

H-1B DENIALS AND REQUESTS FOR EVIDENCE INCREASE UNDER THE TRUMP ADMINISTRATION

EXECUTIVE SUMMARY

H-1B denials and Requests for Evidence (RFEs) increased significantly in the 4th quarter of FY 2017, likely due to new Trump administration policies, according to data obtained from U.S. Citizenship and Immigration Services (USCIS) by the National Foundation for American Policy. The proportion of H-1B petitions denied for foreign-born professionals increased by 41% increase from the 3rd to the 4th quarter of FY 2017, rising from a denial rate of 15.9% in the 3rd quarter to 22.4% in the 4th quarter. The number of Requests for Evidence in the 4th quarter of FY 2017 *almost equaled* the total number issued by USCIS adjudicators for the first three quarters of FY 2017 combined (63,184 vs. 63,599). Failure to comply with an adjudicator's Request for Evidence will result in the denial of an application. As a percentage of completed cases, the Request for Evidence rate was approximately 69% in the 4th quarter compared to 23% in the 3rd quarter of FY 2017.

The data document how the Trump administration is limiting the admission of high-skilled foreign nationals, even though economists believe America greatly benefits from the entry of foreign-born scientists and engineers. The significant increase in denials and Requests for Evidence in the 4th quarter of 2017, which started July 1, 2017, came shortly after Donald Trump issued his restrictive "Buy American and Hire American" executive order on April 18, 2017. The data indicate the new administration needed time to get in place its new political appointees – considered by observers to be a who's who of opponents of all forms of immigration – and to exert their will on USCIS career adjudicators, who were not considered favorably inclined in the first place toward businesses or high-skilled foreign nationals. (The data in this report include only petitions at USCIS, not decisions at consular posts.)

Due to the time and expense, employers and attorneys only apply for individuals they believe have a good chance of gaining approval, which means an increase in denial rates and Requests for Evidence reflect changes in government policies and practices. Interviews with attorneys and companies, as well as other data, indicate high rates of denials and Requests for Evidence in skilled visa categories have continued into FY 2018. USCIS has announced many other policy initiatives to make it more difficult for high-skilled foreign nationals to work in the United States. A recent USCIS memo on Notices to Appear could place high-skilled applicants whose applications are denied into deportation proceedings, while another new policy allows adjudicators to deny applications without even providing an opportunity for an employer to respond to a Request for Evidence.

Analysis of the data shows:

- Requests for Evidence for H-1B petitions more than doubled between the 3rd quarter and 4th quarter of FY 2017, rising from 28,711 to 63,184. The Requests for Evidence in the 4th quarter of FY 2017 were far higher than in the 1st quarter of FY 2017, the last months of the Obama administration (17% vs. 69%).

H-1B Denials and Requests for Evidence Increase

- USCIS adjudicators were much more likely to issue a Request for Evidence for applications for Indians than for people from other countries. In the 4th quarter of FY 2017, 72% of H-1B cases for Indians received a Request for Evidence, compared to 61% for all other countries. Data analyzed over the years show USCIS adjudicators deny more applications and issue a higher rate of Requests for Evidence for Indians on both H-1B and L-1 petitions.
- There was a 42% increase in the proportion of H-1B petitions denied for Indian-born professionals from the 3rd to the 4th quarter of FY 2017. In the 3rd quarter, 16.6% of the completed H-1B cases for Indians were denied compared to 23.6% in the 4th quarter. Similarly, there was a 40% increase in the proportion of H-1B petitions USCIS adjudicators denied for professionals from countries other than India from the 3rd to 4th quarter, rising from a denial rate of 14% in the 3rd quarter to 19.6% in the 4th quarter.

