



Press Release

December 9, 2004

USCIS TO IMPLEMENT H-1B VISA REFORM ACT OF 2004 New Law Changes Aspects of the Temporary Work Program

Washington, D.C.— U.S. Citizenship and Immigration Services (USCIS) announced today that President Bush has signed the Omnibus Appropriations Act for FY 2005, which contains provisions affecting the H-1B and L nonimmigrant visa categories. Both the H-1B and L programs allow U.S. employers to sponsor temporary foreign workers.

New Fees

Before October 1, 2003, employers who used the H-1B program were required to pay an additional \$1,000 fee imposed by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). In part, that \$1,000 fee paid for U.S. citizens, lawful permanent residents and other U.S. workers to attend job training and receive low-income scholarships or grants for mathematics, engineering or science enrichment courses administered by the National Science Foundation and the Department of Labor. Those ACWIA fee requirements sunset on October 1, 2003.

The H-1B provisions of the Omnibus Appropriations Act reinstates the ACWIA fee and raises it to \$1,500. Petitioners who employ no more than 25 full-time equivalent employees, including any affiliate or subsidiary, may submit a reduced fee of \$750. Certain types of petitions, that were previously exempt from the \$1,000 fee, are still exempt from the new \$1,500 and \$750 fee. The new \$1,500 and \$750 fee applies to any non-exempt petitions filed with USCIS after December 8, 2004.

In addition, the Act creates a new Fraud Prevention and Detection Fee of \$500 which must be paid by petitioners seeking a beneficiary's initial grant of H-1B or L nonimmigrant classification or those petitioners seeking to change a beneficiary's employer within those classifications. Other than petitions to amend or extend stay filed by an existing H-1B or L employer, there are no exemptions from the \$500 fee. The new \$500 fee applies to petitions filed with USCIS on or after March 8, 2005.

Each of these fees is in addition to the base processing fee of \$185 to file a Petition for a Nonimmigrant Worker (Form I-129) and any premium processing fees, if applicable.

H-1B Cap

This Act, and Public Law 108-441 (Dec. 3, 2004), provides new exemptions from the congressionally mandated annual H-1B cap.

- The first 20,000 H-1B beneficiaries who have earned a master's degree or higher from a U.S. institution of higher education are not subject to the annual congressionally mandated H-1B visa cap of 65,000. After those 20,000 slots are filled, USCIS is required to count those cases against the cap for the remainder of the fiscal year.
- For FY 2005, the new provision will allow USCIS to accept new petitions on behalf of up to 20,000 beneficiaries meeting these criteria. Petitions under this provision cannot be filed at this time, as the provision is not effective until March 8, 2005. USCIS will provide additional guidance on eligibility and process at a later date.
- Public Law 108-441 extended the "Conrad 30" J-1 program covering certain medical graduates. Nonimmigrants currently in the United States on a J-1 (exchange) visa who receive a waiver of the two-year residency requirement if requested by either a federal or state agency are now exempt from the H-1B cap. Qualifying employers of these beneficiaries may submit H-1B petitions, notwithstanding the fact that the H-1B cap was already met for FY 2005, after December 8, 2004.

Petitioners must separately evaluate whether an H-1B petitioner is exempt from certain fees and whether the petition is exempt from the H-1B cap, because the rules applicable to each type of exemption are not the same. For example, a petition by an otherwise non-exempt employer to extend the H-1B stay of a beneficiary for the first time would be exempt from the H-1B cap, but not from either the \$1,500 or \$750 fee.

A separate press release covers changes to the L-1 program made by the Omnibus Appropriations Act for FY 2005.

– USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.