

PRESENTED AT

44th Annual Conference on Immigration and Nationality Law

October 22-23, 2020

Live Webcast

Immigration Malpractice Claims

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IMMIGRATION MALPRACTICE CLAIMS

1. Failure to timely file Immigration forms.

As every Immigration practitioner is aware, there is a “window” for filing forms. For example, when an EB3 I140 is filed and approved, there may be a long wait until the I485 becomes available to file. Once this I485 “window” is open, it is incumbent upon the attorney to timely file these forms.

The USCIS gives some reasons for untimely filing:

Once USCIS receives a benefit request, USCIS assesses whether the request meets the minimum requirements for USCIS to accept the request. If all minimal requirements (including submission of initial evidence for intake purposes) for acceptance are not met, USCIS rejects the benefit request for improper filing.

USCIS only begins to adjudicate a benefit requests after USCIS accepts the request (and processes required fees).

In order for USCIS to accept a benefit request, a submission must satisfy all applicable acceptance criteria. USCIS generally accepts the request if it contains:

- A complete, properly executed form, with a proper signature;
- The correct fees; and
- The required initial evidence for intake purposes, as directed by the form instructions.

USCIS rejects benefit requests that do not meet these minimum requirements. Reasons for rejection may include, but are not limited to:

- Incomplete benefit request;
- Improper signature or no signature;
- Use of an outdated version of a USCIS form at time of submission;
- Principal application error (USCIS cannot process derivative or dependent applications if the related principal application is in error); and
- Incorrect fee, including missing fees or fees in the wrong amount.

In addition, USCIS rejects benefit requests for an immigrant visa if an immigrant visa is not immediately available to the applicant.

The rejection of a filing with USCIS may not be appealed. However, rejections do not preclude a benefit requestor from resubmitting a corrected benefit request. If the benefit requestor later

resubmits a previously rejected, corrected benefit request, USCIS processes the case anew, without prejudice.^[14] The rejected case does not retain its original receipt date when resubmitted.

USCIS requires new fees with any new benefit request; a new filing date also generally applies.

Effect of Returned Payment

If, subsequent to receipting, a check or other financial instrument submitted for payment is returned as not payable, USCIS re-submits the payment to the remitter institution one time. If the instrument used to pay the fee is returned as non-payable a second time, USCIS rejects the benefit request as improperly filed and the receipt date is forfeited. USCIS assesses a \$30 returned check fee and pursues collection using administrative debt collection procedures. A rejection of a filing with USCIS may not be appealed.

Returned Payment for an Underlying Petition

If a dishonored payment rejection occurs on an underlying petition that is accompanied by other filings that are dependent on the filing that is rejected, such as an Immigrant Petition for an Alien Worker (Form I-140) concurrently filed with an Application to Register Permanent Residence or Adjust Status (Form I-485), even though the other filings' fees may be honored, USCIS administratively closes the dependent filings and refunds the fees.

Returned Payment for Premium Processing Service Requests

If a premium processing fee for a Request for Premium Processing Service (Form I-907) is dishonored when it is filed at the same time as a Petition for Nonimmigrant Worker (Form I-129) or Immigrant Petition for Alien Workers (Form I-140), USCIS rejects the entire filing.

If USCIS has approved the petition and any fee, including one fee of a multiple fee filing, is dishonored, USCIS may revoke the approval. In this case, USCIS issues a Notice of Intent to Revoke (NOIR) to the requestor. If the requestor does not rectify the dishonored payment within the requisite NOIR time period, USCIS revokes the approval and retains (and does not refund) any fee that was honored in association with the approval.

For example, if the Form I-907 fee is dishonored after USCIS approves an associated Form I-140, USCIS revokes the Form I-140 approval (assuming the NOIR time period has passed without sufficient response). USCIS then retains the Form I-140 fee, administratively closes the Form I-485, and refunds the Form I-485 fee.

Response to a NOIR

If the benefit request was approved by USCIS, the approval may be revoked upon notice.^[17] If the approved benefit request requires multiple fees, approval may be revoked if any fee submitted is not honored. USCIS may retain (and not refund) other fees that were paid for a benefit request that is revoked because of a dishonored fee payment.

To sufficiently respond to a NOIR, the requestor must demonstrate that the payment was honored or that it was rejected by USCIS by mistake.^[18] If USCIS issues a NOIR and the request does not

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First appeared as part of the conference materials for the
44th Annual Conference on Immigration and Nationality Law session
"Best Practices for Malpractice Avoidance"