

## USCIS' New Guidance to Defer to Prior Approvals for Extension Petitions

On April 27, 2021, U.S. Citizenship and Immigration Services (USCIS) announced new policy guidance, to take effect immediately, to address the issue of deference to prior approvals when adjudicating a request for an extension. By implementing these changes, USCIS will be substantively reverting to USCIS's previous and prior long-standing guidance. The new guidance clarifies that USCIS gives deference to prior determinations when adjudicating extension requests involving the same parties and facts unless there was a material error, material change in circumstances or in eligibility, or new material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility. It also indicates that USCIS considers, but does not defer to, previous eligibility determinations on petitions or applications made by other U.S. government agencies. In addition, USCIS notes that officers make determinations on the evidence of record in the petition or application under adjudication.

The guidance on this particular topic has continued to change over the past two decades. In 2004, USCIS issued guidance that specifically directed officers to generally defer to prior determinations of eligibility when adjudicating extensions involving the same parties and facts as the initial petition. In 2017, USCIS rescinded the 2004 guidance and advised officers that they should adjudicate extension petitions individually with no deference to prior approvals. This new guidance, which is contained in volume 2 of the USCIS Policy Manual, restores the 2004 deference policy, with a few additional updates. USCIS also reiterated that the guidance contained in the most recent policy manual is controlling and supersedes any related prior guidance. Therefore, the latest update to the guidance that directs officers to defer to prior approvals will supersede any prior guidance.

We will be monitoring any additional information and updates issued by USCIS.

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