Federal Court Strikes Down $100,000 H-1B Fee: Implications for Employers and Cap-Exempt Institutions

Jun 15, 2026

Categories:

Immigration & ICE
Operations
Publications

Authors:

Elizabeth (Liz) La Rocca
Cynthia Vivekanandam
Abigail L. Castle

On September 19, 2025, the Trump administration issued a proclamation establishing a $100,000 fee for each new H-1B petition filed. In response to the significant burden on U.S. employers, multiple lawsuits followed. Last week, the U.S. District Court for the District of Massachusetts issued a significant order in *State of California et al. v. Mullin et al.*, declaring the policy implementing the proclamation unlawful. The proclamation has now been vacated in its entirety, and the $100,000 H-1B visa fee is no longer required.

A coalition of 20 states filed the lawsuit, arguing the proclamation violated the separation of powers and the Administrative Procedure Act (APA). In vacating the policy nationwide, the district court found the fee constituted an unlawful tax imposed without congressional authorization. This ruling applies to all U.S. employers, including cap-exempt institutions such as hospitals, universities, and nonprofit research entities. It provides relief from an exorbitant fee and allows U.S. employers to continue to sponsor international talent for specialty occupations, including medical doctors, health care professionals, professors, researchers, and other professionals with skills considered necessary for the U.S. economy.

Key Legal Findings

The district court held the $100,000 fee functioned as a tax rather than a penalty or "regulatory fee," as the federal government proposed, because it did not punish an unlawful act or omission. The court explained, "Hiring workers pursuant to the H-1B Program is plainly lawful." The Executive Branch exceeded its authority because taxing power lies with Congress, and the Immigration and Nationality Act (INA) does not delegate taxing power to the Executive Branch, even though the INA's sweeping, discretion-conferring language grants it the power to restrict entry of foreign nationals. The policy also violated the APA by bypassing notice-and-comment rulemaking, resulting in nationwide vacatur. The court further reasoned that the proclamation did not constitute an unreviewable presidential action, specifically because the $100,000 H-1B visa fee constituted a tax and thus functioned more than simply a restriction on the entry of foreign nationals.

Impact on Employers and Cap-Exempt Institutions

The decision restores the ability of employers to file H-1B petitions without the prohibitive financial burden. During litigation, statistics revealed that as of February 2026, only 85 petitioners had elected to pay the $100,000 H-1B visa fee, demonstrating the severe impact on a U.S. employer's ability to sponsor key international talent.

Cap-exempt employers, including nonprofit hospitals and research institutions, will find particular relief in this ruling. The fee had significantly disrupted recruitment and staffing at public institutions. These entities depend on H-1B workers to fill critical roles in research and health care, including medical doctors for areas that are federally designated as facing health care worker shortages. The litigation highlighted the fee-impaired staffing at public hospitals and reduced access to specialized medical professionals, directly affecting patient care outcomes.

Ongoing Litigation and Risk Considerations

Despite the ruling, litigation is ongoing. Days after the $100,000 H-1B fee was vacated, the U.S. Department of Justice filed notice that it would appeal the decision. Employers should act strategically now while there appears to be a window to resume filings, subject to further judicial developments.

Accordingly, employers should consult with immigration counsel and take the following actions:

- Proceed with H 1B filings where necessary to meet immediate workforce needs.

- Conduct careful, case by case, legal analysis before initiating filings.
- Maintain flexibility in hiring timelines and immigration strategies.
- Closely monitor litigation developments and agency guidance.

For hospitals and nonprofit organizations, this means balancing urgent staffing demands with prudent risk assessment, particularly in high-impact roles tied to patient care or public health.

Bottom Line

This decision provides meaningful relief to employers, particularly in the nonprofit and health care sectors, by eliminating a significant financial barrier to hiring skilled foreign workers. It also serves as an important reaffirmation of the constitutional limits on executive authority, underscoring that the power to impose taxes remains with Congress and cannot be exercised through executive action under the guise of immigration policy.

Employers should proceed cautiously, continue to monitor developments closely, and consult with immigration counsel to assess ongoing compliance obligations and adjust their workforce planning strategies as the legal landscape continues to evolve. For more information about this legal development or assistance in successfully navigating your ongoing compliance obligations, please contact the authors or any member of the FBT Gibbons' Immigration team.