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January 2023 Immigration Update

USCIS Issues Proposed Rule to Significantly Increase Filing Costs for Employers

On January 4, 2023, the U.S. Citizenship & Immigration Services (USCIS) [published](#) a Notice of Proposed Rulemaking (NPRM) to significantly increase filing costs for employment-based petitioners. The agency emphasized that the proposed fee adjustment is necessary to fully recover USCIS's operational costs and reestablish timely USCIS service levels. Addressing the need and basis for the fee increase, USCIS explained that the proposed fee schedule will increase USCIS's average total annual fee revenue from \$4.5 billion to \$6.64 billion.

Notable proposed changes that would significantly increase employers' cost of filing include:

- A new Asylum Program Fee of \$600 for employment-based petitions (e.g., Forms I-129 and I-140) in addition to the required classification-specific filing fees.
- Separate fees for each nonimmigrant classification covered by Form I-129, Petition for a Nonimmigrant Worker.
 - Form I-129 for H-1 classifications: \$780 (70% increase)
 - Form I-129 for L classification: \$1,385 (201% increase)
 - Form I-129 for O classification: \$1,055 (129% increase)
 - Form I-129 for E, TN, P, H-3 classifications: \$1,015 (121% increase)
- Increasing the H-1B registration fee per beneficiary from \$10 to \$215.
- Requiring separate filing fees for Form I-485, Application to Register Permanent Residence or Adjust Status, and associated Form I-131, Application for Travel Document, and Form I-765, Application for Employment Authorization.
 - Form I-485: \$1,540
 - Form I-765: \$650 (by paper) or \$555 (online)

- Form I-131: \$630
- Changing the premium processing time frame from 15 calendar days to 15 business days for most requests.
- Incorporating biometrics costs into the main benefit fee and removing the separate biometric services fee in most cases.

The NPRM will go through the standard federal regulatory process. The 60-day public comment period started on January 4, 2023, and runs through March 6, 2023. Employers interested in providing their feedback to USCIS concerning the fee increases may do so [here](#).

USCIS Announces Final Phase of Premium Processing Expansion for Employment-Based Immigrant Petitions along with Future Expansion for Students and Exchange Visitors

On January 12, 2023, USCIS announced it will implement the final phase of the premium processing expansion on January 30, 2023, for Form I-140 immigrant petitions filed in the EB-1 and EB-2 categories. As of January 30, 2023, USCIS will accept premium processing requests (Form I-907) for:

- All pending E13 (or EB-1(C)) multinational executive and manager petitions and E21 (EB-2) National Interest Waiver (NIW) petitions; and
- All initial E13 multinational executive and manager petitions and E21 NIW petitions.

For these newly eligible petitions, USCIS will issue a decision or request for evidence within 45 calendar days upon receiving the premium processing request.

USCIS also announced it will, in March 2023, expand premium processing to certain [F-1 students seeking Optional Practical Training \(OPT\)](#) and F-1 students seeking [STEM OPT extensions](#) who have a pending [Form I-765, Application for Employment Authorization](#). Then, in April 2023, USCIS will expand premium processing to F-1 students seeking OPT and F-1 students seeking STEM OPT extensions who are filing an initial Form I-765. Additional information regarding USCIS's expansion plans can be found [here](#).

No Further Movement in February 2023 Visa Bulletin

The U.S. Department of State (DOS) released the [February 2023 Visa Bulletin](#), and there is still no forward movement in the Employment-Based Final Action Dates Chart for the EB-1 through EB-5 preference categories. For the EB-1 category, the cutoff date for China and India remains February 1, 2022, and the cutoff date for the “All Chargeability Areas Except Those Listed” remains November 1, 2022. [Click to view table.](#)

Similarly, there is no forward movement in the Employment-Based Dates of Filing Chart. For the majority of the categories, the Dates of Filing remain the same except for the Other Workers category where the Dates of Filing retrogressed from September 8, 2022 to February 1, 2020 for most applicants. [Click to view table.](#)

While the DOS’s Final Action Dates Chart determines when a Form I-485, Application to Register Permanent Residence or Adjust Status or an Immigrant Visa may be approved, USCIS announces every month whether applicants should use that chart or the Dates for Filing Chart to determine when their I-485 application may be submitted. For February 2023, USCIS announced the applicants should use the Dates of Filing Chart. [Click](#)

U.S. State Department Extends Authority for Consular Officers to Waive Interview Requirement for Certain Nonimmigrant Visas

The U.S. State Department (DOS) [announced](#) an extension of a temporary policy allowing officers at U.S. consulates abroad to waive the in-person interview for certain nonimmigrant visa applicants to facilitate what is commonly called a “drop box” appointment.

