On July 13, 2018, U.S. Citizenship and Immigration Services (USCIS) introduced a new policy memorandum which grants immigration officers the discretion to deny an application, request, or petition without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID). This significant policy shift will come into effect on September 11, 2018, and gives anyone who reviews visa applications or petitions full discretion to deny initial applications, requests, and petitions without issuing an RFE or NOID **even in cases with** **insufficient initial evidence**. This policy change will apply to all applications, requests, and petitions except for Deferred Action for Childhood Arrivals (DACA) decisions received after September 11, 2018.

Previously, USCIS was required to submit a “Request for Evidence” on incomplete visa applications **unless there was no possibility new information could lead to a complete application**, according to the 2013 policy memorandum “Requests for Evidence and Notices of Intent to Deny.” According to the 2013 policy, immediate denials or approvals can only be used for cases that contain enough evidence to indicate clear ineligibility or eligibility. Clear ineligibility includes cases where the applicant, petitioner, or requestor has no legal basis for the benefit or request sought, or submits a request for a benefit or relief under a program that has been terminated (such as a denial where a nonexistent benefit is requested). In cases where the record does not establish eligibility or ineligibility, the 2013 policy guidelines state that an RFE instead of a denial should always be used unless there is **no possibility** that further evidence can aid the case.

New revisions beginning September 11, 2018 will extend immediate, or statutory, denials to situations including applications submitted with little to no supporting evidence, and cases without required official documents or evidence. The new policy is intended to discourage frivolous or incomplete filings used as “placeholder” filings and encourage diligence in collecting and submitting required evidence, and is not intended to penalize filers for innocent mistakes or misunderstandings of requirements.

This policy change continues USCIS’s recent legal trend of stricter standards for approval and emphasizes that the burden of proof to establish eligibility is solely on the applicant, petitioner, or requestor. This new policy increases denial situations, which, when combined with USCIS’s June 28 guidance (where removal proceedings must start upon denial of an immigration benefit), requires applicants and petitioners to be more vigilant when filing cases.

By overturning 2013 guidance about issuing RFEs and NOIDS, this policy will remove the timeframe for applicants to complete applications if something is missing. Instead, officers will have the discretion to deny applications with incomplete information without notice beforehand, even if the information partially fulfills the criteria for an approval. This legal shift removes space for margin of error as well as constructive dialogue between immigration lawyers and USCIS on applications.

The extent to which USCIS adjudicators will apply this new policy guidance, starting September 11, 2018, will only be apparent over time. It is likely that the number of denials will increase and in the event of a denial, a greater number of individuals on work or student visas will be placed in removal proceedings as a result of the June 28, 2018 USCIS guidance to initiate removal proceedings upon denial of an immigration benefit.

There are several steps you can take to improve your immigration chances. Petitioners and applicants must take extra care to document all of the required information for their filings, and to ensure its accuracy. Statutory rejections on the basis of missing evidence will likely become more common nationwide on the basis of adjudicator discretion after September 11, 2018. H1-B extension petitions should be filed well in advance of expiration (the law allows filing six months before expiration) so that a potential decision is known while the applicant is still in status.

In the future, certain form instructions or regulations may allow applicants, petitioners, or requestors to file a form before all the required initial evidence is available, or may restrict this new policy. However, the new September 11, 2018 policy change will be drastic in its effect on the immigration process, and will certainly require more diligence on the part of all participants.