

RELIGIOUS IMMIGRATION QUARTERLY

USCIS To Increase Application Fees

On February 3, 2004, the USCIS issued a proposed rule increasing fees for immigration applications and petitions. The fee increases generally ranged from fifty to sixty five dollars. The fingerprinting fee (now called the “biometric fee”) was increased twenty dollars, so that the fee is now seventy dollars.

According to the USCIS, the increased fees were necessary because of heightened security costs, increasing costs of other activities such as improving refugee processing and various other administrative costs. The table below lists the current fee and the proposed (increased) fee for some common immigration applications.

Application	Current Fee	Proposed Fee
I-90 Application to Replace Permanent Resident Card	\$130.00	\$185.00
I-129 Petition for Nonimmigrant Worker	\$130.00	\$185.00
I-131 Application for Travel Document	\$110.00	\$165.00
I-360 Petition for Special Immigrant	\$130.00	\$185.00
I-485 Application to Adjust Status	\$255.00	\$315.00
I-765 Application for Employment Authorization	\$120.00	\$175.00
N-400 Application for Naturalization	\$260.00	\$320.00
N-470 Application to Preserve Residence	\$95.00	\$150.00

Delays in the Visa Waiver Program

In the fall 2003 newsletter we told you that, as of October 1, 2003, a person entering the United States under the Visa Waiver Program would be required to have a Machine Readable Passport (MRP). The Secretary of State has postponed the October 1, 2003 deadline for 22 of the 27 countries in the Visa Waiver Program, because those countries were unable to issue MRP's before the deadline. The new deadline for these countries is October 26, 2004, and it applies to the following countries: Australia, Austria, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

Most of these countries have said that they will also be unable to meet the new deadline. For example, Japan and the United Kingdom will not begin issuing MRP's until late in

2005. Most other countries, such as France, Germany, Italy, and Spain, will not do so until late 2006. The State Department has said that it does not intend to extend the deadline further. As a result, travelers from countries that have not issued machine readable passports by October 26, 2004 will be required to get nonimmigrant visas in order to enter the U.S. The State Department estimates that this will increase nonimmigrant visa applications by more than fifty percent and will result in significant delays in processing applications.

Update on the US VISIT Program

As we mentioned in our last newsletter, implementation of the US VISIT program began on January 5, 2004. This program is intended to increase security by verifying the identity of foreign nationals as they enter and leave the U.S.

Currently, US VISIT entry procedures are operational at 115 airports and 14 seaports. The entry procedures involve collecting digital fingerprints and a digital photograph from each foreign national entering the United States, in addition to having an Immigration official review the individual's documents and asking questions regarding the individual's stay in the U.S.

In the next phase of the US VISIT program, these entry procedures will be implemented at the 50 highest-volume land ports of entry. This phase is scheduled to be completed by December 31, 2004. Entry procedures will be implemented at all remaining land ports of entry by December 31, 2005. The US VISIT program also entails exit procedures, which will be implemented at ports of entry over the next two years. The exit procedure requires collection of information from individuals as they leave the United States.

At this point, it does not seem that the US VISIT program has caused undue delays. However, it is very early in the implementation process and many are concerned that, as the process moves forward, the lack of sufficient resources, properly trained personnel, and technology will lead to lengthy delays at the ports of entry.

Difficulties with Student Visas

Who ever said being a student was easy? Over the past couple of years it has become increasingly difficult to obtain F-1 (Student) Visas from U.S. consulates around the world. An estimated fifty percent of F-1 visa applications worldwide are denied. In many developing countries, such as Nigeria, this number is much higher.

One major obstacle to obtaining the F-1 visa is the presumption of "immigrant intent." This is the presumption that all applicants intend to come to the U.S. *permanently*, while the F-1 visa is available only to those who wish to come to the U.S. *temporarily* to study. The F-1 visa applicant must prove to the satisfaction of the consular officer that he or she will return to the home country once studies are completed.

There are several factors that a consular officer will look at in determining whether an applicant has the required “non-immigrant intent”: family ties in the home country, the applicant’s economic situation, employment in the home country, ownership of real estate or other property, the applicant’s intended path at the conclusion of the proposed studies. It may be difficult for a prospective student to satisfy some of these factors. For example, many are relatively young, have not had significant previous employment, and do not own property.