The interview waiver policy applies to certain applicants for the following visa categories: H-2 temporary agricultural and non-agricultural workers; F, M, and academic J visa applicants; and H-1, H-3, H-4, L, O, P, and Q workers. Eligibility is limited to individuals (1) applying for a visa in their country of nationality or residence, (2) who were previously issued any type of visa, (3) who have never been refused a visa (unless such refusal was overcome or waived), and (4) who have no apparent ineligibility or potential ineligibility.

The interview may also be waived for first-time F, M, and J visa applicants and individual petition-based H-1, H-3, H-4, L, O, P, and Q applicants who are eligible for, and have previously traveled to the United States using, the Visa Waiver Program's Electronic System for Travel Authorization. These policies are effective through December 31, 2023.

Applicants renewing a visa in the same classification within 48 months of the prior visa's expiration are also eligible for interview waivers. DOS has indicated this policy is in place until further notice.

Interview waivers and drop box appointments are not guaranteed to any applicant. Consular officers may still require an in-person interview on a case-by-case basis.

U.S. Federal Agencies Release the Latest Unified Regulatory Agenda

As part of the release of the semiannual Unified Regulatory Agenda, the U.S. Departments of Homeland Security, Labor, and State outlined the immigration rules and regulations they expect to issue over the coming months. Below is a list of the notable topics addressed:

- **H-1B:** As announced [here](#), the Department of Homeland Security (DHS) intends to make the following changes in an October 2023 proposed rule.
 - revise the regulations relating to the "employer-employee relationship" and provide flexibility for start-up entrepreneurs;
 - implement new requirements and guidelines for site visits, including in connection with petitions filed by H-1B dependent employers whose basic business information cannot be validated through commercially available data;
 - provide flexibility on the employment start date listed on the petition (in limited circumstances) and address "cap-gap" issues;
 - bolster the H-1B registration process to reduce the possibility of misuse and fraud in the H-1B registration

system; and

- clarify the requirement that an amended or new petition be filed where there are material changes, including by streamlining notification requirements relating to certain worksite changes, among other provisions.
- **Prevailing Wages:** In October 2020, the Department of Labor (DOL) started its initial, ultimately unsuccessful attempt to implement a new methodology for establishing prevailing wages, a critical component of the E-3, H-1, and permanent labor certification (or PERM) programs. Per the new [agenda](#), the DOL will try again with a Notice of Proposed Rulemaking slated for September 2023.
- **I-9:** In August 2022, DHS issued a proposed rule that would allow the DHS secretary the authority to implement alternatives to the current in-person document examination procedures. After DHS finishes reviewing public feedback provided in response to the proposed rule, it anticipates issuing a final rule in May 2023.
- **Adjustment of Status:** As announced [here](#), DHS intends to make the changes below to “reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas.” DHS proposes issuing a Notice of Proposed Rulemaking covering these changes in July 2023.
 - permit concurrent filing of a visa petition and the application for adjustment of status for the employment-based 4th preference (certain special immigrants) category, including religious workers;
 - permit the transfer of underlying basis of a pending adjustment of status application;
 - amend the definition relating to ineligibilities under section 245(c) of the INA;
 - change the age calculation under the Child Status Protection Act;

- authorize employment authorization for certain derivative beneficiaries waiting for immigrant visa availability when they present compelling circumstances; and
 - amend the regulations relating to temporary protected status and travel authorization and the impact on the adjustment of status eligibility.
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- **Consular Fees:** The Department of State (DOS) anticipates releasing a [final rule](#) in March 2023 that will increase consular fees for several nonimmigrant visa categories, certain Border Crossing Cards, and J-1 Waiver requests.
 - **Public Charge:** DOS intends to issue a [proposed rule](#) in January 2023 to update its regulation covering the public charge ground visa ineligibility. DOS's proposed rule is likely to align with the [DHS final rule](#) that went into effect on December 23, 2022.
 - **Immigrant Visa Interview Waivers:** DOS expects to issue a [final rule](#) in April 2023 that would allow consular operations to waive the in-person interview requirement for certain immigrant visa applicants.

For more information, contact the authors of this article or any member of Frost Brown Todd's [Immigration Law](#) practice.

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