

National Foundation for American Policy

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H-1B Denial Rates Continue to Rise: 33% of New H-1B Petitions Denied by USCIS in First Two Quarters of FY 2019

Arlington, Va. – Denial rates for new H-1B petitions for initial employment have continued to increase, rising from 6% in FY 2015 to 33% through the second quarter of FY 2019, according to a National Foundation for American Policy (NFAP) [analysis](#) of U.S. Citizenship and Immigration Services (USCIS) data. 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 4 times higher.

The NFAP analysis of H-1B data is an update of an April 2019 [report](#) on H-1B denial rates. The 33% denial rate for new H-1B petitions for initial employment through the second quarter of FY 2019 represents an increase from a 32% denial rate for new H-1B petitions in the first quarter of FY 2019. The data are through March 31, 2019, and, therefore, do not reflect cases selected in the H-1B lottery held in April 2019.

The data obtained from analyzing the USCIS [H-1B Employer Data Hub](#) show employers have continued to experience difficulty gaining approval for existing H-1B visa holders, including current employees seeking to extend status. In the first two quarters of FY 2019, USCIS adjudicators denied 14% of H-1B petitions for “continuing” employment, compared to denying only 3% of H-1B petitions for continuing employment in FY 2015 (and only 5% of such petitions as recently as FY 2017).

“Employers generally only file cases for individuals they believe qualify for H-1B status, which means high denial rates should not be expected and indicate USCIS has changed the approval standard without any change in the law or regulation,” said Stuart Anderson, executive director of the National Foundation for American Policy and counselor to the Commissioner of the Immigration and Naturalization Service (INS) under President George W. Bush. “Given the global economy and the high demand for technical talent for companies to remain competitive, the denials and uncertainty in the immigration process will encourage more work to be done outside the United States.”

A copy of the [new report](#) can be found at <https://nfap.com/>.

USCIS defines an “initial” petition as “new employment,” typically a case that would count 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.”

The combined denial rate for H-1B petitions for continuing employment of 14% for the first two quarters of FY 2019 is the highest since FY 2009 and more than 4 times higher than the denial rate for such petitions in FY 2015. While the denial rate for continuing employment remains historically high compared to earlier years, NFAP analysis finds the denial rate for H-1B petitions for continuing employment declined from 18% in the 1st quarter of FY 2019 to 10% in the second quarter of FY 2019, for a combined rate of 14% for such petitions through the second quarter. Without more data it is not possible to know if this is a trend. The full-year data for FY 2019, available after September 30, 2019, will provide additional insight into H-1B approvals and denials.

For H-1B petitions for initial employment, the denial rate was 32% in the first quarter of FY 2019 and 35% in the second quarter, for a combined denial rate of 33% for the first two quarters. As noted, the FY 2018 denial rate of 24% for H-1B petitions for initial employment represented a four-fold increase in the denial rate compared to FY 2015. There were about twice as many cases for initial employment decided in the first quarter as in the second quarter of FY 2019 but there were more cases decided in the second quarter than during the first quarter of FY 2019 for continuing employment.

Table 1
Denial Rate: H-1B Petitions for Initial (New) Employment

FISCAL YEAR	DENIAL RATE
FY 2019*	33%
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, National Foundation for American Policy. *FY 2019 data through the second quarter of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

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, according to attorneys and employers. The new policies began in April 2017, after Donald Trump issued the “Buy American and Hire American” [executive order](#). An H-1B visa is generally the only practical way for a high-skilled foreign national, including a recent international student, to work long-term in the United States.

In October 2017, one of the first actions of the new USCIS director was to issue a [memo](#) on “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status,” which has likely been responsible for many of the denials in continuing employment cases.

All of the 27 companies USCIS has identified as the top employers of H-1B visa holders, including many of America’s best-known companies, saw an increase in their H-1B denial rates for initial employment between FY 2015 and FY 2019. Amazon, Apple, JPMorgan Chase and others saw increases in their denial rates for initial employment between FY 2015 and the first two quarters of FY 2019.

At least 9 companies that provide professional or information technology (IT) services to other U.S. companies had denial rates for H-1B initial employment that exceeded 40% through the second quarter of FY 2019, even though these same companies had denial rates of between 4% and 8% for H-1B petitions for initial employment in FY 2015.

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 14% through the second quarter of FY 2019. All but two of the 27 top

employers of H-1B visa holders experienced an increase in denials for H-1B petitions for continuing employment between FY 2015 and the second quarter of FY 2019.

Table 2
Denial Rate: H-1B Petitions for Continuing Employment

FISCAL YEAR	DENIAL RATE
FY 2019*	14%
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, National Foundation for American Policy. *FY 2019 data through the first two quarters of FY 2019. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

Only approximately 20% of the full-time graduate students at U.S. universities in computer science and electrical engineering are U.S. students, according to the National Science Foundation. New technologies, increased research and development and efforts to improve company competitiveness by enhancing digital platforms, usually through the work of outside IT services companies, continue to increase the demand for technical talent in America.

If the goal of the Trump administration is to make it much more difficult for well-educated foreign nationals to work in America in technical fields, then USCIS is accomplishing that goal. Whether the actions of USCIS are serving the best interests of the United States is a question that remains open for debate.

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. Twitter: [@NFAPResearch](https://twitter.com/NFAPResearch)

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