In addition to the presumption of “immigrant intent,” other factors add to the difficulty in getting an F-1 visa. Consular officers have expressed concern about a high rate of fraud with F-1 visa applicants. Also, several of the terrorists from the September 11th attacks entered the U.S. on F-1 visas. Consular officers are obviously very concerned about preventing similar errors in the future.

There is no easy solution to the problems encountered at consular posts. Issuance of a visa is ultimately up to the consular officer. Furthermore, there is no appeal from the officer’s decision. This has led some to apply for a visa in a different category, such as B-2 (tourist), and then file an application with U.S. Citizenship and Immigration Services (USCIS) to change their status to F-1 once they are in the United States. The benefits of this approach are that it may be easier to get the B-2 visa, the USCIS seems much less skeptical of F-1 applicants than many of the consulates, and a denial by the USCIS can be appealed. However, there are some difficulties with this approach as well. First, the individual cannot begin to attend school until the change of status is approved by the USCIS. Second, the individual generally must wait at least sixty days before filing a petition to change from B-2 to F-1 status. If the petition is filed sooner than this, the USCIS may conclude that the individual did not really intend to visit the U.S. but rather intended to engage in studies. This conclusion could lead to serious consequences for the individual.

As consulates continue to closely scrutinize F-1 visa applications, proper documentation of the applicant’s eligibility becomes increasingly important. If an application is denied, you should contact our office immediately. While there is no formal appeal process, we may be able to assist by contacting the consulate. Also, we have found that consulates are relatively responsive to requests from U.S. Senators. Therefore, it may be worthwhile to contact your Senator and request assistance in the event of a denial.

“Harboring” Illegal Aliens: What it Means and How it is Enforced

The Immigration and Nationality Act (INA) makes it a crime for a person to “conceal, harbor, or shield from protection” a foreign national when the person “knows or recklessly disregards the fact” that the foreign national is in the U.S. illegally. The criminal penalties for violating this provision of the INA can be severe. If the “harboring provision” is violated “for the purpose of commercial advantage or private financial gain,” then the defendant can be fined, imprisoned for not more than ten years, or both. This penalty applies with respect to *each* foreign national. Where there is no showing

that the violation was done for commercial advantage or private financial gain, the penalty is a fine and/or up to five years imprisonment. Here too the penalty applies with respect to each foreign national.

The term “harbor” has been defined broadly by the courts. Simply providing shelter to foreign nationals with knowledge of their unlawful presence is enough to constitute a violation of the harboring provision. Aside from providing shelter, courts have said that actions which “substantially facilitate the alien’s remaining in the United States in unauthorized status” are also violations of this section of the INA.

Though the provision is broadly construed, it should not be considered a violation to help an undocumented person seek lawful status in the U.S. However, it remains unclear how vigorously Immigration will enforce this provision and exactly which actions might be found to “substantially facilitate” an undocumented person’s remaining in the U.S.

Legislative Update: Proposals for Immigration Reform

On January 7, 2004, President Bush presented his “Fair and Secure Immigration Reform” proposal. President Bush’s plan would grant temporary legal status to certain immigrant workers, whether living abroad or living in the U.S. without lawful status. The temporary worker status would be granted for three years, with the ability to extend the status for an additional three years. The proposal has been widely criticized. Some have argued against the prospective measure because it fails to offer an avenue to permanent residency, and claim it would not do enough to protect the rights of exploited immigrant workers. Others have complained that the proposal is an “amnesty” which rewards or encourages illegal behavior.

Though he outlined his proposed immigration policy over two months ago, President Bush has yet to submit a concrete legislative proposal for consideration in Congress. However, Senator Tom Daschle and Senator Chuck Hagel have co-sponsored their own comprehensive immigration bill, which is currently before the Senate Judiciary Committee. The bill, like the president’s proposal, would allow a limited number of immigrant workers to obtain temporary status to work in the United States. Unlike Bush’s proposal, the bill would also provide an avenue for permanent residency. An immigrant worker could obtain permanent residency if: he had lived in the U.S. for the five years prior to the bill, had worked at least four years during this time, and paid a fine. The immigrant worker would also be subject to security checks, and be required to pay taxes and demonstrate a knowledge of English. Because immigration reform is such a contentious issue, and because this is a presidential election year, it will be difficult for the Hagel/Daschle bill to move beyond the Judiciary Committee.