



News & Types: Immigration Monthly Updates

# Business Immigration Monthly - January 2024

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Practices: Immigration

## **USCIS TO INCREASE PREMIUM PROCESSING FEES ON FEBRUARY 26, 2024**

On December 28, 2023, U.S. Citizenship and Immigration Services (USCIS) published a final rule indicating that it will increase the filing fee for its premium processing service.

The Immigration and Nationality Act (INA), as amended, allows the Secretary of the Department of Homeland Security (DHS) to collect a premium fee for immigration petitions that the Secretary deems appropriate for premium processing and may adjust the fee on a biennial basis by the percentage increase of the Consumer Price Index for All Urban Consumers (CPI-U); and the CPI-U increased by 12.30%. USCIS last adjusted the premium processing fees on the biennial basis on October 1, 2020. The premium processing fee collected by USCIS is to be allocated to serve the premium processing program and to help reduce processing times.

The new increase affects the following petitions and applications that are post-marked on or after February 26, 2024.

- \$2,805 for employment-based nonimmigrant petitions (Form I-129) for the classifications of Treaty Trader (E-1), Treaty Investor (E-2), Australian Worker (E-3), Specialty Occupation Worker (H-1B), Trainee (H-3), Executive or Manager Intracompany Transferee (L-1A), Specialized Knowledge Intracompany Transferee (L-1B), Blanket Approval for L-1 (LZ), Individuals having Extraordinary Ability or Achievement (O-1), Individuals who will accompany an O-1 artist or athlete to assist in a specific event or performance (O-2), Athletes or Members of an Internationally Recognized Entertainment Group (P-1), Essential Support Personnel to a P-1 Athlete (P-1S), Individual Performer or Part of a Group Entering to Perform Under a Reciprocal Exchange Program (P-2), Essential Support Personnel who are an integral part of the performance of a P-2 artist or entertainer (P-2S), Artist or Entertainer coming to be part of a culturally unique program (P-3), Essential Support Personnel of an Artist or Entertainer coming to be part of a culturally unique program (P-3S), Participant of an international cultural exchange (Q-1), Canadian Worker under the USMCA (TN-1), and Mexican Worker under the USMCA (TN-2).
- \$1685 for a Temporary Non-Agricultural Worker (H-2B) or Religious Worker (R-1).
- \$2,805 for employment-based immigrant petitions (Form I-140) for the classifications of Individual of Extraordinary Ability (E11), Outstanding Professor or Researcher (E12), Multinational Executive or Manager (E13), Professional having an Advanced Degree or Individual having Exception Ability (E21), Skilled Worker (E31), Professional (E32) and Other Worker (EW3).

- \$1,685 for applications for employment authorization by Students (F-1) requesting pre-completion optional practical training (C03A), post-completion optional practical training(C03B) or STEM optional practical training (C03C).
- \$1,965 for applications requesting initial status or an extension of status in the visa classifications for Student or their Dependent (F-1 or F-2), Vocational Student or their Dependent (L-1 or M-2), and Exchange Visitor or their Dependent (J-1 or J-2).
- When USCIS authorizes Premium Processing of applications for dependents in the visa classifications for Treaty Trader (E-1/E-1S/E-2Y), Treaty Investor (E-2/E-2S/E-2Y), Australian Worker ) E-3/E-3S/E-3Y), Intracompany Transferee (L-2/L-2S/L-2Y ), Specialty Occupation Worker/Temporary Worker/Trainee (H-4), Extraordinary Ability or Achievement or accompanying staff (O-3), Athlete/Performer/Entertainer or their staff (P-4), or Religious Worker (R-2) the filing fee will be \$1,965. USCIS has not stated when premium processing service for these benefit requests will be implemented.

Filing a request for premium processing service may be done concurrently with the benefit petition request or anytime thereafter before USCIS issues a decision on the underlying petition or application.

### **USCIS FILING FEE INCREASE ANTICIPATED SOON**

In our [January 2023 Business Immigration Monthly](#), we reported that USCIS commenced the regulatory process to increase its filing fees for employers who are sponsoring foreign workers and individuals who are applying for temporary status or Permanent Resident status (Green Card). The USCIS indicated that the new fees would help it recover operating costs.