Table 1 United States Citizenship and Immigration Services (USCIS) I-129, Petition for Nonimmigrant Worker, Classification H-1B Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country						
Country	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	65,116	86,297	21,304	18,578	19.8%	17.3%
India	52,164	69,496	15,609	15,469	18.3%	18.2%
All Other Countries	12,952	16,801	5,695	3,109	25.3%	13.8%
Quarter 2 Total	97,266	100,214	20,897	16,310	17.3%	13.5%
India	73,993	81,355	16,144	13,466	16.6%	13.8%
All Other Countries	23,273	18,859	4,753	2,844	20.1%	12.0%
Quarter 3 Total	169,785	107,291	20,299	28,711	15.9%	22.5%
India	118,600	76,784	15,334	22,330	16.6%	24.2%
All Other Countries	51,185	30,507	4,965	6,381	14.0%	18.0%
Quarter 4 Total	71,911	71,187	20,514	63,184	22.4%	68.9%
India	57,526	48,309	14,932	45,761	23.6%	72.4%
All Other Countries	14,385	22,878	5,582	17,423	19.6%	61.2%
Grand Total	404,078	364,989	83,014	126,783	18.5%	28.3%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations. Denial and Request for Evidence rates are calculated based on completed cases (not receipts).

H-1B Denials and Requests for Evidence Increase

- The denial rate for L-1B petitions (to transfer employees into the U.S. with “specialized knowledge”) increased between the 1st and 4th quarter of FY 2017 from 21.7% to 28.7%, an approximately one-third increase in the denial rate within the same fiscal year. Almost half (48%) of Indian nationals whose employers sought to transfer them into the U.S. via L-1B petitions had their applications denied in the 4th quarter of FY 2017, representing an increase from an already high 36% denial rate in the 1st quarter of FY 2017.
- Demonstrating the trend in adjudications is continuing, in the 1st quarter of FY 2018 the denial rate was 30.5% for all L-1B petitions and 29.2% in the 2nd quarter of FY 2018, both representing an increase from a denial rate of 24% for L-1B petitions in FY 2016.
- Between the 1st and 4th quarter of FY 2017, the denial rate increased by 67% (from 12.8% to 21.4%) for L-1A petitions, which are used to transfer managers and executives into the U.S. The increase in denials for L-1A petitions began early in the Trump administration. The denial rate for applications for L-1A petitions for Indians increased from 9.5% in the 1st quarter to 13% in the 2nd quarter, and 17.4% and 16.4% in the 3rd and 4th quarters. The Request for Evidence rate was consistent through FY 2017.
- O-1 petitions are for individuals who possess “extraordinary ability in the sciences, arts, education, business, or athletics.” By the 4th quarter of FY 2017, almost 80% of the applicants for O-1 petitions from India had a Request for Evidence.

The increase in denials and Requests for Evidence of even the most highly skilled applicants seeking permission to work in America indicates the Trump administration is interested in less immigration, not “merit-based” immigration. Observers note the administration has implemented no policies to facilitate the hiring of high-skilled foreign nationals. Instead, U.S. Citizenship and Immigration Services has enacted a series of policies to make it more difficult for even the most highly educated scientists and engineers to work in the United States. USCIS no longer defers to prior determinations, approvals or findings of facts when extending a current H-1B or other high-skilled visas and has announced it will rescind work authorization for the spouses of many H-1B visa holders, revise the definition of an H-1B specialty occupation and further limit the ability of international students to work on Optional Practical Training (OPT) after graduation, including in science, technology engineering and math (STEM) fields.

At U.S. universities, 81% of the full-time graduate students in electrical engineering and 79% in computer science are international students. Based on its policies, it is clear the current administration would prefer these individuals not be allowed to work in the United States.

H-1B Denials and Requests for Evidence Increase

H-1B DENIALS AND REQUESTS FOR EVIDENCE BY QUARTER IN FY 2017

Soon after Donald Trump issued the “Buy American and Hire American” [presidential executive order](#) on April 18, 2017, U.S. Citizenship and Immigration Services (USCIS) started to increase both the Requests for Evidence (RFEs) and denials for H-1B petitions for high-skilled foreign-born professionals. Requests for Evidence more than doubled between the 3rd quarter and 4th quarter of FY 2017, rising from 28,711 to 63,184.¹ (The 4th quarter of FY 2017 started July 1, 2017.) As Table 2 shows, the number of Requests for Evidence in the 4th quarter of FY 2017 *almost equaled* the total number of RFEs issued by adjudicators for the first three quarters of FY 2017 combined. As a percentage of completed cases, the Request for Evidence rate was approximately 23% in the 3rd quarter, compared to 69% in the 4th quarter. (See Table 3.) Using completed cases is considered more appropriate than receipts, and even with generous assumptions about processing cases from the previous quarter, the rate of Requests for Evidence in the 4th quarter of FY 2017 was far higher than in 1st quarter of FY 2017, the last months of the Obama administration (17% vs. 69%, see Table 1).

