Global Immigration Alert

August 2026

United States

Updated USCIS policy guidance authorizes discretionary denials

Executive summary

On 5 August 2026, US Citizenship and Immigration Services (USCIS) issued a Policy Alert revising evidentiary standards and procedures relating to Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs). The policy emphasizes that applicants and petitioners bear the burden of establishing eligibility for an immigration benefit at the time of filing and while the case pends with USCIS. Consistent with the updated guidance, USCIS officers may, at their discretion, deny certain benefit requests without first issuing an RFE or NOID when required initial evidence is not submitted or the filing otherwise fails to establish eligibility.

The policy also updates response periods for RFEs and NOIDs, mailing deadlines, and circumstances under which USCIS may consider partial responses to RFEs and NOIDs to be a request for a decision based on the record. The policy is effective immediately and applies to benefit requests pending with USCIS or filed on or after 5 August 2026.

Background and analysis

Guidance reflected in the USCIS Policy Manual (PM) prior to 5 August generally encouraged officers to issue RFEs or NOIDs instead of denying an application or petition that was filed with information or evidence that failed to establish eligibility. The agency's stated purpose in restoring officers' full discretion to outright deny such cases is to improve efficiency and discourage frivolous filings.

Additional important updates to the PM are as follows:

- Officers are no longer required to provide the maximum period allowed of 12 weeks to respond to RFEs, although they may choose to do so.
- The additional 14-day response period previously provided to notices mailed outside the Unites States has been eliminated.
- When officers receive a partial response to an RFE or NOID, they may treat it as a request for a final decision and adjudicate the case based on that response and the evidence already in the record, rather than issuing another request.

What this means

The updated guidance places greater emphasis on the importance of submitting complete and well-documented filings at the time of submission. Employers and foreign nationals should not assume that USCIS will provide an opportunity to supplement the record through an RFE or NOID if required initial evidence is omitted.

Organizations may wish to review case preparation procedures, document collection practices, and pre-filing review processes to help confirm that all required supporting documentation is included with the initial filing. This may be particularly relevant for benefit requests that require extensive evidence to establish eligibility.

Applicants and petitioners should also carefully review response deadlines contained in RFEs and NOIDs. USCIS has clarified that response periods may be shorter than the regulatory maximum and that additional mailing time for international correspondence is limited to the three days permitted under existing regulations.

While USCIS officers retain discretion to issue RFEs and NOIDs when appropriate, employers and foreign nationals may wish to prepare filings with the expectation that eligibility should be demonstrated through the initial submission whenever possible. In addition, applicants and petitioners should be aware that submitting a partial response to an RFE or NOID may result in USCIS adjudicating the benefit based on the evidence contained in the record at that time of the response.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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