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Game Changer for H-1B Filings: Change of Status Petitions Escape $100,000 Fee

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After President Trump's Proclamation imposed a $100,000 fee on any H-1B beneficiaries attempting to enter the U.S. led to widespread chaos, the administration quickly mobilized to dial back the full impact on employers and their H-1B beneficiaries. Now, to expand relief , U.S. Citizenship and Immigration Services (USCIS) has provided additional clarification on who is subject to the new $100,000 payment requirement, including the unexpected development that prospective H-1B beneficiaries seeking to change from one status (e.g., F-1, etc.) to H-1B status would not be subject to the fee. The updated guidance:

- Clarifies the types of cases that would be subject to the proposed fee
- Exempts those who are already in the U.S. and seeking a change to H-1B status
- Outlines how additional exemptions could be pursued, and
- Clarifies how to make the fee payments.

The Proclamation: $100,000 Payment Requirement Effective September 21, 2025: Starting at 12:01 a.m. EDT on September 21, 2025, new H-1B petitions may require a $100,000 payment as a condition of eligibility.

Who Is Subject to the Payment: The payment **only** applies to:

- New H-1B petitions filed on or after September 21, 2025, on behalf of beneficiaries outside the U.S. who do not hold a valid H-1B visa; or
- Petitions that request consular notification, port of entry notification, or pre-flight inspection, even if the beneficiary is currently inside the U.S.; or
- Petitions where USCIS denies a change of status, amendment, or extension request. For example, if the beneficiary is not in valid nonimmigrant status or departs the U.S. before adjudication.

Now, Change of Status Filings Are Exempt (If Approved): In perhaps the biggest concession, the Proclamation does not apply to H-1B petitions filed on or after September 21, 2025, that request a change of status, extension, or amendment for an alien inside the U.S., so long as the petition is approved as an amendment, extension, or change of status. Additionally, the foreign national will not be subject

to the $100,000 fee if he or she later departs the U.S. and subsequently seeks to apply for a visa stamp abroad and to re-enter the U.S.

In other words, employers may avoid the $100,000 payment by filing a change of status petition from within the U.S., provided the beneficiary is eligible and remains in valid status throughout adjudication. Companies throughout the country had been pressing the administration for this critical exception. The Proclamation mentioned anticipated additional guidance and probable greater scrutiny on possible misuse of certain other visa categories (e.g., business visitors, tourists, etc.), which may limit scenarios in which a change of status to H-1B may be pursued, and we expect more guidance to be issued in the coming days/weeks.

How and When to Pay

- For those who would be subject to the new fee, they must make payment via Pay.gov before filing the petition. A receipt or proof of payment must be included in any petition filing that requires the fee.
- Link to payment portal: Pay.gov H-1B Payment Form

Exceptions Are Rare

- Exceptions, again, for those subject to this new fee, would be granted only in extraordinarily rare situations deemed to be in the national interest.
- Requests must be submitted to: H1BExceptions@hq.dhs.gov.

Employers should be aware that two separate lawsuits have been filed against this proposed fee (based on allegations of violations of the Administrative Procedure Act and an unconstitutional tax). Our team will continue to monitor the progress of this litigation and provide updates as they become available.

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