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July 6, 2016

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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529-2020

By electronic submission: www.regulations.gov

**RE: U.S. Citizenship and Immigration Services Fee Schedule
81 Fed. Reg. 26903 (May 4, 2016)
RIN Number 1615-AC09**

Dear Acting Chief Deshommes:

The U.S. Chamber of Commerce writes in response to the request for comments by the Department of Homeland Security (hereinafter referred to “DHS” or “Department”) to the Notice of Proposed Rulemaking entitled *U.S. Citizenship and Immigration Services Fee Schedule*, 81 Fed. Reg. 26904 (May 4, 2016) (hereinafter referred to as “NPRM,” or “proposal”). The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region, as well as state and local chambers and industry associations, and is dedicated to promoting, protecting, and defending America’s free enterprise system.

The Chamber and its members appreciate the fact that US Citizenship and Immigration Services (hereinafter referred to as “USCIS” or “the agency”) issued this NPRM to update its fee schedule so as to avoid an estimated \$560 million annual shortfall. Our members recognize that such a set of circumstances would have a profoundly negative impact on the services they would receive from the agency. However, our members do have some misgivings regarding the agency’s actions in how it is proposing to make up for this expected shortfall.

An examination of the types of fees that are being increased in the NPRM, and more importantly, the percentage increase of these particular fees above their current levels, indicate that the business community is going to be forced to bear a much greater burden in

making up for this shortfall than other stakeholders. Our members are willing to do their part to ensure that USCIS can operate effectively in processing various immigration petitions in a timely manner, but there are many things that the agency should have done in the NPRM to be more open and transparent with the public in explaining the agency's decision-making process.

SIGNIFICANT FEE INCREASES FOR EMPLOYMENT-BASED BENEFITS

Under the agency's proposal, the weighted average increase on each fee under the proposed schedule is 21%.¹ Upon a closer examination of the agency's proposal, one can see that many of the immigration benefits that our members will seek will increase significantly higher than 21%. The following proposed fee increases are of particular importance to Chamber members, given that the proposed increase in the fee is equal to or greater than the weighted average calculated by the agency:

- **I-129 Petition for a Nonimmigrant Worker** – the current fee of \$325 would increase by \$135 dollars to \$460, which represents a **42% increase**;
- **I-131 Application for Travel Document** – the current fee of \$360 would increase by \$215 to \$575, which represents a **60% increase**;
- **I-140 Immigrant Petition for Alien Worker** – the current fee of \$580 would increase by \$120 to \$700, which represents a **21% increase**;
- **I-526 Immigrant Petition by Alien Entrepreneur** – the current fee of \$1,500 would increase by \$2,175 to \$3,675, which represents a **145% increase**;
- **I-539 Application to Extend/Change Nonimmigrant Status** – the current fee of \$290 would increase by \$80 to \$370, which represents a **28% increase**; and
- **I-924 Application for Regional Center Designation** – the current fee of \$6,230 would increase by \$11,565 to \$17,795, which represents a **186% increase**.²

In addition to these fee increases, the agency is also imposing a new fee on the administration under the Immigrant Investor Program for the I-924A, which is a fee associated with an annual certification by a regional center. This new fee will be \$3,035 dollars.

The practical impact of these increased fees will be felt by employers of all types and all sizes. In the NPRM, it does not appear that the agency took into account the fact in many instances where a worker is coming to the U.S. for reasons of employment, he or she is oftentimes accompanied by his or her family. For example, if an H-1B worker is accompanied by his wife and two children and he intends to reside permanently, these increased costs will impact that individual and his family, in some cases, for over a decade because of the current backlogs in the State Department's Visa Bulletin that prevent an individual from adjusting status.

¹ See 81 Fed. Reg. 26903, 26905 (May 4, 2016).

² 81 Fed. Reg. 26903, 26927 (May 4, 2016).