Table 2
Number of Requests for Evidence Rate for H-1B Petitions: First 3 Quarters vs. 4th Quarter FY 2017

	Quarters 1, 2 and 3 Combined	Quarter 4
Requests for Evidence	63,599	63,184

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations

USCIS adjudicators were much more likely to issue a Request for Evidence for applications for Indians than for people from other countries. In the 4th quarter of FY 2017, 72% of H-1B cases for Indians received a Request for Evidence, compared to 61% for all other countries. Data analyzed over the years from USCIS have shown applications for Indians result in higher rates of denials and Requests for Evidence on both H-1B and L-1 visas.

Table 3
Request for Evidence Rate on H-1B Petitions: 3rd Quarter vs. 4th Quarter FY 2017

Country	Request for Evidence Rate 3rd Quarter FY 2017	Request for Evidence Rate 4th Quarter FY 2017
India	24.2%	72.4%
All Other Countries	18.0%	61.2%
Combined Total	22.5%	68.9%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

¹ All data in this report were obtained from U.S. Citizenship and Immigration Services. NFAP performed additional calculations.

H-1B Denials and Requests for Evidence Increase

A Request for Evidence or RFE is issued by an adjudicator to demand additional information. Failure to comply will almost certainly result in the adjudicator denying an application for an H-1B, L-1 or other visa types. An earlier NFAP report on L-1B petitions in 2014 explained the economic cost of these types of policies: “Employers report the time lost due to the increase in denials and Requests for Evidence has cost millions of dollars in project delays and contract penalties, while aiding competitors that operate exclusively outside the United States – beyond the reach of U.S. Citizenship and Immigration Services adjudicators and U.S. consular officers.”²

Table 4
Denial Rate for H-1B Petitions: 3rd Quarter vs. 4th Quarter FY 2017

Country	Denial Rate 3 rd Quarter FY 2017	Denial Rate 4 th Quarter FY 2017
India	16.6%	23.6%
All Other Countries	14.0%	19.6%
Combined Total	15.9%	22.4%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

The timing of the increase in denials and Requests for Evidence likely relates to the new administration organizing itself in the early days for a full-scale assault on high-skilled immigration, of which increasing the difficulty of adjudications was just the first of many steps. “It took some time to get people in to many of the key positions,” said immigration attorney Greg Siskind. “Once we saw who was being appointed, a who’s who of stars in the anti-immigration world, no one was really surprised with what we’re seeing.”³

There was a 42% increase in the proportion of H-1B petitions denied for Indian-born professionals from the 3rd to the 4th quarter of FY 2017. In the 3rd quarter, 16.6% of the completed H-1B cases for Indians were denied compared to 23.6% in the 4th quarter. Similarly, there was a 40% increase in the proportion of H-1B petitions USCIS adjudicators denied for professionals from countries other than India from the 3rd to 4th quarter, rising from a denial rate of 14% in the 3rd quarter to 19.6% in the 4th quarter.

The higher rates of denials and Requests for Evidence have continued into FY 2018, as indicated by anecdotal evidence from companies and attorneys and the publicly available data on L-1B petitions (see next section). Moreover, USCIS is enacting additional restrictive policies, such as USCIS potentially placing denied applicants in deportation proceedings (see [this article](#) on the Notices to Appear [memo](#)) and a [new policy](#) that will allow adjudicators to deny applications without providing a Request for Evidence or the ability to correct deficiencies.

² *L-1 Denial Rates for High Skill Foreign Nationals Continue to Increase*, NFAP Policy Brief, National Foundation for American Policy, March 2014.

³ Interview with Greg Siskind.

