



New Immigration Trends under the Trump Administration

JOHN ASSADI, ESQ.

PARTNER, ELLENOFF GROSSMAN & SCHOLE, LLP



A sudden increase in Denials and Requests For Evidence (RFEs) in different visa categories:

H-1B

Non- immigrant Visa

Allows US Companies to hire foreign workers in specialty occupations

L-1

Non- immigrant Visa

Intracompany Transferee

Available to foreign workers with managerial, executive or specialized knowledge who will be transferred to a U.S. branch, parent, subsidiary or an affiliate of a foreign organization or company

O-1

Non- immigrant Visa

Available to individuals with extraordinary ability or achievement

Table 1
United States Citizenship and Immigration Services (USCIS)
I-129, Petition for Nonimmigrant Worker, Classification H-1B
Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country

	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	65,116	86,297	21,304	18,578	19.8%	17.3%
Quarter 2 Total	97,266	100,214	20,897	16,310	17.3%	13.5%
Quarter 3 Total	169,785	107,291	20,299	28,711	15.9%	22.5%
Quarter 4 Total	71,911	71,187	20,514	63,184	22.4%	68.9%
Grand Total	404,078	364,989	83,014	126,783	18.5%	28.3%

A sudden increase in Requests for Evidence from the 3rd to 4th Quarters of FY 2017 for H-1Bs

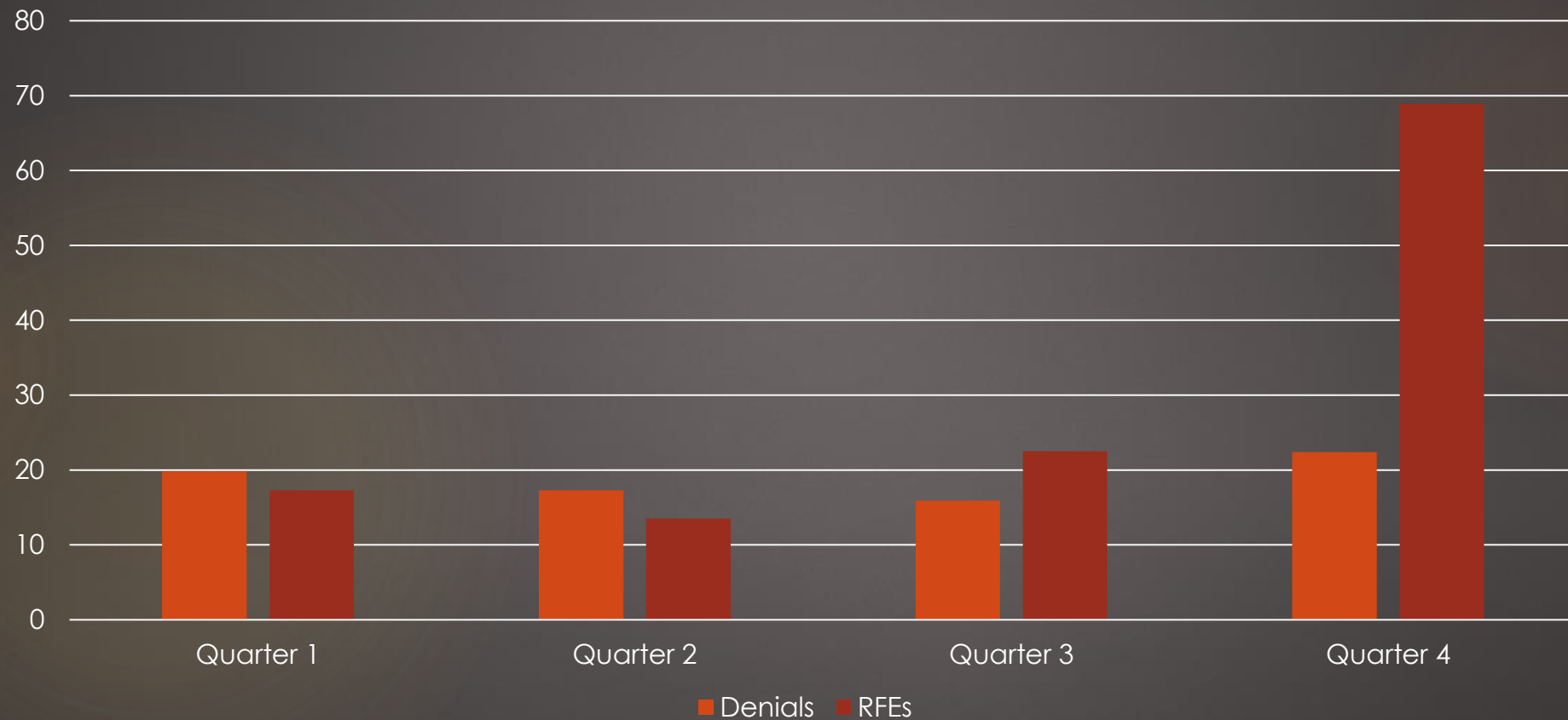


Table 3
United States Citizenship and Immigration Services (USCIS)
I-129, Petition for Nonimmigrant Worker, Classification L-1A
Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country

