

April 1, 2007

Director, Regulatory  
Management Division  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
111 Massachusetts Avenue, NW. 3rd Floor,  
Washington, DC 20529.

Dear Sir/Madam;

**Re: Proposed Rule, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, DHS Docket No. USCIS-2006-0044**

Please find following my comments for the record and consideration on the proposed hike in the USCIS fees. My comments are limited to the impact the proposed fee increase will have on highly skilled immigrants who wish to pursue their American dream legally through Employment-Based (EB) immigration.

At the outset, I acknowledge the efforts of USCIS, DOL, FBI and various other federal agencies that are involved in ensuring that the applications of hundreds of thousands of people who immigrate to the US legally are processed efficiently. I also understand that the huge volume of applications the USCIS processes is resource intensive. Therefore, it follows that given the mandate from Congress that USCIS funds its various processes through fees generated from the prospective immigrants, periodic fee increases are necessary and required.

However, the current fee increase proposed by USCIS is very steep for prospective immigrants who have recently arrived in the US and, especially for those whose dependents cannot be employed due to current laws. Following are my comments on the fee increases and alternatives that I hope the USCIS will explore, which will reduce the significant burden placed upon prospective immigrants.

1. Processing Times

Table 3 of the published rule presents the average time taken by the USCIS to process various applications. The table provided below presents a comparison of the processing times as listed on the various service centers from the USCIS website ([www.uscis.gov](http://www.uscis.gov)).

Form	Average processing time per Table 3 in proposed rule (months)	Current processing time (months) at various service centers (as of 03/15/07)			
		California	Nebraska	Texas	Vermont
I-129	2	2	10	9	3
I-131	2	3	3	3	3
I-140	3	NA	7	6	11
I-485	7	7	7	6	11

I-765	2	3	3	3	3
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As seen from the above chart, the processing times at the various service centers vary dramatically, especially for forms I-129, I-485 and I-140. Besides, the time for processing form I-485 does not take into account the time taken for background clearances and fingerprinting checks by the FBI. Therefore, the concept of average processing times as presented in the Federal Gazette announcement on Feb.1, 2007 is incomplete unless accompanied by maximum and minimum processing times with the percentage of applications processed for those time values. I feel that the USCIS should aim at limiting the *total processing time* to within 6 months *from the date of receipt of notice* instead of the average processing times, as presented in the rule. I suggest that any fee increase proposed by the USCIS to increase its efficiency and thus reduce the *total* processing time should be approved only if USCIS stipulates and undertakes to improve the total processing time by at least 20 percent especially, if more than 5% of the customers encounter processing times significantly longer than the average.

## 2. Fee increases

The proposed rule gives as an example the case of Form I-485 in justifying how the increase of fees from the current \$325 to the proposed \$905 is an increase of only 66% when the costs of multiple Employment Authorization Documents (EAD) and Advance Travel Parole (ATP) Documents are factored in. There are several issues with these calculations, some of which are listed below:

- If the average processing time for Form I-485 is only 7 months, then an applicant would need only one EAD and one advanced parole document, both of which are currently valid for one year. The total fees an applicant would pay are therefore, \$675 and not \$800 as presented in the proposed rule. This means that the increase in fees is actually 75% and not 66%, otherwise it conveys the impression that the USCIS may be contradicting itself by tacitly acknowledging that the average processing times are actually longer than what is shown in Table 1 of the announcement in the Federal Gazette.
- Even if I were to assume that the assumptions made by USCIS in its calculation are correct, the fee increase is applicable to *all applicants* irrespective of whether they want or need an EAD or an advanced travel parole. Under the current system, an applicant only pays for what (s)he wants, which is only fair.
- The fees for the EADs and ATPs that are currently being charged are paid by each applicant annually. It makes a great difference when a person is required to pay \$350 per year for an EAD and ATP versus requiring them to pay for those benefits in advance lumpsum. This is comparable to asking an applicant to pay in advance for services that *may or may not be required* if the USCIS were to improve its *total* processing times within six months.
- The proposed rule increases the fees payable by minors (less than 14 years of age) to \$805 who will also be adjusting their status along with their parents. I feel that this increase is unreasonable given the fact that the likelihood of a minor having the need of an EAD is relatively low. Also, an adjustment of status application by a minor will need significantly less processing and background checks. Finally, this increase

in addition to the \$905 that an applicant will be paying for self and other adult dependents is an additional financial burden. In the spirit of Hon. Michael Chertoff's recent announcement waiving the passport fees for US citizen who are under 14 years of age, I request that minors under the age of 14 be exempted from any fee increase.