*H-1B Denials and Requests for Evidence Increase***L-1B DENIALS INCREASED**

High denial rates for L-1B petitions are difficult to understand, since the petitions are for foreign nationals considered valuable employees who already work for the employers abroad and whose applications attorneys believe meet the standards for approval. As with H-1B petitions, due to the time and expense, employers and attorneys only send in applications for individuals they believe have a good chance of gaining approval, which means it makes little sense to attribute an increase in the denial rate to a sudden influx of unqualified applicants, rather new restrictive policies.

Table 5
Denial Rate for L-1B Petitions: 1st Quarter vs. 4th Quarter FY 2017

Country	Denial Rate 1st Quarter FY 2017	Denial Rate 4 th Quarter FY 2017
India	36.0%	47.8%
All Other Countries	14.1%	16.7%
Combined Total	21.7%	28.7%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

The denial rate for L-1B petitions increased between the 1st and 4th quarter of FY 2017 from 21.7% to 28.7%, an approximately one-third increase in the denial rate within the same fiscal year. Most of that increase involved Indians, which saw their denial rate for L-1B petitions increase from 36% in the 1st quarter to almost 48% in the 4th quarter of FY 2017. That means nearly half of Indian nationals whose employer sought to transfer them into the U.S. via L-1B petitions had their applications denied in the 4th quarter of FY 2017. The increase in the denial rate for L-1B petitions continued into FY 2018. According to publicly available data on the USCIS website, the L-1B denial rate (calculated by NFAP) was 30.5% for all L-1B petitions in the 1st quarter of FY 2018 and 29.2% in the 2nd quarter of FY 2018, compared to 24% in FY 2016 and 27% in FY 2017.⁴ (See Table 6.)

Table 6
Denial Rate for L-1B Petitions: FY 2016 to FY 2018

Fiscal Year	Denial Rate
FY 2015	24.9%
FY 2016	24.2%
FY 2017	27.1%
1 st Quarter FY 2018	30.5%
2 nd Quarter FY 2018	29.2%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

⁴ The data for FY 2017 on L-1B petitions on the USCIS differs slightly from the data NFAP received from USCIS. The data on the website show a denial rate of 26.9% for L-1B petitions for FY 2017, rather than 27.1%.

H-1B Denials and Requests for Evidence Increase

To obtain permission to transfer an employee with “specialized knowledge” in L-1B status into the United States an employer, in most cases, must first obtain an individual petition approval from U.S. Citizenship and Immigration Services and, in general, then use that approved petition to obtain a visa from a U.S. post abroad for the employee to gain entry to America.⁵ (As noted earlier, the data in this report include only petitions at USCIS, not decisions made at consular posts.) The employee must have worked at least one year abroad for the employer. L-1B admission for an employee transferred with “specialized knowledge” is limited to 5 years, with regulations limiting the initial period of admission to three years. Under the law, “An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.”⁶ The problem of high denials and Requests for Evidence for L-1B petitions has persisted for several years but had seen some improvement prior to the Trump administration.

Table 7 United States Citizenship and Immigration Services (USCIS) I-129, Petition for Nonimmigrant Worker, Classification L-1B Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country						
Country	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	3,310	2,529	702	1,500	21.7%	46.4%
India	1,349	723	406	934	36.0%	82.7%
All Other Countries	1,961	1,806	296	566	14.1%	26.9%
Quarter 2 Total	3,599	2,535	1,013	1,779	28.6%	50.1%
India	1,321	789	680	1,095	46.3%	74.5%
All Other Countries	2,278	1,746	333	684	16.0%	32.9%
Quarter 3 Total	3,672	2,887	1,158	1,609	28.6%	39.8%
India	1,400	804	788	943	49.5%	59.2%
All Other Countries	2,272	2,083	370	666	15.1%	27.2%
Quarter 4 Total	3,039	2,527	1,015	1,671	28.7%	47.2%
India	1,141	710	650	981	47.8%	72.1%
All Other Countries	1,898	1,817	365	690	16.7%	31.6%
Grand Total	13,620	10,478	3,888	6,559	27.1%	45.7%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

⁵ Some employers qualify to apply for “blanket” petitions from U.S. Citizenship and Immigration Services. That allows employers to pre-certify the qualifying corporate relationship and for employees then to file directly for L-1 visas with consulates abroad, documenting their qualifications or credentials in the process. *L-1 Denial Rates Increase Again for High Skill Foreign Nationals*, NFAP Policy Brief, National Foundation for American Policy, March 2015.

