KANTER IMMIGRATION LAW OFFICE

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June 2016 Newsletter

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Filing Fee Increases for Most Popular Applications and Petitions

In May, U.S. Citizenship and Immigration Service (USCIS) published a proposed rule to increase the fees on nearly all immigration forms. The increased filing fees will be felt across the spectrum of immigration law, as family, employment, and individual cases will all see an increase in fees. Below are the most widely used forms:

Family:	Current	Proposed
Form I-130, petition for family members	$420	$535
Employment:		
Form I-129, petitions for H, L, E, O, P, R (employment-based nonimmigrants)	$325	$460
Form I-140, petition for permanent employment	$580	$700
Individual:		
Form I-90, application to replace permanent resident card (green card)	$450*	$540*
Form I-485, adjustment of status (green card) application	$1,070*	$1,225*
Form I-765, work card application	$380	$410
Form I-131, travel document application	$360	$575
Form I-539, change/extend status application	$290	$370
Form I-751, removal of conditions application	$590*	$680*
Form N-400, naturalization application	$680*	$725*

*Includes biometrics

While these fee increases are only in the proposal stage right now, it is likely that most of these increases will become final and that they will go into effect by the end of the year (premium processing is not projected to change). USCIS operations are financed primarily through filing fees, and the agency is predicting a $560 million shortfall this year.

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Employers with a Pending I-129 Extension/Change May Submit a Service Request after Seven Months

Form I-129 is frequently used by employers because it covers several very popular employment-based visa categories, such as H, L, O, P, E, TN, and R. These submissions are handled primarily by USCIS's California and Vermont service centers. Increasing backlogs and extended processing times have delayed adjudication and can frustrate employers, but the risk can be even greater to a beneficiary who has been working for months if the I-129 is ultimately denied.

For H-1B extensions and amendments sent to the California Service Center, the current processing time is eight months, according to the USCIS website, but other visa categories are being processed between two and five months. The Vermont Service Center (VSC) is taking even longer for H-1B extensions and amendments, and is experiencing processing

delays for L visa petitions as well. Even O and P petitions sent to the VSC are taking six months, which is longer than usual. This is particularly problematic because the beneficiary's work authorization is automatically extended for 240 additional days when an extension or amendment filed. When adjudication exceeds eight months, it leaves the beneficiary unable to work legally.

Unfortunately, employers cannot pick and choose which service center to submit their I-129 petitions, as they are bound by geographic location. But, for those with a pending H-1B extension or amendment request, they no longer have to wait until their petition has exceeded the posted processing times to submit a service request. Now, employers (or their attorneys) are now able to reach out to USCIS after 210 days (seven months) have passed since filing, which flags the delayed H-1B petition between one and three months earlier than current processing times. Hopefully, this new policy will help the USCIS service centers to identify pending cases that are nearing the expected deadline and to prioritize these cases so they can be adjudicated within the posted processing times — and, more importantly, before the extended grant of work authorization expires.

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Adjustment of Status and Registry Applicants Should Double Check Combo Card for Travel Authorization Before Travelling Abroad

Combination employment authorization (EAD) and advance parole (AP) cards are normally concurrently filed with adjustment of status applications and for those adjusting based on registry. These concurrently filed cases (Forms I-765 and I-131) are normally approved at the same time. Consequently, the work authorization card that is issued contains an AP travel authorization notation on the bottom, "SERVES AS I-512 ADVANCE PAROLE," making it also a travel permit, and thus a "combo card." Normally, no separate AP document is issued. Recently, however, there have been reports of such cards missing the travel authorization annotation. In response to inquiries, USCIS has advised that it only issues the combo card when it approves a Form I-131 advance parole application at the same time as it approves a Form I-765 employment authorization filed under the "C9 adjustment" or "C16 registry" category. No other category is eligible for a combo card. If the case is in either category, it is possible that the I-131 application will not be adjudicated at the same time as the I-765 application, and thus no combo card will be issued. If that happens, applicants can contact USCIS's National Customer Service Center, obtain a Service Request Management Tool (SRMT) number and ask the service center to issue a combo card.

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Two Lawsuits Challenge the Government's H-1B Lottery System

Recently, two lawsuits have been filed in federal district court challenging various aspects of the H-1B lottery system. The first case is a class action filed in the U.S. District Court for the District of Oregon against USCIS and alleges that the randomized lottery system used to select a limited number of H-1B petitions for processing is "arbitrary and capricious." The suit asks the court to hold unlawful and set aside USCIS's regulations that require H-1B petitions to be filed during a five-day filing window and subjecting them to a random lottery in which losing lottery filings are rejected and not assigned a priority date. The case asserts that USCIS should be issuing receipts and priority dates for all cases because there is no statutory basis for the agency to require a filing window, a random lottery, and a rejection system. Indeed, the plain language of the statute requires that H-1B petitions be processed in the order in which petitions are filed. Plaintiffs argue that an orderly priority date assignment system and waiting list should be established similar to the system in place for immigrant visa petitions. The current regulatory system results, says plaintiffs, in a potentially never-ending game of chance for petitions filed during the window each year, with some unlucky individuals trying and failing each year to obtain an H-1B number, while some lucky lottery winners obtain a visa number in the very first year a petition is filed on their behalf. The plaintiffs ask the court to order defendants (USCIS) to assign priority dates to improperly rejected H-1B petitions that are resubmitted for acceptance by members of the class; order USCIS to accept H-1B petitions throughout the year and assign priority dates; and make H-1B numbers available based on the order in which they are received. In the past four years, almost 500,000 cases have been rejected.

