

# National Foundation for American Policy

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## **New Data Show H-1B Denials and Requests for Evidence for High-Skilled Professionals Increasing Due to Trump Administration Policies**

**Arlington, Va.** – H-1B denials and Requests for Evidence (RFEs) increased significantly in the 4<sup>th</sup> quarter of FY 2017, likely due to new Trump administration policies, according to data obtained from U.S. Citizenship and Immigration Services (USCIS) in a [new report](#) by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The research finds the proportion of H-1B petitions denied for foreign-born professionals increased by 41% increase from the 3<sup>rd</sup> to the 4<sup>th</sup> quarter of FY 2017, rising from a denial rate of 15.9% in the 3<sup>rd</sup> quarter to 22.4% in the 4<sup>th</sup> quarter. The number of Requests for Evidence in the 4<sup>th</sup> quarter of FY 2017 *almost equaled* the total number issued by USCIS adjudicators for the first three quarters of FY 2017 combined. 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 4<sup>th</sup> quarter compared to 23% in the 3<sup>rd</sup> quarter of FY 2017.

The report, “H-1B Denials and Requests for Evidence Increase Under the Trump Administration,” is available at <https://nfap.com/>.

“The data document how the Trump administration is limiting the admission of high-skilled foreign nationals, even though nearly every economist believes America would benefit from the entry of more foreign-born scientists and engineers,” said NFAP Executive Director Stuart Anderson, former head of policy at the Immigration and Naturalization Service under President George W. Bush.

The significant increase in denials and Requests for Evidence in the 4<sup>th</sup> 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 made 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 3<sup>rd</sup> quarter and 4<sup>th</sup> quarter of FY 2017, rising from 28,711 to 63,184. The Requests for Evidence in the 4<sup>th</sup> quarter of FY 2017 were far higher than in the 1<sup>st</sup> quarter of FY 2017, the last months of the Obama administration (17% vs. 69%).
- USCIS adjudicators were much more likely to issue a Request for Evidence for applications for Indians than for people from other countries. In the 4<sup>th</sup> 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 3<sup>rd</sup> to the 4<sup>th</sup> quarter of FY 2017. In the 3<sup>rd</sup> quarter, 16.6% of the completed H-1B cases for Indians were denied compared to 23.6% in the 4<sup>th</sup> 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 3<sup>rd</sup> to 4<sup>th</sup> quarter, rising from a denial rate of 14% in the 3<sup>rd</sup> quarter to 19.6% in the 4<sup>th</sup> quarter.
- The denial rate for L-1B petitions (to transfer employees into the U.S. with “specialized knowledge”) increased between the 1<sup>st</sup> and 4<sup>th</sup> 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 4<sup>th</sup> quarter of FY 2017, representing an increase from an already high 36% denial rate in the 1<sup>st</sup> quarter of FY 2017.
- Demonstrating the trend in adjudications is continuing, in the 1<sup>st</sup> quarter of FY 2018 the denial rate was 30.5% for all L-1B petitions and 29.2% in the 2<sup>nd</sup> quarter of FY 2018, both representing an increase from a denial rate of 24% for L-1B petitions in FY 2016 and 27% in FY 2017.
- Between the 1<sup>st</sup> and 4<sup>th</sup> 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 into the U.S. managers and executives. 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 1<sup>st</sup> quarter to 13% in the 2<sup>nd</sup> quarter, and 17.4% and 16.4% in the 3<sup>rd</sup> and 4<sup>th</sup> 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 4<sup>th</sup> 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.

“Even though approximately 80% of the full-time graduate students in key technical fields at U.S. universities are international students it’s clear the current administration would prefer these individuals not be allowed to work in the United States,” said Anderson. “It’s fair to say there isn’t a high-tech company in America who thinks that makes sense.”

#### **About the National Foundation for American Policy**

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. Ziglar. Over the past 24 months, NFAP’s research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization’s reports can be found at [www.nfap.com](http://www.nfap.com). Twitter: [@NFAPResearch](https://twitter.com/NFAPResearch)

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