Immigration Services (USCIS) to address how high-skilled immigrants can remain in the United States and pursue job searches after losing their jobs during this ongoing period of tech-sector layoffs.

On December 19, 2022, we published a fact sheet in response to the tech-sector layoffs to highlight options available to affected individuals during the up-to-60-day grace period following termination of employment.¹ The fact sheet identified possible options available for individuals while pursuing new employment or pursuing other nonimmigrant status should they be unable to find a new H-1B petitioner. We updated the fact sheet on March 10, 2023, with a question and answer section that responds to frequently asked questions and provides a detailed overview of the possible options.

We understand the uncertainty and distress of waiting for a new benefit request to be adjudicated. Our responses to your specific questions are addressed in the attached enclosure.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, reading "Ur M. Jaddou".

Ur M. Jaddou
Director

Enclosure

¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Options for Nonimmigrant Workers Following Termination of Employment* (last reviewed/updated Mar. 10, 2023), <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/options-for-nonimmigrant-workers-following-termination-of-employment>.

**U.S. Citizenship and Immigration Services Response to
Representative Anna G. Eshoo's April 10, 2023 Letter**

1. Over the past six months, approximately how many H-1B visa holders have successfully maintained legal status after losing their jobs and how many have departed the country or accrued unlawful presence? We ask that you share any relevant data with us so we can better understand the impact of the layoffs.

Response: Between October 1, 2022 and April 12, 2023, approximately 50,000 H-1B beneficiaries had their petitions revoked due to a withdrawal notification from their petitioners. From this population, approximately, 38,000 have maintained legal status by becoming a lawful permanent resident (LPR) or obtaining another non-immigrant status. For details, please see the tab "a. Question 1" of the enclosed spreadsheet. USCIS does not have updated data on the remaining population, approximately 12,500 individuals, whose petitions were revoked. Note, a revocation of a petition does not necessarily mean the loss of legal status or departure from the United States.

2. What are the approval and denial rates, broken down by visa category, for newly unemployed H-1B holders who have applied for the nonimmigrant visas listed in the December 19th USCIS fact sheet? Considering unemployed H-1B holders only have a limited 60-day window to secure a new visa, we request that you release this data publicly so these individuals can make informed decisions about which visas to apply for.

Response: The requested data is provided in tab "b. Question 2" of the enclosed spreadsheet.

3. Approximately how long does it take for USCIS to process visa applications submitted by newly unemployed H-1B holders? While individuals are legally allowed to remain in the U.S. as their visa applications are pending, we're concerned about the potential consequences of processing times that exceed the 60-day grace period. In such cases, immigrants will be required to depart the country immediately if their visa applications are denied. This situation not only causes significant distress for the affected individuals but could also result in them accruing unlawful presence if it takes an extended period of time to get their affairs in order before departing the country. This could be held against them if they apply for a visa in the future.

Response: Our current visa processing times vary by form, classification, and Field Office or Service Center. Currently, processing times for Form I-129 H-1B extension of status or change of status petitions across Service Centers is a minimum of 2 to a maximum of 3 months. The current processing times for Form I-539 application to change status to B nonimmigrant ranges from 12.5 months to 31 months. The timely filing of a non-frivolous application or petition to change status will toll, or stop, the accrual of unlawful presence until the application or petition is adjudicated. If the application or petition is ultimately approved, then the individual's status is changed, and the individual is considered to have been in a period of authorized presence the entire time the application was pending. If the application or petition is denied, then the individual starts to accrue unlawful presence the day after the denial decision.

Some petitions may be eligible for premium processing for an additional fee. Some circumstances may warrant expedited adjudication, including applications to change status to a dependent status that includes eligibility for employment authorization. For example, an

U.S. Citizenship and Immigration Services Response to Representative Anna G. Eshoo's April 10, 2023 Letter

application to change status from H-1B to L-2 may be eligible for expedited adjudication to prevent severe financial loss.¹

4. What guidance, if any, has USCIS issued to adjudication officers in response to ongoing layoffs in the tech sector? We are specifically interested to know whether USCIS has instructed adjudicators to prioritize retaining immigrant talent when reviewing the visa applications of laid off H-1B holders.

Response: USCIS generally processes cases as they are received and has not issued specific guidance to adjudication officers regarding layoffs in the tech sector.

5. Are newly unemployed H-1B holders penalized when applying for B-1/B-2 visitor visas? Because B-1/B-2 visas are intended for short-term visits to the U.S., we're concerned that adjudicators will deny visas to laid-off H-1B holders, many of whom have lived in the U.S. for years, on the grounds that these individuals do not have sufficient ties to their home countries to demonstrate that they intend to leave the U.S. once their visas expire.

Response: H-1B workers who are unexpectedly laid off will not be automatically denied for insufficient evidence of ties to their home country. USCIS officers will evaluate each case on its merits, taking into consideration the totality of the circumstances and evidence and the requirements for the benefit sought.

¹ See the How to Make an Expedite Request page for additional information at <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>.