- The majority of EB applicants who are in the process of obtaining permanent residency are on a H1B status. Per current law, dependents of H1B workers cannot work while on dependent (H4) status. Thus, in a majority of cases, the primary applicant on a H1B is supporting himself/herself and his/her dependents on a single income. For such an applicant, the increase in fees from \$675 to \$905 for self *and each of his dependents* is a significant financial burden which needs to be considered, especially, given the fact that such an applicant is already paying taxes and other government fees just like an American worker does.
- The financial burden of the immigration process for a family of 4 (two adults and two minors) would be approximately \$3600, which is a sizeable amount, and quite typically the average monthly paycheck after taxes for many individuals!

In general, I have the following comments on the proposed fee increases.

- I agree that "The immigration benefits that USCIS confers are truly valuable and it is appropriate that prospective immigrants bear the full costs of the service provided." However, I do not agree with the USCIS' contention that the costs incurred by the USCIS in granting fee waivers and other free services should be borne by *future* immigrants, especially since all the fees paid to the USCIS are non-refundable. This means that in cases where applications are denied, a fully paying customer is bearing the cost for free services offered to others while he gets no benefit at all. Also, the decision to provide free services to applicants who cannot afford to pay for them is due to the generosity of the American public and should therefore be *funded* by Congress and the American public. Thus, each immigrant who is approved and pays taxes will automatically be sharing this burden.
- While Congress has mandated that the USCIS sustain its functions from processing fees paid by petitioners, many individual petitioners (especially EB immigrants) living and working in the US, who file petitions with the DHS-USCIS, do pay taxes every year to the IRS and their respective state government tax agencies. *I feel that such a drastic fee hike should apply only to family-based immigration applicants, who live outside the US and do not pay any taxes in the US at all.*
- I feel a better way to reduce workload and increase efficient processing of applications would be to issue multi-year EAD's and ATP's valid for at least three years to those who apply for these documents. USCIS could charge a fee of approximately two and a half times the current fee for these documents. Since, the time needed to process the document is the same irrespective of the period of validity of the document, the USCIS would be able to use the additional revenue thus generated for meeting its goals, while at the same time being fair to its customers.

### 3. National Security Concerns

The proposed rule has a discussion on the need to improve background checks, etc. in the interest of national security. I am in total agreement with the USCIS that prospective immigrants be thoroughly screened and security cleared before being granted permanent residency status. Therefore, I agree with the increase in the biometric and background check fees as proposed by USCIS. However, in fairness to its customers, I suggest that the time taken for the background check to be completed be included in the calculation of total processing times. This will ensure that the various other federal agencies involved also devote sufficient resources to ensure fast and efficient background checks.

#### 4. Related suggestions and comments

I suggest that the USCIS explore the possibility of allowing the filing of I-485 petitions even when current immigrant visa numbers are unavailable for severely retrogressed countries. Not only does allowing for such a benefit not contravene any provision under current INA, it has been a part of various bipartisan immigration-related bills submitted in the 109th Congress. The benefits of allowing filing for adjustment of status (form I-485) when visa numbers are unavailable are numerous as explained below.

##### A. National Security Benefits

A significant number of aliens, who would have been eligible for filing for adjustment of status, if not for retrogression<sup>1</sup>, are still awaiting security clearance. As per the current USCIS regulations, an alien who has filed for adjustment of status (form I-485) is first cleared through a name and background check by the FBI. Due to the current retrogression facing the EB immigration categories, many aliens who are already in the U.S. will not be subject to a name/background check until their priority dates become current. However, allowing aliens to file form I-485 even when their priority dates are not current will help process them through the FBI name check process, which is of utmost criticality to the interests of homeland security.

##### B. Health Concerns

Currently, aliens who are in the U.S.A. on non-immigrant visas are not subject to any medical checks. Per current USCIS regulations, every alien who files Form I-485 needs to go through medical check up/vaccinations, etc before being eligible for adjudication. Due to retrogression, it is likely that a significant number of aliens will not be subject to this very important check for a number of years until their priority dates become current. Allowing the filing of Form I-485 will lead to more aliens being screened for medical problems.

