

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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425 I Street NW
Washington, DC 20536

September 15, 2003

MEMORANDUM FOR SERVICE CENTER DIRECTORS, BCIS
REGIONAL DIRECTORS, BCIS
OFFICE OF INTERNATIONAL AFFAIRS, BCIS

FROM: William R. Yates /s/
Associate Director for Operations
Bureau of Citizenship and Immigration Services
Department of Homeland Security

SUBJECT: Sunset of Additional \$1,000 Filing Fee Imposed by American Competitiveness and Workforce Improvement Act (ACWIA) and Return to 65,000 Annual Limit on H-1B Petition Approvals

The purpose of this memorandum is to remind Service Centers that absent additional H-1B legislation enacted before the end of the current fiscal year, H-1B petitioners who file petitions on or after October 1, 2003, will no longer be required to submit the additional filing fee of \$1,000. This is a result of the sunset provision in Immigration and Nationality Act (INA) section 214(c)(9)(A). Furthermore, the annual ceiling on H-1B petition approvals under INA section 214(g) will revert from 195,000 to 65,000 beginning in fiscal year 2004.

Any H-1B petition filed on or after October 1, 2003 that includes the additional \$1,000 filing fee imposed by ACWIA together with the base filing fee of \$130 in a single remittance should be rejected by Service Centers as improperly filed. If the fees are in separate remittances, then the \$1,000 ACWIA fee can be rejected and the petition and filing fee accepted. The written instructions should further advise the petitioner that Form I-129W, H-1B Data Collection and Filing Fee Exemption, must still be filed in conjunction with Form I-129 when petitioning for an H-1B nonimmigrant worker, but the filing fee information in Part B can be omitted.

The Form I-129W and accompanying instructions will be revised to delete all references to the additional \$1,000 filing fee and fee exemption. The Form I-129W will be retained in the BCIS Forms Inventory and be utilized in the H-1B petition filing process because the form collects necessary data on H-1B petitioners and beneficiaries, and also serves to "track" the number of new H-1B petitions approved during each fiscal year. Therefore, the Form I-129W

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must be used at least in the short term to ensure BCIS adherence to the H-1B numerical limitations imposed by law.

The BCIS will seek to revise regulations in 8 CFR applicable to this change in the H-1B program in the near future. Questions regarding this memorandum may be directed to Joe Holliday at Service Center Operations or Kevin Cummings at Office of Program and Regulation Development, through appropriate channels.