

# A Wall is Already Under Construction...An Invisible One

Published on January 10, 2019

Michele Madera



There is a lot of controversy currently over building a physical wall at the southern border of the United States. What is not making the news is the invisible wall that has been built to deter and slow legal immigration. Here are just a few of the policies that were enacted in 2018 to create an invisible wall to legal immigration:

## Denial of Immigration Filings

Over the summer, U.S. Citizenship & Immigration Services (USCIS) issued a new policy that it can deny immigration filings without issuing a Request for Evidence or a Notice of Intent to Deny. Previously, USCIS would issue these requests to allow employers or applicants the opportunity to correct a record before issuing a denial that can have drastic consequences. Before this change in policy, USCIS had the ability to deny a case outright; the new policy denies employers and individuals the opportunity to supplement the filing or correct a small oversight. A denial could result in serious consequences for an innocuous error, including a person accruing unlawful presence in the U.S. and having to depart the U.S. immediately or possibly face bars to returning to the U.S. in the future.

## Increase in Requests for Evidence

Even before announcing the aforementioned policy, USCIS had greatly increased the number of Requests for Evidence (RFE) issued and denials. For the H-1B, the RFE rate was 17% for the last quarter of the Obama administration. For the third quarter of 2017, it rose to 23%, and for the fourth quarter of 2017, it skyrocketed to 69%, with a 72% rate for Indian citizens. This substantial increase is part of a coordinated strategy to make it onerous on employers to sponsor a foreign worker. The intended result is for employers to forgo the H-1B worker as a resource in the United States, even if they were the best qualified and no comparable U.S. worker was identified.

## Removal Proceedings

USCIS also implemented a policy on October 1 to initiate removal proceedings by issuing a "Notice to Appear" (NTA) when a case is denied. USCIS plans to apply this policy in instances of fraud, criminal offense, or unlawful presence. Currently, the agency is not issuing NTAs for all cases, but it has done so in many cases. As a result, anxieties are further increasing for foreign nationals living in almost constant fear they will be put in removal proceedings. The foreign national cannot simply choose to depart once the

removal process has been initiated; rather they need to appear in Immigration Court and request permission to leave the U.S. voluntarily. This puts even more strain on the already overburdened immigration court system that has a backlog of over a million cases.

#### What You Can Do

These are just a few of the changes we have seen to make legal immigration more difficult. Advice for employers and foreign nationals includes:

- Speaking to their attorney to stay abreast of the changes
- Planning for those changes in an actionable and ready-to-implement manner

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Michele Madera is a partner at Klasko Immigration Law Partners specializing in advising corporations on immigration and compliance strategy to meet their global hiring needs. For more information, please see her bio here: <https://www.klaskolaw.com/team-member/michele-madera/>.

To get in touch with Michele directly, please email her at: [mmadera@klaskolaw.com](mailto:mmadera@klaskolaw.com).