⁶ INA §214(c)(2)(B).

H-1B Denials and Requests for Evidence Increase

L-1A DENIALS INCREASED

The denial rate increased by 67% (from 12.8% to 21.4%) between the 1st and 4th quarter of FY 2017 for L-1A petitions, used to transfer into the U.S. managers and executives. The increase in denials for L-1A petitions began almost immediately after Donald Trump took office in January 2017. (The 2nd quarter of FY 2017 lasted from January 1 to March 31, 2017.) The denial rate for Indians increased from 9.5% in the 1st quarter to 13% in the 2nd quarter, and 17.4% and 16.4% in the 3rd and 4th quarters. The Request for Evidence rate was consistent through FY 2017.

Table 8 United States Citizenship and Immigration Services (USCIS) I-129, Petition for Nonimmigrant Worker, Classification L-1A Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country						
Country	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	7,062	5,979	880	2,377	12.8%	34.7%
India	2,085	1,855	194	699	9.5%	34.1%
All Other Countries	4,977	4,124	686	1,678	14.3%	34.9%
Quarter 2 Total	7,314	6,120	1,298	2,911	17.5%	39.2%
India	2,348	2,194	341	891	13.5%	35.1%
All Other Countries	4,966	3,926	957	2,020	19.6%	41.4%
Quarter 3 Total	7,982	6,723	1,645	2,930	19.7%	35.0%
India	2,497	2,115	447	819	17.4%	32.0%
All Other Countries	5,485	4,608	1,198	2,111	20.6%	36.4%
Quarter 4 Total	6,841	6,307	1,717	3,181	21.4%	39.6%
India	2,204	2,159	422	992	16.4%	38.4%
All Other Countries	4,637	4,148	1,295	2,189	23.8%	40.2%
Grand Total	29,199	25,129	5,540	11,399	18.1%	37.2%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

Table 9
Denial Rate for L-1A Petitions: 1st Quarter vs. 4th Quarter FY 2017

Country	Denial Rate 1st Quarter FY 2017	Denial Rate 4 th Quarter FY 2017
India	9.5%	16.4%
All Other Countries	14.3%	23.8%
Combined Total	12.8%	21.4%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

H-1B Denials and Requests for Evidence Increase

O-1 PETITIONS

While the rate of denials for O-1 petitions remained relatively stable, Requests for Evidence, particularly for applicants from India, increased over the course of the fiscal year. By the 4th quarter, almost 80% of the applicants for O-1 petitions had a Request for Evidence, although the number of O-1 petitions for Indians are small compared to other visa categories, which should temper broad conclusions about the O-1 category. “The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements,” according to USCIS.⁷

Table 10 United States Citizenship and Immigration Services (USCIS) I-129, Petition for Nonimmigrant Worker, Classification O-1 Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country						
Country	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	573	459	62	105	11.9%	20.2%
India	28	29	5	5	14.7%	14.7%
All Other Countries	545	430	57	100	11.7%	20.5%
Quarter 2 Total	494	512	77	175	13.1%	29.7%
India	40	40	1	7	2.4%	17.1%
All Other Countries	454	472	76	168	13.9%	30.7%
Quarter 3 Total	644	508	85	122	14.3%	20.6%
India	90	54	3	7	5.3%	12.3%
All Other Countries	554	454	82	115	15.3%	21.5%
Quarter 4 Total	600	525	68	201	11.5%	33.9%
India	114	65	4	55	5.8%	79.7%
All Other Countries	486	460	64	146	12.2%	27.9%
Grand Total	2,311	2,004	292	603	12.7%	26.3%

Source: U.S. Citizenship and Immigration Services, National Foundation for American Policy calculations.

⁷ <https://www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement>.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

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