On January 19, 2024, the White House's Office of Information and Regulatory Affairs (OIRA) completed its review of revisions made by USCIS to its fee rule and a publication of the fee schedule is anticipated soon. Below is a comparison of the current filing fee, proposed fee increase, and **unconfirmed** anticipated fee increase. Please note that the USCIS will confirm the exact fee increase when the final rule is released. The final rule will also indicate whether or not the USCIS will be charging an extra asylum program fee of \$600 on each employment-based petition, in addition to the regular filing fees. It is anticipated that the new fee schedule will become effective 30 days after the final rule is published.

<b>Visa Classification/ Petition</b>	<b><u>Current Fee</u></b>	<b><u>Proposed fee</u></b>	<b><u>Anticipated fee (unconfirmed)</u></b>
H-1B Workers (Form I-129)	\$460 + \$500 Fraud Detection fee (initial petitions) + \$750/\$1500 ACIWA Supplement fee (initial petition and first extension) + \$4,000 9-11 Response fee (Employers with more than 50 employees and more than	\$780. \$500 Fraud Detection fee (initial petitions) + \$750/\$1500 ACIWA Supplement fee (initial petition and first extension) + \$600 Asylum Program fee	\$555 + \$500 Anti-fraud Fee (initial petitions) + \$750/\$1500 Supplement Fee (initial petition and first extension) + \$4,000 9-11 Response fee (Employers with more than 50 employees and more than 50% of staff on

	50% of staff on H-1B or L visas)		H-1B or L visas)
H-1B Quota Registration Fee	\$10.00	\$215	Unknown
L-1 Intracompany Transferee (Form I-129)	\$460.00 + \$500 Fraud Detection fee (initial petitions) + \$4,500 9-11 Response fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas)	\$1,385 + \$500 Fraud Detection fee (initial petitions) + \$4,500 9-11 Response fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas) + \$600 Asylum Program fee	\$805 + \$500 Anti-fraud Fees (initial petitions) + \$4,500 9-11 Response fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas) plus
O-1 Extraordinary Workers (Form I-129)	\$460	\$1,055 + \$600 Asylum Program fee	\$705
E-1 Treaty Trader, E-2 Treaty Investor, E-3 Australian Worker and TN Treaty Workers from Mexico/Canada (Form I-129)	\$460	\$1,015 + \$600 Asylum Program fee	\$695
Visitors and Dependents (Form I-539)	\$370	\$620	\$400
Employment Authorization (Form I-765)	\$410	\$650	\$550
Employment-based Immigrant Petition (Form I-140)	\$700	\$715 + \$600 Asylum Program fee	\$555
Family-based Immigrant Petition (Form I-130)	\$535	\$710 (on-line filing) \$820 (paper filing)	\$550 (on-line filing) \$560 (paper filing)
Family-based and Employment-based Application to Adjust Status (Form I-485) with EAD and Advance Parole	\$1,225	\$2,280	\$1,130 For Forms I-485 filed after 10/02/2020, a \$590.00 fee to renew the Advance Parole (Form I-131); and

– Applicants aged 14 to 78			a \$550 fee to renew the EAD (Form I-765) is planned.
Family-based and Employment-based Application to Adjust Status (Form I-485) with EAD and Advance Parole – Applicants aged 79 or older	\$1,140	\$2,280	\$1,130 For Forms I-485 filed after 10/02/2020, a \$590.00 fee to renew the Advance Parole (Form I-131); and a \$550 fee to renew the EAD (Form I-765) is planned.
Family-based and Employment-based Application to Adjust Status (Form I-485) with EAD and Advance Parole – Applicants under age 14	\$750/\$1,140	\$2,280	\$1,130 For Forms I-485 filed after 10/02/2020, a \$590.00 fee to renew the Advance Parole (Form I-131); and a \$550 fee to renew the EAD (Form I-765) is planned.
Naturalization	\$640 + \$85 Biometrics fee	\$760	\$1,170
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	fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas)	fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas) + \$600 Asylum Program fee	fee (Employers with more than 50 employees and more than 50% of staff on H-1B or L visas) plus
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older			EAD (Form I-765) is planned.
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Naturalization	\$640 + \$85 Biometrics fee	\$760	\$1,170

Information about the new USCIS fee schedule will be contained in a future Masuda Funai Business Immigration Update after the USCIS releases the final rule.

