

H-1B Requests for Evidence: An Inevitability?

H-1B visas are granted to those who meet specific qualifications. The required qualifications include that the applicant have at least a bachelor's degree from a U.S. institution and have a job offer from a U.S. employer that requires the H-1B Candidate to hold at least a bachelor's degree. There is an annual cap on the number of H-1B applications that can be filed each year. The limit for the 2020 fiscal year has already been reached. If you have applied for an H-1B visa, you may not necessarily receive an acceptance or rejection of your application. You may receive requests for evidence (RFEs). In 2019, 75.4% of H-1B cases were approved. About 60% of applicants received RFEs. It is important to understand what an RFE means. Especially considering the fact that, in 2019, around 40% of cases that received RFEs ended-up being either withdrawn or denied.

I Filed an H-1B Petition and then Received a Request for Evidence (RFE) . . . What does this mean?

A request for evidence (RFE) is intended to help prove that all required elements of an H-1B visa are being satisfied by the applicant. The applicant must be able to prove that he or she holds a bachelor's degree from a U.S. institution. The applicant must also be able to prove that he or she has a job offer from a U.S. employer and that the job requires the applicant holds a bachelor's degree. While these elements may seem straightforward enough, it can get pretty complicated, especially regarding the second element. The job position must be considered a "specialty position". USCIS also tends to favor jobs in STEM (science, technology, engineering, and mathematics).

There are many reasons an applicant may receive an RFE. For instance, if a petition was filed on behalf of a business for a professional that is not usually associated with that business's field, an RFE may be issued by the USCIS to explain the unusual circumstances that led to this. A somewhat similar issue may trigger an RFE when an individual may hold a degree in a field that is different from the field of the offered job position. Additionally, there may be questions regarding whether or not the job is in a "specialty position." A specialty position requires a bachelor's degree. It is usually a position of some complexity. There may be other requirements as well. An RFE may request evidence be produced to support the claim that the job offer is in fact for a "specialty position."

Some of the most common RFEs go to answering and offering proof about:

- Whether the job is a specialty occupation;
- Whether an employer-employee relationship exists;
- Whether there is enough in-house work for the employee;

- Whether the beneficiary properly maintained status;
- Whether there is enough off-site location work for the employee;
- Whether the employer has complied with the itinerary requirement for third-party locations;
- Whether the requisite fees have been filed.

If you receive an RFE, be diligent about immediately providing the requisite information requested. Do so promptly so as not to jeopardize the status of your visa application.

Trusted Legal Counsel for Visa Applicants

If you should have any questions or need more information about the ways in which the U.S. Immigration and Nationality Laws may impact you, your family, your friends or your colleagues, please contact the U.S. Immigration and Nationality Lawyers at the NPZ Law Group – VISASERVE – U.S. Immigration and Nationality Lawyers by e-mailing us at info@visaserve.com or by calling us at 201-670-0006 (x107). You can also visit our Law Firm's website at www.visaserve.com.