

PUBLICATION

USCIS Ombudsman's Report: Continued High RFE Rates in Employment-Based Petitions; Employment Authorization Document Adjudication Delays

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For those noticing an increase in Requests for Evidence (RFEs) issued by USCIS in recent months, you are not alone. The USCIS Ombudsman's 2016 Report to Congress confirms continued high rates of Requests for Evidence (RFE) for H-1B (Specialty Occupation Workers), L-1 (Intracompany Transferee Managers and Executives, and Specialized Knowledge Workers), P-1 (Internationally Recognized Athletes), and O-1 (Individuals with Extraordinary Ability or Achievement) petitions.

The fiscal year (FY) 2015 RFE rate for H-1B petitions at the California Service Center (CSC) declined 10 percent from FY 2014, and is now aligned with the Vermont Service Center (VSC) rate, which also decreased slightly in FY 2015, to 23 percent. The impact of the precedent decision *Matter of Simeio*, 26 I&N Dec. 542 (AAO 2015) (holding that petitioners must file an amended or new H-1B petition with the corresponding labor condition application (LCA) if an employee moves to a new work location that is outside the area of employment covered by the previous LCA) has not yet become apparent, as the agency's guidance on *Simeio* was not issued until late in FY 2015. [For a full discussion on the *Simeio* decision and its impact, see our prior post [here](#).] However, the report notes stakeholders receive RFEs requesting information unrelated to the reason for filing the amendment.

In FY 2015, the CSC's L-1A RFE rates rose to 55 percent, its highest level in 20 years. At the VSC, the rate of L-1A RFE rates dropped from a high of 44.6 percent in FY 2014, to 29 percent in FY 2015. The L-1B RFE rates dropped in FY 2015 at both service centers, to 44 percent at the CSC and 33 percent at the VSC.

The Ombudsman was unclear why L-1A RFE rates differ so considerably between USCIS service centers. It noted that the L-1B rates in FY 2015 were not affected by the USCIS guidance, as the guidance did not become final until August 17, 2015.

The report also expressed concern about a high rate of RFEs of 49 percent at the VSC for O-1 and 65 percent for P-1 petitions, the lengthening processing times for O-1 petitions, and the burden on petitioners due to USCIS's requests for consultations from incorrect industry peer groups.

EAD adjudication processing times beyond 90 days continue despite the steps USCIS has taken to address delays. By current regulation, USCIS must adjudicate most EADs within 90 days of receipt, however, data from FY 2015 shows that 22 percent of EAD adjudications take longer than 90 days resulting in adverse consequences for both employers and foreign nationals.