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USCIS exempts F-1 to H-1B status change from the \$100,000 fee, easing concerns for Indian students

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In a major relief for foreign students and American employers the US Citizenship and Immigration Services (USCIS) has clarified that the \$100,000 'entry' fee announced by President Donald Trump, that came into effect from Sept 21, will not apply to individuals already in the United States who are seeking a change of status to an H-1B, extension of stay, or amendment (such as a change in the employer)

This clarification will benefit thousands of international students on F-1 visas who transit to H-1B status through the annual lottery selection process. While the entry fee has to be paid by the sponsoring employer and not the beneficiary (individual who is sponsored), it was feared that employers would not wish to cough

up this significant sum for recent graduates (entry-level hires). International students who face the added pressure of heavy student loans can now breathe easy. However, another proposal in the pipeline, which seeks to give preference in H-1B visa allotments based on wage levels, will dent work prospects for international students

Owing to the USCIS clarification, US employers such as universities, nonprofit entities affiliated with universities, nonprofit research organizations, and governmental research institutions who are eligible to hire under the cap-exempt H-1B route will not have to pay this fee, where the international student is transiting from an F-1 visa to a work visa.

According to the USCIS guidance note, issued late night on Monday, H-1B petitions "approved for an extension of stay, amendment, or change of status – including change of employer applications – will not be subject to the

proclamation or the associated \$100,000 fee.” Individuals who are already in the US with approved H-1B applications will also not become subject to the fee if they travel abroad, the immigration agency has clarified.

However, new H-1B petitions filed for consular processing, where the worker is outside the US will trigger the \$100,000 payment requirement.

Boost for Indian students transitioning from F-1 to H-1B: The new guidance provides significant relief for international students, particularly the large Indian cohort who have a significant presence in the H-1B pipeline. As per the latest Open Doors report for 2023-24, 3.3 lakh Indian students were enrolled in U.S. institutions, with 97,556 undergoing Optional Practical Training (OPT).

Students who complete their studies in the US typically work under the OPT program – the tenure of which is three years for students from the Science, Technology, Engineering and Mathematics (STEM) fields. Several US employers file H-1B applications for such students. Under the guidance, recently graduated international students, who are sponsored for an H-1B status, while they are in the US will not be subject to this fee.

Change of status in other cases: The entry fee would also not apply in ‘change of status’ cases for other categories as well. Such as a L-1 visa holder (intra company transfer visa holder) transitioning to an H-1B.

The guidance is also significant for J-1 visa holders—a category that includes medical residents, researchers, teachers and scholars. J-1 visa holders are normally required to return to their home country for two years after completing their program before they can apply for an H-1B visa. Those in the medical field often seek a J-1 home residency waiver, allowing them to transition directly to H-1B status. “This is much-needed clarity and great news for healthcare employers sponsoring physicians for J-1 waivers and the resulting H-1Bs,” said Elissa Taub, partner at Siskind Susser, an immigration law firm.

Immigration attorneys warn that if a change of status is requested, but is approved only for consular notification because the beneficiary (F-1 or L-1 visa holder) travelled while the application was pending or was found to have ‘violated status’, the entry fee will have to be paid. For instance, an international student could have violated his status because of unauthorised work.

Rajiv S. Khanna, managing attorney at Immigration.com points out that, "Status determinations are often complex and sometimes arbitrary. Months later, USCIS can find a status violation that was not anticipated, resulting in a \$100,000 bill!"

Pay upfront: The \$100,000 fee applies to new H-1B petitions filed on or after September 21 for workers who are outside the US and who do not hold a valid H-1B visa, or where the employer specifically asks for consular notification instead of a change of status. Even an H-1B petition for the same worker with the same employer becomes payable if USCIS denies the extension or change of status request and approves it only for consular processing.

The guidance note states that payment of the \$100,000 fee must be made on the US Department of Treasury portal prior to filing the H-1B application with USCIS. Khanna points out that the sponsoring employer cannot file the application and pay later. "Proof of payment (or proof of exception) must accompany the initial filing. Failure to include this proof results in automatic denial," he said. However, if the H-1B application is denied, the fee will be refunded.

National interest exemptions - A steep climb: While Trump's proclamation allows for national interest exceptions, USCIS has set an exceptionally high bar for obtaining a waiver from the payment of the \$100,000 fee. The agency says exceptions will be granted only in "extraordinarily rare circumstances."

To qualify, employers must prove that: The individual's presence in the US as an H-1B worker is in the national interest; No US worker is available to fill the role; The foreign national poses no security or welfare threat; and lastly that requiring payment would 'significantly undermine US interests.

Khanna said, "The fourth criterion is particularly challenging. How do you prove that requiring payment would "significantly undermine" US interests? This seems to contemplate scenarios like: Critical national security projects where delay would be harmful, or perhaps Emergency healthcare or disaster response situations."

“Document everything exhaustively. If as a sponsoring employer you are seeking an exception, assume you are making a case comparable to a National Interest Waiver, but with the added burden of proving the payment requirement itself causes harm,”added Khanna.

Legal challenges continue: Two lawsuits challenging the proclamation have already been filed in US federal courts, seeking to block implementation of Trump’s proclamation. Attorneys argue that the fee is punitive, bypasses congressional authority and violates administrative law. But for now, the clarification from USCIS is seen as a temporary balm, which has addressed some but not all concerns of American employers.