While the backlogs are a concern that is larger than the scope of this NPRM, the impact still needs to be acknowledged by the agency, as the problems caused by the backlog will impact the way in which these fee increases will be felt by stakeholders. These increases will be very costly to employers. Using the above example, every time that individual and his family want to extend their status, their employer will have significantly higher costs to do so because the fees for the I-129 for the principle nonimmigrant and the I-539 fee for his wife and children will have increased substantially under this proposal. If that employee needs to travel outside the U.S. for the purposes of his employment, his employer will be forced to pay 60% more for travel documents. Moreover, with regard to the travel documents, they are generally valid for only two years after the date of issuance. If the individual in this example is working in the same job for a decade and needs those travel documents every two years, it is not as if that fee increase is going to be paid just one time over that 10 years period – it could be paid for at least 5 times over the course of a decade.

All of these costs will be borne by the employers. If these added costs are imposed upon Chamber members that hire high-skilled workers (H-1B, L-1, TN), there will be a negative impact, regardless of the size of the business. Our larger members who hire these types of workers usually have a significant amount of these types of nonimmigrants on their payroll. This magnifies the cost impact to their bottom line because they will have to bear these added burdens for hundreds or even thousands of employees. Small businesses, on the other hand, may not have many of these types of nonimmigrant workers on their payroll, but the presence of just a few employees can have just as much of a profound impact on their bottom line because they generally have smaller profit margins due to their size.

It bears mentioning that these added costs will negatively impact employers that hire workers through the H-2A and H-2B programs. Many Chamber members who have a distinct interest in either of these two seasonal programs are small businesses, where the owner wears many hats and profit margins are oftentimes thin. Moreover, the Administration understands, particularly in the agricultural context, that the current H-2A program is unworkable for many stakeholders.³ Adding new costs to using that program will only further discourage use of the program, which will only exacerbate the current problems we all recognize are caused by an immigration system that is woefully inadequate for our nation's economic needs and is in dire need of reform.

With regard to the increase in fees on the aforementioned elements of the EB-5 Immigrant Investor Program, we understand that the agency is currently working on an NPRM that will seek to address some concerns over the operation of the EB-5 program. The Chamber is also working with Congress to reauthorize the Regional Center Pilot Program and institute needed reforms to the program. Given that these efforts are ongoing, we ask that the agency keep this in mind because if the requirements of the program are substantially altered, the provisions in the NPRM may no longer be needed in their current form because the

³ See "Fixing our Broken Immigration System: The Economic Benefits to Agriculture and Rural Communities," The Executive Office of the President (July 2013), <https://www.whitehouse.gov/sites/default/files/uploads/ag-rural-report-07292013.pdf>

administration of the EB-5 program might look significantly different after reforms are implemented. If that is the case, it is our hope that the agency would adjust its proposal to ensure that the fee increases on these particular benefits allow the agency to recover the costs of administration without unduly burdening EB-5 program stakeholders.

INCREASED FEES SUBSIDIZING OTHER IMMIGRATION SERVICES

The agency stated in the executive summary of the NPRM that the new fee schedule will not only cover the costs associated with the agency administering each benefit, but will also cover the costs for other services that USCIS provides that are not “directly fee funded.”⁴ Specifically, DHS proposes that the revenue accrued under this new fee schedule will cover the costs of the Systematic Alien Verification for Entitlements (hereinafter “SAVE”) program, which is used by various federal, state, and local government agencies to ensure that non-citizens do not receive public benefits or licenses they are not entitled to because of their immigration status. Moreover, these increased fees will be used to fund the operations of the Office of Citizenship, which helps promote English language learning and otherwise works to encourage eligible aliens to naturalize and become U.S. citizens, as well accommodate an anticipated 100,000 refugee admissions in FY17, which represents a 43% increase in admissions from the 70,000 cap on refugee admissions in FY15.

Reasonable minds can disagree over the relative merits of each of these programs, or how much money should be allocated to administer each program. However, when our members are being asked to pay for newly created fees or pay fees that are significantly higher than what they have been paying for several years, and they are told that this money is going to be used not just for the service they are requesting, but it will also pay for services requested by other individuals or groups, the next question from many our members is “what are we paying for?”