The second lawsuit filed against DHS and USCIS seeks declaratory, injunctive, and other appropriate relief under the Freedom of Information Act to obtain information so that the public has a clear understanding of USCIS operating procedures and policies when administering the H-1B lottery. The suit was filed by a private law firm, the American Immigration Council (Council), and the American Immigration Lawyers Association (AILA). It alleges that USCIS has never been forthcoming in describing the selection process. The suit is intended to let the American public and those most directly affected see how the lottery system works from start to finish, in order to learn whether the system is operating fairly. Despite the government's stated commitment to transparency and accountability, prior attempts to learn more about how the H-1B lottery process is conducted have been resisted.

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Three-Month Wait Times for NIV Appointments at U.S. Consular Posts in India

U.S. consular posts in India are currently experiencing extraordinary wait times for nonimmigrant visa (NIV) interview appointments as a result of increased demand. As of

early June, the current wait times for all NIV categories other than B, F, and J are: Chennai, 75 days; Hyderabad, 93 days; Kolkata, 96 days; Mumbai, 88 days; and New Delhi, 100 days. Unfortunately, backlogs are likely to continue, if not worsen, during the busy summer months.

DOS reports that demand for visas to travel to the United States has increased by 80 percent in the past five years; more than one million visa applications were adjudicated during the last fiscal year alone. While additional consular positions are being requested to alleviate the increase in visa wait times, foreign nationals should consider deferring unnecessary travel to India until after the backlogs have subsided. When travel is essential, be prepared for lengthy delays in the scheduling of visa interviews.

Foreign nationals who must travel to obtain a visa now should be mindful that:

- The Indian visa appointment system provides a mechanism for requesting an expedited appointment. First priority goes to cases involving humanitarian issues (*e.g.*, travel to receive an organ donation, to care for a seriously ill relative in the U.S., etc.). Business emergencies take second priority. In making a business-expedite request, it is important to articulate why the need to travel is urgent, why advance planning was not possible, and the impact if travel does not occur.

- India requires applicants for a petition-based visa to have already obtained USCIS *approval* of the underlying petition before requesting an interview, not just a petition number for a still-pending case.

- If an Indian national has reason to travel to another jurisdiction, applying outside of India as a Third Country National may be an option. Such applications are mostly likely to be successful in H-1B, L-1, and O petition-based cases.

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USCIS Permits Biometrics Collection Abroad, But Only in Rare and Compelling Circumstances

USCIS will now permit biometrics to be collected abroad in certain “rare” and compelling circumstances. Biometrics collection for certain applications, such as Form I-131 (Application for Reentry Permit), may be taken at a USCIS office abroad, even if the collection was originally scheduled at an ASC office in the United States. This is available to residents of countries where USCIS has an international office.

To qualify, applicants must prove that extenuating circumstances required them to depart the U.S. before the scheduled biometrics appointment in the U.S. For example, the applicant may have been granted a job transfer on short notice or may need to assist a seriously ill family

member living abroad. Applicants must also show that a request was made to either expedite or reschedule the biometrics appointment at an ASC before leaving the United States, or explain why they failed to do so. Contact information for each individual USCIS international field office (IO) can be found online, and applicants should e-mail the appropriate office to request the appointment and explain why the circumstances are rare and extenuating.

USCIS IOs will not grant an overseas biometrics appointment merely to avoid the expense of traveling back to the United States for a domestic ASC appointment. The USCIS IO field offices have extremely limited capacity to collect biometrics abroad and can only handle a limited number of appointments. As such, it is best for clients to have biometrics taken while in the United States. However, if extenuating circumstances arise and the applicant resides in a country with a USCIS office, a request for biometrics abroad may be submitted to the local USCIS international field office.

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USCIS Publishes Performance Data for Certain Cases

USCIS recently has issued performance data for the L-1B, T, U, and EB-5 visas, as well as naturalization cases. In FY2015, USCIS received well over 13,000 petitions for L-1B visas, which apply only to employees with "specialized knowledge" in an international company. During the same year, USCIS approved more than 10,000 petitions and denied 3,446. The first two quarters of FY2016 show a similar denial rate of just under one-third.