I-129, Petition for a Nonimmigrant Worker
Count of H1B Beneficiaries with an Auto Revocation between October 1, 2022 and April 12, 2023
Grouped by Revocation Month and Current Immigration Status as of April 12, 2023



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Revocation Month	Valid - LPR	Valid - Approved Nonimmigrant Status	Valid - Pending Nonimmigrant Application/Petition	No Pending or Approved Application/Petition	Total
TOTAL	4,660	32,692	522	12,483	50,357
October 2022	801	4,808	8	1,726	7,343
November 2022	559	3,309	5	1,109	4,982
December 2022	632	3,761	24	1,405	5,822
January 2023	834	5,005	49	1,988	7,876
February 2023	1,183	8,985	178	3,465	13,811
March 2023	507	5,244	196	2,186	8,133
April 2023 (Through April 12th)	144	1,580	62	604	2,390

I-129, Petition for a Nonimmigrant Worker
Count of H1B Beneficiaries with an Auto Revocation between October 1, 2022 and April 12, 2023
Grouped by Current Visa Category/Status and Current Immigration Status as of April 12, 2023



U.S. Citizenship
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Services

Visa Category/Status	Valid - LPR	Valid - Approved Nonimmigrant Status	Valid - Pending Nonimmigrant Application/Petition	No Pending or Approved Application/Petition	Total
TOTAL	4,660	32,692	522	12,483	50,357
LPR	4,660				4,660
B1			5		5
B2		2	62		64
I-765 - C35 EAD			3		3
E2		3			3
E3		7			7
E3S			1		1
F1		1	3		4
F2			3		3
H1B		32,182	373		32,555
H4		283	70		353
L1			1		1
L1A		6			6
L1B		7			7
L2		6			6
L2S		8			8
O1A		124			124
O1B		6	1		7
O3		1			1
P1S		2			2
TD		1			1
TN1		42			42
TN2		11			11
No Application/Petition				12,483	12,483

Note(s):

- 1) This report reflects the most up to date data available at the time the database is queried.
- 2) Counts may differ from those reported in previous periods due to system updates and post-adjudicative outcomes.
- 3) This report counts the number of distinct individuals with a H1B auto-revocation based on 8 C.F.R. 214.2(h)(11)(ii). If one beneficiary has multiple revoked petitions, the most recent revocation is counted in this report.
- 4) The report matched the I-129 revocation to other case data based on the A Number if entered on both forms. Many I-129 petitions do not have the beneficiary's A number captured, in which case the report matched data based on a key of the combined fields of the beneficiary's last name, first name, date of birth and country of birth. Therefore, it is possible some I-129 revocations are not matched and not counted in this report.
- 5) Valid - LPR means the beneficiary is a lawful permanent resident as of the report date.
- 6) Valid - Approved Nonimmigrant Status means the beneficiary has another valid non-immigrant status (H1B, H4, L1A, etc.) as of the report date.
- 7) Valid - Pending Nonimmigrant Application/Petition means the beneficiary filed an I-129 or I-539 prior to the end of the 60 day grace period following the H1B revocation and that application/petition is still pending as of the report date.
- 8) No Pending or Approved Application/Petition means the beneficiary does not have an approved or pending application/petition as of the report date, subject to the data limitations in note 4.
- 9) USCIS cannot determine if the auto-revocation is due to the beneficiary quitting the job, the petitioner terminating the employee, or the petitioner going out of business.

Source:

Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality
CLAIMS3 & ELIS, queried 04/2023, TRK #11972.

I 129, Petition for a Nonimmigrant Worker
Approvals and Denials for Beneficiaries with Auto Revoked H1B Petitions
Grouped by Form Number and Visa Class
Adjudications between October 1, 2022 - April 12, 2023



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Form Number	Visa Class	Approvals	Denials	Approval %	Total
TOTAL		11,713	447	96.3%	12,160
I129 Total		11,363	320	97.3%	11,683
I129	E2	1			1
I129	H1B	11,286	307	97.4%	11,593
I129	L1A	1	2		3
I129	L1B	1	2		3
I129	O1A	60	8		68
I129	O1B	4	1		5
I129	P1S	3			3
I129	TN1	5			5
I129	TN2	2			2
I539 Total		350	124	73.8%	474
I539	B1	1	2		3
I539	B2	8	57		65
I539	F1		10		10
I539	F2		2		2
I539	H4	333	50	86.9%	383
I539	L2	1	1		2
I539	L2S	6	1		7
I539	TD	1	1		2
I765 Total			3	0.0%	3
I765	C35		3		3

Note(s):

- 1) This report reflects the most up to date data available at the time the database is queried.
- 2) Counts may differ from those reported in previous periods due to system updates and post-adjudicative outcomes.
- 3) This report counts the number of I129, I539, and I765 adjudications for H1B beneficiaries with an auto-revocation based on 8 C.F.R. 214.2(h)(1)(ii).
- 4) The report matched the I-129 revocation to other case data based on the A Number if entered on both forms. Many I-129 petitions do not have the beneficiary's A number captured, in which case the report matched data based on a key of the combined fields of the beneficiary's last name, first name, date of birth and country of birth. Therefore, it is possible some I-129 revocations are not matched and not counted in this report.
- 5) USCIS cannot determine if the auto-revocation is due to the beneficiary quitting the job, the petitioner terminating the employee, or the petitioner going out of business.
- 6) Approval % is calculated by dividing the number of approvals by the total completions. Classification groups with less than 100 completions are not shown due to low counts.

Source:

Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality
CLAIMS3 & ELIS, queried 04/2023, TRK #11972.