



EMAIL BULLETIN

U.S. CIS PROPOSES EXORBITANT FILING FEE INCREASES FOR APPLICATIONS AND PETITIONS SEEKING IMMIGRATION BENEFITS

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Some Fees Would Double, While Others Would Almost Triple

On February 1, 2007, U.S. Citizenship & Immigration Services published in the Federal Register a Proposed Rule that would substantially increase the filing fees for petitions and applications seeking immigration benefits. The U.S. CIS is not permitted to expend more on benefits adjudications than it collects in filing fees. Therefore, the CIS periodically reviews filing fees and implements fee increases as appropriate to avoid budgetary shortfalls. Past fee increases, while unwelcome considering the often widespread public disappointment in the level of service provided, have sometimes been significant but not exorbitant. Not so with the newly proposed CIS fee increases, which have raised eyebrows even in the U.S. Congress. Among Congressional leaders publicly voicing concern over the proposed increases are Senator Edward Kennedy (D-MA), Senator Patrick Leahy (D-VT), Representative Zoe Lofgren (D-CA), and Representative John Conyers (D-MI).

Below is a comparison of the current and proposed fees for some of the most commonly filed petitions and applications, as well as the ones for which proposed increases are most dramatic. A full comparison chart of all proposed fee increases may be located at <http://www.tindallfoster.com/ExportedSite/ImmigrationResources/GovtWebsitesDocs/CISFees.pdf>.

Form	Description	Current Fee	Proposed Fee
I-129	Nonimmigrant Visa Petition (e.g. H, L, O, P visa petitions)	\$190	\$320
I-130	Immediate Relative Immigrant Petition (e.g., for spouse of U.S. Citizen)	\$190	\$355
I-131	Application for Travel Document (e.g., Advance Parole, Reentry Permit)	\$170	\$305
I-140	Immigrant Visa Petition (employment-based)	\$195	\$475
I-485	Application to Adjust Status (“green card” application)	\$325	\$905

I-526	Immigrant Petition by Alien Entrepreneur (“investor visa”)	\$480	\$1,435
I-539	Application to Extend or Change Nonimmigrant Status	\$200	\$300
I-751	Petition to Remove Conditions on Permanent Residence	\$205	\$465
I-765	Application for Employment Authorization	\$180	\$340
I-829	Petition by Entrepreneur to Remove Conditions	\$475	\$2,850
N-400	Application for Naturalization (U.S. Citizenship)	\$330	\$595

Under the title “Building an Immigration Service for the 21st Century,” the CIS issued a Press Release defending the proposed fee increase as necessary to “recover the costs necessary to administer an efficient and secure immigration system that ultimately improves service delivery, prevents future backlogs, closes security gaps, and furthers our modernization efforts.” CIS Director Emilio Gonzalez went on to say, “We’re confident that this fee adjustment will enable the type of exceptional immigration service our nation expects and deserves.”

CIS Director Emilio Gonzalez has presented the \$905 Adjustment of Status Filing Fee as an all-in-one fee that takes into account the fees and services associated with Applications for Advance Parole and Employment Authorization. According to Director Gonzalez, applicants will file only the Application to Adjust Status, and if the Application to Adjust Status is not adjudicated in a timely manner, the CIS will issue “interim benefits” in the form of Advance Parole and Employment Authorization Documents (EAD cards) to cover travel and employment authorization while the Application to Adjust Status remains pending. Presumably, charging in advance for EAD Applications and Advance Parole Applications would provide an economic incentive for the CIS to adjudicate Applications to Adjust Status in a timely manner in order to achieve the windfall of fees paid for EAD and Advance Parole adjudication and document issuance without having to actually adjudicate those applications and issue those documents. While Director Gonzalez characterizes this new strategy as a “pricing strategy” that will “put the monkey on our [CIS] back, not theirs,” under this proposed model, should the CIS adjudicate the Application to Adjust Status in a timely manner (presumably within 4 months based on CIS estimates with the new fees in place), the applicant will have paid filing fees in advance for Applications that are unnecessary. Should the CIS fail to adjudicate the Application to Adjust Status within the time frame projected with the new fee increases, the Applicant will have paid a higher application fee without having received the promised benefits of improved service and shortened adjudication times.

While the CIS suggests that the new fee increase will allow for a 20% reduction in adjudication time frames from six months to four months, the CIS often fails to meet even the current CIS goal of six-month adjudication time frames for Immigrant Visa Petitions and Applications to Adjust Status. In fact, the current CIS-published processing

report from the CIS Nebraska Service Center reports that the Service is adjudicating Immigrant Visa Petitions filed in April, May, June, and July of 2006, depending on the immigrant category. These CIS-published time frames do not meet the existing six-month CIS goal and do not take into account the many case adjudications that lag behind the dates reported on the CIS monthly processing reports.

This Proposed Rule for the increase in filing fees remains open for comment through April 2, 2007. Comments may be submitted electronically via the Federal Register web site at <http://www.regulations.gov>. Comments may also be submitted by electronic mail at OSComments@dhs.gov, by facsimile at 866-466-5370, or by mail to the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. All comments should reference DHS Docket No. USCIS-2006-0044.

As always, Tindall & Foster, P.C. will advocate for reasonable measures that do not unfairly impact immigration opportunity and business growth; however, nothing can substitute for your company's voice. Tindall & Foster, P.C. invites you to join our firm, as well as U.S. Congressional members, in voicing concern over the exorbitant fee increases proposed by the CIS. For assistance in preparing a comment that represents your company's position on this Proposed Rule, please contact your Tindall & Foster immigration attorney. Your Tindall & Foster immigration attorney will be happy to work with you to best articulate your company's comment and submit it in accordance with the requirements for the notice and comment period of this proposed rulemaking.