	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	7,062	5,979	880	2,377	12.8%	34.7%
Quarter 2 Total	7,314	6,120	1,298	2,911	17.5%	39.2%
Quarter 3 Total	7,982	6,723	1,645	2,930	19.7%	35.0%
Quarter 4 Total	6,841	6,307	1,717	3,181	21.4%	39.6%
Grand Total	29,199	25,129	5,540	11,399	18.1%	37.2%

Table 4
United States Citizenship and Immigration Services (USCIS)
I-129, Petition for Nonimmigrant Worker, Classification O-1
Receipts, Approvals, Denials and Requests for Evidence by Quarter and Country

	Receipts	Approvals	Denials	Requests for Evidence	Denial Rate	Request for Evidence Rate
Quarter 1 Total	573	459	62	105	11.9%	20.2%
Quarter 2 Total	494	512	77	175	13.1%	29.7%
Quarter 3 Total	644	508	85	122	14.3%	20.6%
Quarter 4 Total	600	525	68	201	11.5%	33.9%
Grand Total	2,311	2,004	292	603	12.7%	26.3%

New Trends in denials:

- ▶ According to a Policy Memo effective as of September 11, 2018, U.S. Citizenship and Immigration Services has discretion to deny an application, petition or request without first issuing a Request for Evidence or Notice of Intent to Deny.
- ▶ As a result, a visa applicant may face removal proceedings without being granted the opportunity to respond to the ground(s) of denial.

New conditions on H-1B petitions/Cap-Exempt issues:

- ▶ Temporary but indefinite suspension of premium processing for cap-subject H-1B employers.
- ▶ Institutions of higher education, non-profit research organizations or those affiliated or related to institutions of higher education are cap-exempt.

Traditional H-1B Cap-Exempt qualification:

- ▶ Nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;
- ▶ Nonprofit entity is operated by an institution of higher education; or
- ▶ Nonprofit entity is attached to an institution of higher education as a member, branch, cooperative or subsidiary

Reminder: Previous cap-exempt determination is not binding upon USCIS

The High Skilled Worker Rule adds a new basis for cap-exemption. Also cap-exempt if:

- ▶ Nonprofit and institution of higher education have formal written affiliation agreement;
- ▶ Agreement establishes active working relationship for purposes of research or education; and
- ▶ Fundamental activity of nonprofit is to directly contribute to research or education mission of institution of higher education.

New trends in adjudication of O-1, L1-B and H-1B cases:

- ▶ On October 23, 2017 USCIS released a policy memo rescinding deference given to prior approvals
- ▶ Extension and renewal petitions for the same applicant are now adjudicated *de novo*

Travel Ban:



- ▶ The Travel Ban has negatively affected citizens of countries subject to the ban
- ▶ These countries are Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen
- ▶ In order for an applicant to be exempt from the ban, they must qualify for a waiver
- ▶ According to Reuters, only 2% of waiver requests are granted

I-9 Inspections:

- ▶ There has been a recent increase in I-9 inspections and enforcement by the U.S. Immigration and Customs Enforcement (ICE).
- ▶ As of August 2018, 5,278 Notices of Inspection were issued and nearly 100 arrests were made.
- ▶ Employers face a greater possibility of criminal prosecution for employment authorization violations.

How to avoid issues with I-9s

Recommendations for Employers:

- ▶ Conduct regular internal audits by attorneys to ensure compliance with the law and to implement best practice methods for the employer.
- ▶ Enroll in and use E-Verify to minimize verification and reporting compliance issues.

Good news for PERM applicants:

- ▶ Low unemployment rate means that PERMs are more likely to succeed. Fewer US applicants for offered positions.
- ▶ Lower level of scrutiny of PERM cases compared to H-1B, O-1 and L-1 visas.
- ▶ PERM Certification (approval by the Department of Labor) in as little as 3 months from date of filing.