### **DOS PROVIDES UPDATE ABOUT THE STATUS OF IMMIGRANT AND NONIMMIGRANT PROCESSING AT ITS OVERSEAS CONSULATES**

On January 2, 2024, the U.S. Department of State (DOS) provided an update on its worldwide operations for Fiscal Year 2023 (September 1, 2022 to October 1, 2023) including its post-pandemic achievements:

- Issuing more than 10.4 million nonimmigrant visas in 2023, a record number not seen since 2015.
- Expanding the interview waiver program for nonimmigrant visa applicants U.S. Consular Posts. The Department of State noted that 40% of the 10.4 million nonimmigrant visas issued were to applicants not required to attend an interview at a U.S. Consular Post.
- Issuing 563,000 family-based immigrant visas allowing family members to obtain Green Cards.
- Issuing 830,000 visas to Students (F-1/M-1) and Exchange Visitors (J-1).
- Issuing 442,000 visas to temporary workers in agricultural sector (H-2A) and other seasonal or temporary need workers (H-2) of which 90% of visa recipients were qualified workers from Mexico, El Salvador, Guatemala and Honduras.

The DOS indicated its goal is to continue to reduce wait times/increase appointment availability for visitor visa (B-1/B-2) applicants. Additionally, the DOS is launching a pilot program for certain H-1B workers to apply to renew their H-1B visas while remaining in the United States. Information on this pilot program was noted in the Masuda Funai [December 2023 Business Immigration Monthly](#) and additional information is below.

### **DOS STATESIDE VISA RENEWAL PILOT BEGINS JANUARY 29, 2024**

The DOS will begin accepting certain online H-1B visa renewal applications on January 29, 2024 in a very, very limited pilot program.

On December 20, 2023, DOS announced a pilot program to resume stateside H-1B visa renewal processing for certain qualified H-1B nonimmigrant visa applications. [Additional guidance and FAQs](#) were release on

January 18, 2024. Stateside renewal of nonimmigrant visas was previously available but was discontinued in 2004.

The announcement indicates the new program is to be of limited duration, limited number of applications, and will be limited to H-1B principals renewing a prior H-1B issued by US Consulates in Canada or India only during specific periods. The DOS indicates that it will seek to expand the scope of the program after the initial pilot program of applications.

For Mission Canada only H-1B visas issued between 01/01/2020 and 04/10/2023 will be renewed. For Mission India only H-1B visas issued between 02/01/2021 and 09/30/2021 will be renewed.

A number of additional limitations apply:

1. The renewal must not be subject to any nonimmigrant visa issuance fee;
2. The applicant must be eligible for a waiver of the in-person interview requirement;
3. The applicant must have submitted ten fingerprints to DOS in connection with a previous application;
4. Any previous visa must not include a "clearance received" annotation;
5. The applicant must not have a visa ineligibility that would require a waiver;
6. The applicant must have an approved, unexpired H-1B approved petition;
7. The must have most recently been admitted to the US in H-1b status;
8. The applicant must currently be maintaining H-1B status in the United States;
9. The applicant's period of authorized admission must not have expired;
10. The applicant intends to reenter the US in H-1B status after a temporary period abroad after receiving the renewed visa.

DOS will begin accepting online applications January 29, 2024 via: <https://travel.state.gov/content/travel/en/us-visas/employment/domestic-renewal.html> and will impose a maximum limit of 2,000 applications per week.

Issuance of a visa through the program is not guaranteed. If the application does not satisfy the requirements for domestic visa renewal under the program for any reason, the application be refused. If refused, the applicant may reapply by filing a new visa application at a U.S. consulate or embassy abroad where they have a residence or are physically present.

#### **MINIMAL PRIORITY DATE ADVANCEMENTS IN THE FEBRUARY 2024 VISA BULLETIN**

The DOS recently issued the February 2024 Visa Bulletin with minimal change from the prior month.