T visa petitions have steadily increased since 2008, with 2,224 being filed in FY2015. The same period showed 1,304 approvals, 486 denials, and 1,666 pending cases. During the first two quarters of FY2016, the approval-denial rate remains the same but the number of pending cases has hardly moved. This could indicate backlogs and extended process times in the future. U visa applications, on the other hand, had more denials than approvals during the second quarter of FY2016, reaching 931. This was a complete reversal from the first quarter, which saw 16,040 U visa applications approved and only 297 denied.

USCIS has seen a surge of EB-5 investors over the past 2½ years, with more applications for EB-5 immigrant status submitted than in the preceding six years combined. This has led to over 20,000 pending cases at the close of FY2016 second quarter. Denial rates remain modest, but are likely to increase due to the sheer number of EB-5 applications filed recently. Approved EB-5 investors applying to remove the conditions on their permanent residence are almost uniformly approved. Over the past eight years, less than 10 percent of all adjudicated cases have been denied. The first two quarters of FY2016 indicate the same trend, with the total denial number for the year projected between 50 and 60. However, over the past eight

years USCIS has only been able to adjudicate about half of all the applications received — over 4,000 cases remain pending.

The total number of naturalization cases filed in the first two quarters of FY2016 exceeds 250,000. The approval rate for the same period is 90 percent. Almost 450,000 naturalization applications remain pending.

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Affirmative Asylum Applicants' Wait for Interview Ranges from 1½ to 5 Years

USCIS has released a new bulletin that shows the expected waiting times between filing an asylum application and appearing for an interview for each office. The typical waiting time is two years, though some offices are taking longer. The long waiting periods are the result of previous backlogs, greater priorities for children and rescheduled applicants, and the conducting of reasonable and credible fear interviews. The following are current processing times by office:

	Current interview wait time
Arlington, VA	29 months
Chicago, IL	19 months
Houston, TX	23 months
Los Angeles, CA	55 months
Miami, FL	34 months
Newark, NJ	32 months
New York, NY	20 months
San Francisco, CA	24 months

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Immigration Benefits for Old Veterans and New Allies

The U.S. Senate and the USCIS have both recently made efforts to provide more immigration opportunities for military veterans and allies of the United States. These policy changes span two wars and three generations, from the mountains of Afghanistan to the islands of the Philippines, and show that some individuals within our government are still concerned about the well-being, safety, and comfort of those individuals who put their lives on the line in defense of freedom.

On June 8, USCIS implemented the Filipino World War II Veterans Parole (FWVP), a policy that will allow certain Filipinos with approved family-based immigrant petitions to request a

grant of parole and come to the United States to live while they await their immigrant visa numbers to become available. This new opportunity is intended for the family members of those Filipino veterans who fought for the United States in World War II and have since become U.S. citizens or permanent residents. Now in the sunset of their lives, these elderly heroes will be able to spend their remaining years with their family.

Several U.S. senators have introduced an amendment to the 2017 defense policy bill that would authorize 4,000 additional visas for Afghans who served as interpreters to U.S. troops and officials during the war in Afghanistan to come to the United States. This amendment will ensure the continuation of the Special Immigrant Visa (SIV) program, which our military commanders have regarded as a great asset during the wars in Iraq and Afghanistan. The SIV program, enacted in 2006, allows Iraqi and Afghan nationals to become permanent residents if they worked as translators or interpreters, or who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan. Over the past decade, more than 37,000 individuals from Iraq and Afghanistan have been granted special immigrant status. However, the SIV programs have been plagued by complications in application processing, delays in security screening, unhelpful statutory time frames and frustrating numerical limitations. These problems have caused major backlogs: in Afghanistan, more than 10,000 qualified individuals have been waiting in limbo for years.

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News in Brief:

The following additional items may be of interest to our readers:

Staffing Company Fined Nearly $210,000 for Failures to Properly File Work Authorization Forms: The Office of Chief Administrative Hearing Officer (OCAHO) issued a final decision and order, directing a staffing company, Golden Employment Group, Inc., to pay $209,600 in civil penalties for I-9 compliance issues. The order resolving the motion for partial summary decision notes that use of E-Verify is not a substitute for properly filed I-9 forms.

Visa Limit Reached for Special Immigrants (EB-4 Preference) from Mexico: The July 2016 *Visa Bulletin* includes a final action date of 1/1/10 for EB-4 visas for special immigrants from Mexico. Starting on 7/1/16, applicants from Mexico who filed Form I-360 on or after 1/1/10 will not be able to obtain an immigrant visa or adjust status until new visas become available. El Salvador, Guatemala, and Honduras also have a final action date of 1/1/10. It is anticipated that EB-4 immigrant visas for Mexico will become current again on October 1, 2016; for the other three countries, DOS cannot yet predict the final action date for next fiscal year but it is expected to be in 2015.

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TPS Designation Extended for Honduras and Nicaragua: Recent DHS notices extended the designation of Honduras and Nicaragua for temporary protected status (TPS) for 18 months, from 7/6/16 through 1/5/18. The 60-day re-registration period runs through 7/15/16. Notices include information on re-registration and applying for renewal of work authorization.

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