##### C. Revenue Generation

Currently, it is conservatively estimated that approximately 650,000 aliens are being impacted by retrogression as of FY 2005<sup>2</sup>. Therefore, at least 650,000 I-485 petitions will

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<sup>1</sup> Retrogression: Backward movement or slow forward movement of priority dates for certain oversubscribed countries due to the numerical caps on immigrant visas issued per year.

<sup>2</sup> Yearbook of immigration statistics

be filed if this administrative rule is passed. The current fees for the Form I-485, Form I-765 (Employment Authorization Document (EAD)) and Form I-131 (Advance Travel Parole) are \$325, \$180 and \$170 respectively<sup>3</sup>. Additionally, a fee of \$70 is currently being assessed for biometric data collection<sup>4</sup>. Thus, each alien filing the Form I-485 and associated forms will be paying \$745. Of these, Form I-765 and Form I-131 need to be filed each year and therefore, \$350 will be recurring revenue from each applicant on an annual basis. Allowing the filing of I-485 will therefore generate an additional \$486 million for the first year and \$228 million recurring for future years.

Realistically, it is expected that the proposed fee increase would be in effect by the time this rule comes into effect. With the \$985 (\$905 Form I-485 fees and \$80 Biometric fee) as proposed under the new fees<sup>5</sup>, at least an additional \$642 million would be generated for the USCIS the year this rule is effective. Since, the USCIS cannot approve these petitions until the respective priority dates are current; these applications will not be counted against the backlog<sup>6</sup> and hence, will not “skew” the statistics, but at the same time provide USCIS with a significant revenue stream.

#### D. Better Record Keeping

Allowing the filing of form I-485 would enable the USCIS and Department of State (DOS) to have reliable estimates of the applications that would become current for any priority date. This would be valuable for the USCIS in workload scheduling and for the DOS in calculating immigrant visa priority dates with greater accuracy.

#### E. Better Customer Service

One of the stated missions of the USCIS is to provide excellent customer service to its customers who are primarily aliens benefiting from the various services the USCIS provides. Allowing these aliens to file form I-485 would go a long way towards providing a short term relief and significantly improve the quality of life for these aliens. At the same time, the USCIS could provide a few resources to “pre-adjudicate” these applications. Pre-adjudications provide multiple benefits; they would weed out fraudulent, incomplete or inaccurate applications thereby enabling the USCIS to enforce the immigration laws by rejecting these petitions at the earliest and, since the applications will already be pre-adjudicated, they can be approved within a very short time as soon as an immigrant visa is available (i.e. priority dates become current) thereby increasing the overall processing times, keeping backlogs to a minimum and providing excellent customer service. This rule would also provide the FBI with sufficient time to process the name checks for the applicants.

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<sup>3</sup> USCIS website; current fees as per information in the proposed rule for revised fees published in the Federal Register, February 1, 2007

<sup>4</sup> Same as note 3 above.

<sup>5</sup> USCIS website; proposed fees as per information in the proposed rule for revised fees published in the Federal Register, February 1, 2007

<sup>6</sup> The Immigration Services and Infrastructure Improvements Act of 2000 (§ 205(a) of P.L. 106-313, 8 U.S.C. § 1574(a)) defines backlog as the period of time in excess of 180 days that an immigration benefit application has been pending before the agency. USCIS defines backlog as the number of pending applications (i.e., the number of applications awaiting adjudication) in excess of the number of applications received in the most recent six months.

Given the volume of applications anticipated to be filed, if this rule were to be implemented it is appropriate that the USCIS has concerns about making resources available to address the huge influx of Form I-485 applications. I agree that with the current resources and financial situation, this concern probably has merit. However, the USCIS will be getting significant revenue once this rule becomes effective. Since, the forms will only be need to be checked for completeness and preliminary approvability prior to approving the form I-131 and form I-765, the amount of additional resources needed would be comparatively minor. It is important to note, that this influx would be temporary with applications gradually reducing to more manageable levels once the initial surge is over. The USCIS could address this temporary surge by various means:

- The USCIS could operate centers similar to the Backlog Elimination Centers as operated by the DOL to process these applications.
- The USCIS could issue multi-year EAD's and ATP's thereby reducing the time and effort involved in approving them each year, thus significantly reducing the resources needed.
- The USCIS could charge a supplemental fee for these petitions. This will provide additional funds for resources as well as take into account possible future fee increases.
- The USCIS could implement premium processing for these applications.

I thank you for your time and kind attention to this submission. I deeply appreciate the chance to share my comments with you.

Sincerely,  
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