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USCIS Implements H-1B and L-1 Fees

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Submitted by Rajiv S. Khanna on Oct 8th 2010

On August 13, 2010, President Obama signed Public Law 111-230, which contains provisions to increase certain H-1B and L-1 petition fees. The law, which already in effect, requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. USCIS has clarified certain matters that employers should bear in mind.

Questions and Answers

Q. To which petitioners does the new fee apply?

A. The additional fee applies to H-1B or L-1 petitioners that employ 50 or more employees in the United States with more than 50 percent of their employees in the United States in H-1B, L-1A or L-1B nonimmigrant status.

Q. To which H-1B petitions does the new fee apply?

A. H-1B petitioners subject to the new law must submit the fee with any H-1B petition filed: To seek initial nonimmigrant status for an alien described in subparagraph (H)(i)(b) of INA section 101(a)(15), or to obtain authorization for an alien having that status to change employers. The new fee does not apply to extension requests filed by the same petitioner for the same employee.

Q. To which L-1A and L-1B petitions does the new fee apply?

A. L-1 petitioners subject to the new law must submit the fee with an L-1A or L-1B petition filed:

To seek initial nonimmigrant status for an alien described in subparagraph (L) of INA section 101(a)(15), or to obtain authorization for an alien having that status to change employers.

The new fee does not apply to extension requests filed by the same petitioner for the same employee.

Q. What is the additional fee for H-1B petitions?

A. Public Law 111-230 requires an additional fee of \$2,000 for covered H-1B petitions. This fee is in addition to the base processing fee, the existing Fraud Prevention and Detection Fee, and any American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee needed to file a Petition for a Nonimmigrant Worker (Form-129), as well as any premium processing fees.

Q. What is the additional fee for L-1 petitions?

A. Public Law 111-230 requires an additional fee of \$2,250 for covered L-1A and L-1B petitions.

This fee is in addition to the base processing fee and the existing Fraud Prevention and Detection Fee required for a Petition for a Nonimmigrant Worker (Form-129) (or, in the case of certain visa exempt aliens, the Nonimmigrant Petition Based on Blanket L Petition (Form I-129S) filed with USCIS), as well as any premium processing fees.

Q. Must the petitioner or the beneficiary pay the additional fee?

A. The petitioner, not the beneficiary, should pay the additional fee, where it applies.

Q. How does the petitioner indicate whether it is subject to the new fee?

A. Until the Petition for Nonimmigrant Worker (Form I-129) and the Nonimmigrant Petition Based on Blanket L Petition (Form I-129S) are revised, USCIS recommends that all H-1B, L-1A, and L-1B petitioners include, as part of the filing packet, the new fee or a statement or other evidence outlining why this new fee does not apply. USCIS requests that petitioners include a notation indicating whether or not the fee is required in bold capital letters at the top of the cover letter. The fee, statement, notation, or other evidence should be provided with each petition submitted. Where the fee or documentation is not submitted with the filing, or where questions remain, USCIS may issue a Request for Evidence to determine whether the additional fee applies to the petition.

Q. How will USCIS address petitions filed without the new fee or an explanation of why the new fee does not apply?

A. Where the fee or explanation is not submitted with the petition, or where questions remain, USCIS may issue a Request for Evidence to determine whether the additional fee applies to the petition. Because an RFE will be issued for the fee, rather than a rejection for the omission of the fee, USCIS will maintain the original filing date as the receipt date. Petitioners should wait to respond to the RFE before sending in the additional fee or an explanation of why the new fee does not apply. Once the revised Form I-129 and Form I-129S are in place, USCIS will reject covered petitions submitted without the new fee.

Q. When will the revised Form I-129 and its instructions be available?

A. USCIS is revising the Form I-129 and Form I-129S and their accompanying instructions and will release them as soon as possible.

Q. Does USCIS require the new fee to be written in a separate check?

A. USCIS recommends that petitioners include the new fee in a separate check. The check should be made payable to the Department of Homeland Security.

Q. How will USCIS define employer for purposes of implementing Public Law 111-230?

A. To implement Public Law 111-230, USCIS will apply the definition of employer found at 8 CFR 214.2(h)(4)(ii), which states:

[A] person, firm, corporation, contractor, or other association, or organization in the United States

which:

(1) engages a person to work within the United States

(2) has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(3) has an Internal Revenue Service Tax Identification number.

The use of this definition for purposes of determining the application of this new fee does not extend or authorize its application beyond Public Law 111-230 and the H-1B rules and regulations.

Q. How will USCIS define employee for purposes of implementing Public Law 111-230?

A. All employees, whether full-time or part-time, will count towards the calculation of whether an employer is subject to the new fee.

Q. When calculating the percentage of employees in H-1B or L-1 status, will USCIS compare the number of nonimmigrant workers in the petitioner's workforce to the number of employees in the United States only or to the number of employees worldwide? Will USCIS include employees in L-1 status who remain on foreign payroll?

A. USCIS will calculate the percentage based on the number of employees in the United States. All employees in the United States, regardless of whether they are paid through a U.S. or foreign payroll, will count toward the calculation.

Q. Does the new fee apply to derivative beneficiaries?

A. No. The new fee does not apply to derivatives.

Q. Does this new fee apply to any other employment-based visa category (e.g., H-2A, H-2B, etc.)?

A. No. The new fee applies only to certain H-1B, L-1A, and L-1B petitions.

Q. Does an employee in L-2 status count as an employee for purposes of determining whether or not the employer has more than 50 percent of its employees in an H-1B or L status?

A. No. Only H-1B, L-1A, and L-1B employees are counted towards the 50% calculation.

Q. Will this fee affect processing times, including premium processing requests?

A. USCIS is working quickly to ensure that processing times are not affected by the implementation of the new law. To avoid RFEs or delays in individual cases, the public is encouraged to include the new fee or a statement or other evidence outlining why this new fee does not apply.

Nonimmigrant Visas:

[H-1 Visa](#) ^[2]

[L-1B Visa](#) ^[3]

Agency:

[USCIS](#) ^[4]

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