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Fee Hikes Give U.S. Employers Chance to Rethink Immigration Strategies

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The cost of running an immigration program at a U.S. company just went up — a lot.

On Jan. 31, U.S. Citizenship and Immigration Services published a final regulation to raise immigration filing fees — and high-skilled categories saw some of the biggest increases. On April 1, the fee for an H-1B petition increased from $460 to $780 (70%), and the fee for an L-1 intracompany transfer petition increased from $460 to $1,385 (201%). All of that is before a new $600 Asylum Program Fee ($300 for small employers) is added on for each employment-based nonimmigrant or immigrant filing. Analysis from the BAL Government Strategies team shows that a typical small- or medium-sized company may see the amount they spend on filing fees more than double.

None of this is *good* news.

At the same time, the fee increases present an opportunity for companies to take stock of their immigration programs and reassess whether they are doing everything they can to take advantage of policy improvements that the Biden administration *has* made.

The fee increases are the first since 2016, and USCIS has said it will put the additional revenue to good use — not only by helping them meet the challenge of expanded humanitarian programs but also by improving processing times and reducing backlogs for employment-based filings. While the business community was clear that it would have liked to see USCIS implement additional efficiencies before raising fees, the administration has shown good faith by working to streamline programs with its current funding level. **Consider:**

- **Improvements to the H-1B program:** Just days after it published the regulation to raise fees, USCIS published a separate regulation to overhaul the H-1B registration and selection process. The big change is a switch from a petitioner- to a beneficiary-centric lottery, so that each H-1B beneficiary may be selected only once, no matter how many registrations are submitted on his or her behalf. This change is designed to eliminate incentives for bad actors to submit multiple H-1B registrations for the same individual — and has the potential to reduce the overall number of registrations and boost the H-1B selection rate. The change enjoys broad support in the business community. So do the introduction of online H-1B filings and a new pilot program that allows some H-1B holders to renew their visas in the U.S. without going abroad.

- **Extended employment authorization:** In September 2023, USCIS increased the maximum validity of Employment Authorization Documents (along with Advance Parole travel documents) to five years for employees with pending green card applications. This change did not draw as much attention as the H-1B overhaul but has proved to be a boon to employers. Previously, green card applicants had to renew their employment authorization every two years. The longer validity saves not only time and money but also adds predictability. Improved EAD processing times are an additional benefit.
- **Flexibility in the green card process:** With the labor certification process (PERM) becoming increasingly difficult, employers continue to turn toward national interest waivers as a green card strategy. This trend is due in part to the increased difficulty of the PERM process when employers have had layoffs. The administration published new guidance on national interest waivers for EB-2 visas in January 2022 and made EB-2 visas a priority in an executive order on intelligence published last fall. The Department of Labor has also asked for public input on whether to revise its list of Schedule A job classifications that do not require labor certification. This list has not been updated since 2004.
- **Improved visa processing abroad:** The U.S. State Department issued more than 10.4 million nonimmigrant visas in the last fiscal year. This figure was nearly a record and the highest total since 2015. It also highlights a marked turnaround in visa processing efficiency at U.S. embassies in consulates following years of reduced staffing and delayed wait times. State Department fees also went up last spring. And while the State Department and USCIS are different agencies with different challenges, the success in improving visa processing abroad is consistent with the Biden administration's broader overall efforts to improve immigration services.

Understandably, we have heard plenty at BAL from employers frustrated with how dramatically fees increased. What we have not heard, however, is that employers plan on dramatically cutting back their immigration programs. This *is* good news — and not only because it means companies will continue to recruit top workers to help keep them competitive.

Despite higher fees, there is ample evidence that it is a good idea to invest in foreign workers now, at a time of generally favorable policies. Take the H-1B program as one example. The H-1B registration fee has increased from $10 to $215 for next year's cap registration, which gave employers an incentive to put eligible employees in the lottery this year if they were able to do so. On top of that, for beneficiaries that were not selected, employers have more favorable options for H-1B alternatives now than they previously did. The administration has added new qualifying fields of study to its STEM Designated Degree Program List, making more recent graduates eligible for extended Optional Practical Training. Officials also provided clarifying guidance on O-1 "extraordinary ability" visa criteria, making this category an increasingly common option.

None of the administration's immigration programs are ensured to continue under future administrations. In the current political environment, there is no telling how long they will last.

Donald Trump has emerged as the Republican Party's presumptive nominee for president. Whatever you think of Trump's politics, it is plainly true that when he was in office, it was harder to recruit and retain high-skilled foreign workers. H-1B denial rates skyrocketed and processing backlogs ballooned at understaffed agencies. COVID-19 only made the problems worse.

Nobody knows what Trump may do if he wins this year's election, but it certainly seems unlikely he would *decrease* immigration fees. Employers could be stuck with higher rates for reduced services.

The adage “never let a crisis go to waste” is instructive as employers face higher costs and uncertainty about the future of favorable immigration policies. While no one enjoys paying higher fees, employers should review their immigration strategies to take advantage of easier processes now before it’s too late.

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