The fact that businesses are being asked to pay substantially higher fees when other stakeholders are being asked to bear no part of the burden to ensure that USCIS is able to properly adjudicate all sorts of immigration petitions calls into question some of the conclusions being reached by the agency. Accepting the agency’s claims that they expect an average \$560 million shortfall for FY16 and FY17, the following questions are being put forth by our membership:

- The SAVE program is partially funded by reimbursable revenue from Federal, state, and local government agencies. There are currently very minimal fees associated with using the SAVE program⁵ – why was there no agency consideration for raising these fees to help come up for the shortfall?
- The agency openly stated that it is preparing for an increase in the amount of refugee petitions, particularly 30,000 more than in FY15. As it pertains to travel

⁴ 81 Fed. Reg. 26903, 26905 (May 4, 2016).

⁵ 81 Fed. Reg. 26903, 26911 (May 4, 2016).

documents, the agency felt that a 60% increase in cost was perfectly fine for stakeholders like our companies, but felt that no increase in the case for travel documents for refugees was necessary. If this \$560 million shortfall is extremely important to the agency and increasing the number of refugee admissions is important to the Administration, why wasn't even a modest increase in the fee for refugee travel documents considered?

- With regard to the fees for naturalization applications, the Form N-400, the proposed increase under the NPRM was a modest 8%. However, the agency is also proposing to cut the costs of a naturalization application for individuals whose household income is between 150%-200% of the Federal Poverty Guidelines. The current fee for this form is \$595; reducing this fee to \$320 for certain individuals would represent a 46% decrease from the current cost, and it would be 50% less than the proposed fee in the NPRM. Once again, the current circumstances are such that the agency is dealing with a \$560 million hole to fill – is giving people an opportunity for a reduced fee to acquire U.S. citizenship really necessary under the current circumstances?
- The projected increase in refugee admissions is being driven, in part, by unusual events outside of our nation. This exodus from places like Syria is a singular, unique phenomenon driving this projected increase in refugee admissions, not a new constant that needs to be paid for on a permanent, ongoing basis. Given that the need to pay for this increase in services is not likely to become permanent, why isn't the agency acknowledging that in the NPRM and proposing that some of these fees might be reduced in the near future once the exigent circumstances requiring additional money for USCIS no longer exist?

MORE TRANSPARENCY IS NEEDED

USCIS should be more transparent in its presentation of its cost analysis and fee increase proposals. A fully transparent presentation would show for each immigration benefit request the following:

- The proportion of the current fee that is directly attributable to the actual cost of processing that request,
- The proportion of the proposed fee that is directly attributable to the actual cost of processing that request,
- The proportion of the current fee that is attributable to providing free or discounted fees for other services under current USCIS operations, and
- The proportion of the proposed fee that is attributable to providing free or discounted services under the new regime proposed in the NPRM.

In providing this information to the public, stakeholders will have a better understanding of not only what they are being asked to pay, but what exactly it is that their money will be spent on. Being asked to spend more money for a particular service is not a welcome idea, especially when many of our members have repeatedly voiced concerns that processing times

for the very requests named in the NPRM are considerably longer than they have been in the past. By informing the public of how much of a particular fee will go towards covering the cost of processing that particular request, along with how much of that fee will be used to cover the operational costs for the SAVE program, the Office of Citizenship, or the increase in refugee admissions, that would at least let our members know how the government is spending their money.

In addition, USCIS should continuously assess its own operational efficiency. In doing so, the agency should conduct these assessments with an eye towards reducing costs or, at the very least, constraining the growth of its operational costs. Relying on escalating fees to cover operational inefficiencies is never wise.

CONCLUSION

The Chamber appreciates the opportunity to comment on this proposal. We appreciate that DHS is concerned about this estimated budgetary shortfall that totals in the hundreds of millions of dollars. However, this proposal could be significantly improved if the agency revised its proposal to more equitably distribute the cost burdens on all stakeholders under the new fee schedule. The business community should not be singled out and forced to bear a significantly higher burden to make up for this budgetary shortfall than other stakeholders, especially when a considerable amount of this additional money being paid for by our members will be going to pay for many different services that our members don't often request, if ever. Lastly, the agency should also provide a more transparent presentation as to how these new fees will be spent by the agency moving forward and look for ways to reduce or constrain growing operational costs.

Thank you for considering our views.

Sincerely,



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