April 2, 2007

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

Via Email: OSComments@dhs.gov

Re: Response to Proposal to Filing Fee Increase, Docket Number USCIS-2006-0044

To Whom It May Concern:

In response to the U.S. Citizen & Immigration Services' proposed rule regarding increasing the filing fees, Docket Number USCIS-2006-0044, please find below our comments. The following represents the concerns of our law office as well as those expressed to us by our clients.

First Issue:

The U.S. Citizenship & Immigration Services has determined that these fees are necessary to fully fund the Immigration Examination Fee Account.

Our First Response:
It is Unfair for Foreign Nationals and Their Sponsors to Fully Fund the Immigration Examination Fee Account

To begin with, it is unfair to expect that foreign nationals and their sponsors should fully fund the Immigration Examination Fee Account. It is not proper nor is it just to expect that extending immigration benefits in the United States be premised on whether these very same immigrants (and their sponsors) can fund their benefits. The extension of immigration benefits to qualified immigrants is a government service that should more appropriately be funded by the U.S. government and ***not*** be fully underwritten by those for whom the benefits are to be extended.

Since we are in April, it is only fitting to contemplate how this would play out in the income tax arena. That is, would we truly expect U.S. taxpayers to underwrite the expenses incurred to collect income taxes? The answer is that we would not tolerate this. To merely suggest this would result in an uproar that would forever silence the suggestion. Likewise, requiring immigrants and their sponsors to fully underwrite the benefits that are extended to them should also not be tolerated.

Our Second Response:
This Increase Does Not Fully Capture the True Ballooning Effect of H-1B Filing Fees and Its Impact on the U.S. Economy

In order to stay competitive globally, it is critical that U.S. employers continue to be able to sponsor foreign nationals for work visas. This country is already facing a true crisis due to the inadequate supply of H-1B visas for foreign national professionals. Last year, all new H-1B numbers available were exhausted less than two months after they were available. This year, it is expected that new H-1B numbers will be exhausted much faster – possibly days after new H-1B numbers are available.

This H-1B crisis is particularly acute when we contemplate the additional filing fees employers are now responsible for – should they be fortunate enough to be able to secure one of these scarce H-1B numbers. According to the U.S. Citizenship & Immigration Services, these increases in filing fees are merely keeping up with inflation. However, this might not be the case when we factor in the two other mandatory fees for H-1B filings added in the 21st century, including the American Competitiveness in the 21st Century Act, which mandates an additional $1,500 in filing fees (or $750 for smaller firms) to improve the global competitiveness of the U.S. workforce, and the additional $500 now required to combat fraud. Finally, if an employer is unable to wait the four to six months it typically takes for an H-1B case to be adjudicated, the employer also faces a $1,000 fee for premium processing. Thus, combined filing fees for a single H-1B is generally $3,190 (or $2,190 if the employer elects not to expedite the case). While in 1998 the filing fee was a mere $130 with no mandatory additional fees, with the proposed increase to $320, filing fee increases for H-1Bs balloon to an overall increase of **2,354%** for an employer electing premium processing or **1,685%** to an employer choosing to wait the four to six months or so by not electing premium-processing service. These fee increases serve to severely undermine the ability of U.S. employers to hire foreign workers, which in turn severely undermines the ability of U.S. workers to compete globally.

Our Third Response:
If Fee Increases Are Inevitable, the U.S. Citizenship & Immigration Services Should Broaden the Fee Waivers to Protect the Interests of the U.S. Public School Systems

For more vulnerable sectors of our economy, including the Public School Systems, this fee increase would be crippling. This would truly represent a financial hardship for the Public School Systems that are already overburdened. In addition, since public funds go to support the Public School Systems, this would not be in the interest of the public good to unduly burden the Public School Systems with a sharp increase in fees for their teachers. In short, this increase might undermine the ability of the Public School Systems to continue to use foreign talent in their classrooms, which is vital given the shortage of U.S. teachers. Therefore, the U.S. Citizenship and Immigration Services should act to safeguard the interests of this vulnerable institution by carving out an exception in the proposed fee schedule for our schools.

Second Issue:

The U.S. Citizenship & Immigration Services has determined that it would be more convenient to merge the fees for certain applications.

Our Response:
It Would Be Unfair to Merge Fees Since Not All Applicants Apply for the Same Services. Thus, Merging Fees Requires Many Applicants to Pay for Unneeded Immigration Benefits.

As stated above, by merging filing fees, the U.S. Citizenship & Immigration Services is forcing applicants to pay for immigration benefits they may not need – or for which they may not be eligible. For example, individuals in H or L classification do not need to apply for Advance Parole Travel Documents or Employment Authorization Documents when they file Adjustment of Status Applications. In addition, children do not generally need to apply for Employment Authorization Documents. By forcing everyone to pay consolidated fees, the U.S. Citizenship and Immigration Services assumes that everyone is seeking the same immigration benefits, which is often not the case. In addition, many foreign nationals cannot and should not apply for Advance Parole Travel Documents, such as those who are grandfathered under Section 245(i) of the Immigration and Nationality Act, yet by merging the fees, they would nevertheless be required to pay for this application. Finally, it is noteworthy to mention that Immediate Relatives of U.S. Citizens are now not given Employment Authorization Documents or Advance Parole Travel Documents until after the interview if their case cannot be immediately approved (because, normally, they are stuck in a name check). Thus, it appears that the U.S. Citizenship and Immigration Services is inappropriately requesting fees from many who may never need nor be eligible for particular immigration benefits.

In short, if it were not bad enough to request foreign nationals and their sponsors to fully
fund the Immigration Examination Fee Account, requiring them to fund it for unneeded services is even more egregious.

Conclusion

In sum, this dramatic fee increase should be rejected and the U.S. Citizenship and Immigration Services should reconsider its proposal.

Sincerely,

Magali S. Candler
Head of Litigation