While USCIS is making progress on pending applications to adjust status ("AOS" or I-485), unfortunately there is a strong trend of such applications being approved prematurely, when an immigrant visa is not available (priority date not current). This premature approval becomes problematic when the new Permanent Resident uses their Green Card to enter the United States from international travel, and down the road should the individual apply for naturalization/U.S. citizenship. We encourage individuals when receiving their Permanent

Resident Card/Green Card, to check the Visa Bulletin to verify that their priority date in the “Final Action” chart (not Filing Priority Date chart) in the Visa Bulletin for the month their AOS/I-485 application was approved was current/available. If the Permanent Resident Card/Green Card was issued erroneously, please reach out to a Masuda Funai immigration attorney for assistance.

Who becomes eligible to be approved for Permanent Resident status (a “Green Card”) or have their Immigrant Visa interview scheduled at a U.S. Consular Post?

For *family-based immigration*, individual from all countries who have applied for adjustment of status or an immigrant visa interview at a U.S. Consular Post as the spouse and/or child of a Permanent Resident and whose Form I-130 petition was filed before February 8, 2020, become eligible to be approved for Permanent Resident status or an Immigrant Visa in February 2024.

For *employment-based immigration* the following foreign nationals who have applied for AOS and have submitted all the required documentation including the Medical Examination (Form I-693), become eligible to have USCIS complete the processing of their application in February 2024. Also, the following foreign nationals who will complete the Immigrant Visa processing at a U.S. Consular Post and who have submitted all the required documentation become eligible to have their interview scheduled in February 2024.

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) whose priority date is before July 1, 2022 – no advancement from January 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before September 1, 2020 – no advancement from January 2024.

Second Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before November 15, 2022 – an advancement of 14 days.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before January 1, 2020 – no advancement from January 2024.

- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before March 1, 2012 – no advancement from January 2024.

### Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2022 – an advancement of one month.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2020 – no advancement from January 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before July 1, 2012 – a one month advancement from June 1, 2012 in this category.

### Who may apply for Adjustment of Status ("AOS") during February 2024?

On a positive note, USCIS has agreed to continue to allow individuals eligible in the family-based and employment-based categories to apply for permanent resident status in the United States through a process call adjustment of status ("AOS") under the "Dates of Filing Chart" (instead of the Final Action Date chart).

For *employment-based immigration* this allows the following foreign nationals to apply for AOS in February 2024:

### First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- China-born persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who filed their Immigrant Petition (Form I-140) before January 1, 2023 – no advancement from January 2024.
- India-born persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) who filed their Immigrant Petition (Form I-140) before January 1, 2021 – no advancement from January 2024.

### Second Preference

- Persons born in any country other than India or China who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or

their employer filed a PERM Labor Certification before February 15, 2023 – no advancement from January 2024.

- China-born persons who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or their employer filed a PERM Labor Certification before June 1, 2020 – no advancement from January 2024.
- India-born persons who are eligible for the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) and who filed their Immigrant Petition (Form I-140), or their employer filed a PERM Labor Certification before May 15, 2012– no advancement from January 2024.

### Third Preference

- Persons born in any country other than India, China or the Philippines who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before February 1, 2023 – no advancement from January 2024.
- China-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before July 1, 2021 – no advancement from January 2024.
- India-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before August 1, 2012 – no advancement from January 2024.
- Philippines-born persons who are eligible for the employment-based 3rd preference category (Professionals or Skilled Workers) and whose employer filed a PERM Labor Certification before January 1, 2023 – no advancement from January 2024.

### **DOJ AND DHS ISSUE FACT SHEET FOR EMPLOYERS USING ELECTRONIC I-9 PROGRAMS**

The Department of Justice's (DOJ) Immigrant and Employee Rights (IER) section together with DHS' Immigration and Customs Enforcement (ICE) have issued a fact sheet for employers on how to avoid violating the law when using electronic software to complete the Form I-9 or E-Verify process.

