

USCIS TO HIKE FILING FEES AND IMPOSE A NEW FEE FOR THE EB-5 INVESTOR PROGRAM BENEFIT.

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Just when employers in the United States were unhappy and raising concerns about the steep increase in the statutory fee for certain H-1B and L-1 petitions, and about the lengthy delays in adjudicating petitions, the Department of Homeland Security (DHS) threw another curved ball. Putting into practice the "Full Cost Recovery" theory, DHS is proposing to raise USCIS filing fees by a *weighted* average of 21 percent and impose a new fee on the Regional Centers with regard to EB-5 processing in order to fully recover costs for its services and to maintain adequate service. The proposed rule has been published in the Federal Register and is open for public comments until July 5, 2016.

As many are aware, U.S. Citizenship and Immigration Services (USCIS) is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners. Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing immigration benefit requests.

USCIS calculates its fees to recover the full cost of USCIS operations, which do not include the limited appropriated funds provided by Congress. USCIS anticipates if it continues to operate at current fee levels, it will experience an average annual shortfall of \$560 million between revenues and costs. This projected shortfall poses a risk of degrading USCIS operations. The proposed rule would eliminate this risk by ensuring full cost recovery. As such, DHS is proposing to adjust fees by a *weighted* average increase of 21 percent (%).

Some the major highlights of the proposed rule include, but are not limited to:

- **EB-5 (IMMIGRANT INVESTOR) VISAS: NEW FEE FOR THE ANNUAL CERTIFICATION OF REGIONAL CENTER, FORM I-924A.**

In order to recover the full cost of processing, DHS is proposing to establish a new fee of \$3,035.00 for the Annual Certification of Regional Center, Form I-924A, pertaining to the EB-5 Regional Center investor visa program benefit. As many are aware, Form I-924A is used by Regional Centers to demonstrate continued eligibility for their designation. Although approved regional centers are required to file the Form I-924A annually, there is currently no filing fee and the processing cost is borne by other individuals paying fees for immigration benefits. Until now USCIS was using its adjudicative resources to handle Form I-924A without charging any fee for approximately 800 currently approved Regional Centers. This USCIS' annual subsidy provided to the EB-5 Regional Center is soon going to end. Note that the rule also proposes to change the title of Form I-924A from "Supplement to Form I-924" to "Annual Certification of Regional Centers."

Further, the proposed fee for processing the Form I-526, Immigrant Petition by Alien Entrepreneur, will increase by 145 % to \$3,675 (from the current fee of \$1,500.00). The good news is that the fee for processing Form I-829, Petition by Entrepreneur to Remove Conditions, is going to remain the same at level of \$3,750.00.

- **THREE-LEVEL FEE STRUCTURE FOR THE APPLICATION FOR NATURALIZATION, N-400.**

DHS is proposing to establish a three-level fee for the Application for Naturalization, Form N-400. First, DHS would increase the standard fee for Form N-400 from \$595 to \$640. Second, DHS would continue to charge no fee to an applicant who meets the requirements of sections 328 or 329 of the Immigration and Nationality Act of 1952 (INA) with respect to military service and applicants with approved fee waivers. Third, DHS would charge a reduced fee of \$320 for naturalization applicants with family income greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. DHS is proposing this change to increase access to United States citizenship.

- **USCIS WILL NOT BEGIN PROCESSING THE REQUESTED IMMIGRATION BENEFIT UNTIL THE FILING FEE AND/OR BIOMETRICS FEE PAYMENT GETS CLEARED.**

Current regulations provide that when a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter is notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. Further, if a benefit request is received by DHS without the correct biometric service fee, DHS notifies the applicant of the deficiency and takes no further action until payment is received. In accordance with these provisions, when a payment is returned as non-payable, USCIS places the immigration benefit request on hold and suspends adjudication. If a check is dishonored or payment otherwise fails, USCIS assesses a \$30.00 charge and pursues the unpaid fee and penalty using administrative debt collection procedures. If the biometrics services fee was required and is missing, USCIS generally provides the filer 30 days to correct the payment. If payment is made within the allotted time, USCIS resumes processing the benefit request. If the filer does not correct the payment, USCIS rejects the filing. If the biometric fee is not paid, USCIS considers the benefit request as abandoned. DHS is proposing to eliminate the above-mentioned rules requiring that cases be held while deficient payments are corrected.

USCIS clears payment checks through the Automated Clearing House (ACH) by converting checks to electronic payments. Because USCIS converts checks into ACH payments, there is currently no or very little delay before USCIS knows whether the check is valueless. DHS is proposing that USCIS will not begin processing the benefit request until the payment has cleared. DHS anticipates that the proposed change would reduce the USCIS administrative costs for holding and tracking immigration benefit requests with rejected payments. This change would streamline USCIS' process for handling immigration benefit requests when payments are returned as not payable or do not include the required biometric services fee.

- **HOLDING THE BIOMETRIC SERVICES FEE AT ITS CURRENT LEVEL.**

Though the model used by the DHS suggested a reduced Biometrics fee of \$75.00, it is proposing to hold the Biometrics service fee at its current level of \$85.00. DHS believes that the importance of and uncertainty in the Biometric services area justifies holding that fee at \$85.00.

- **REFUNDS**

DHS is proposing a minor change in the provision regarding USCIS fee refunds. In general, except for a premium processing fee, USCIS does not refund a fee regardless of the decision on the immigration benefit

request. Going forward, USCIS will refund a fee if the agency determines that an administrative error occurred resulting in the incorrect collection of a fee. Examples of USCIS errors include:

- Unnecessary filings: Cases in which USCIS (or DOS in the case of an immigration benefit request filed overseas) erroneously requests that an individual file an unnecessary form along with the associated fee; and
- Accidental payments: Cases in which an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS (or the DOS in the case of an immigration benefit request filed overseas) erroneously accepts the erroneous fee.

A copy of the proposed rule published in the Federal Register, and more detailed information regarding the proposed fee changes can be gathered at: <https://www.federalregister.gov/articles/2016/05/04/2016-10297/us-citizenship-and-immigration-services-fee-schedule>