The fact sheet discusses what employers should keep in mind if they use such software to electronically complete, modify, or retain the Form I-9, and applies to employers who use these programs to participate in E-Verify. The fact sheet highlights that the use of electronic I-9 software does not exempt employers from compliance with all legal requirements. In particular, if an employer chooses to use a software program to complete and retain the Form I-9 or participate in E-Verify, the employer should ensure the Form software complies with:

- *Form I-9 legal requirements;*
- *E-Verify requirements; and*
- *Prohibitions against unfair employment practices*

Legal Requirements: Requirements for completing the Form I-9 apply equally in the context of a software program. These include having access to the current acceptable versions of the Form I-9, instructions, and list of acceptable documents. The employee is required to complete section 1 before the employer completes section 2. Employees and employers must be able to leave optional sections blank.

Employers should be familiar with the electronic Form I-9 requirements found in 8 C.F.R. § 274a.2(e)-(i). These relate to the integrity, accuracy, and reliability of the system; security and documentation; indexing; electronic signatures; retention; audit trails; location, retrieval, reading and reproduction abilities; as well as the ability to provide Form I-9 summary files (such as a spreadsheet) containing all the information fields on electronically stored Forms I-9 requested by the inspecting agency. Employers must follow all applicable retention requirements for Forms I-9 and any attachments, including copies of supporting documents.

E-Verify Requirements: In the E-Verify context, participating employers can create cases directly through E-Verify's website or through a "web services" access method using customized software to connect with E-Verify. All employers that participate in E-Verify, whether as direct users or through web services access, must follow the E-Verify requirements detailed in the Memorandum of Understanding and E-Verify guidance.

Regarding Unfair Employment Practices: The fact sheet points out that employers must allow employees to take actions to resolve a mismatch. In addition, employers cannot take adverse action against the employee, such as suspending or refusing to pay the employee because of the mismatch, if the employee chooses to take actions to resolve the mismatch.

Training: The fact sheet also indicates that employers using electronic Form I-9 software programs should provide the personnel administering them with adequate training and other support including establishing procedures to complete a Form I-9 outside of the electronic or E-Verify context if they cannot use the software or it does not function properly.

Warnings: A list of what to avoid when using the software programs is provided. The includes automatically pre-populating employee information, completing an I-9 on the employee's behalf, and removing any I-9 fields or requesting more or different information the form requires, and other actions to avoid. Employers should be cautious of Form I-9 software programs that claim to have government endorsement, certification, or approval since the government does not approve, endorse, or certify any Form I-9 software programs. Employers should be wary of programs that impose unnecessary obstacles that make it harder for employees to start work or get paid, such as by requiring a Social Security number to onboard or by not paying an employee who can complete the Form I-9 and is waiting for a Social Security number. Finally, the fact sheet warns that programs that do not provide technical assistance and support should be avoided.

If you have questions regarding Form I-9, the use of electronic Form I-9 software, or E-Verify, please contact a Masuda Funai immigration attorney.

## **MFEM NEWS**

### **2024 MASUDA FUNAI IMMIGRATION SEMINAR**

Masuda Funai would like to invite you to our complimentary in-person Immigration Seminar to be held in Arlington Heights, Illinois on February 29, 2024.

Topics to be covered include:

- Get Ready for 2024: Hot Topics in US Immigration
- Roundtables with Experts: Small Group Sessions to Discuss Your Business Immigration Questions
- Green Card Sponsorship: What are the Issues and Risks an Employer Should Consider?
- The Intersection of Employment Law and Immigration Law: Hiring, Wage Transparency Laws, Remote Work, and Layoffs

This seminar will be submitted for 2.75 hours SHRM, HRCI and MCLE general recertification credit.

Additional information (including registration information) is available on the Masuda Funai website at <https://www.masudafunai.com/events/2024-annual-complimentary-immigration-seminar>.

### **Bob White Elected Chair of NAFSA Region V**

Bob White, an immigration attorney in the Masuda Funai Immigration Group, has been elected the 2024 Chair of Region V of NAFSA: Association of International Educators. NAFSA Region V consists of approximately 800 colleges and universities located in Illinois, Wisconsin and Michigan. The highlight of the 2024 year will be a bi-regional conference being held at the Renaissance Hotel and Convention Center in Schaumburg, Illinois from October 30 to November 1, 2024. It is anticipated that there will be more than 700 attendees at this conference. Additional information about NAFSA Region V (including signing up for its monthly newsletter) is available at <https://www.nafsa.org/connect-and-network/nafsa-regions/region-v>.

*Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.*