

2021 Outlook on Business and Employment-Based Immigration

By Lidia Ebersole & Stephanie Olivera Mittica

In the year 2020, the Trump Administration announced many changes to employment-based immigration. With many of these changes currently being litigated, and in light of the presumptive results of the recent presidential election, it is unclear what changes will be implemented. Below is a brief outlook on what to expect in 2021 in the area of business and employment-related immigration and how to navigate the uncertainty.

FILING FEE INCREASES

Earlier this year, the United States Citizenship and Immigration Services (USCIS) implemented new filing fees for immigration-related benefits, increasing many of the fees by up to 500%. These fee increases were set to take effect on October 2, 2020, but a last-minute injunction stopped the increases from becoming effective. As the fee increases continue to be litigated, we prepare our clients for the possibility of increased fees when advising them on how to prepare for future hiring of foreign workers. We also assist in expeditious preparation of paperwork to take advantage of the injunction and file applications, where possible, before the increases, if any, take effect.

PROPOSED REGULATION TO ELIMINATE H-1B LOTTERY

The H-1B visa program allows U.S. employers to fill labor shortages in positions requiring highly skilled or highly educated workers. To protect U.S. workers, the H-1B program has an annual numerical cap. Additionally, U.S. employers are required to pay the prevailing wage to the foreign workers. The prevailing wage is determined by the Department of Labor and can sometimes result in salaries higher than those paid to U.S. workers. Because of a high-popularity of the H-1B program, in the last decade, USCIS has consistently received more H-1B petitions than the annual allocation of visas. To allow USCIS to select which visa petitions should be accepted for review, various measures were implemented, including the H-1B visa lottery, which served as an objective chance-based method of selecting which employers can benefit from the oversubscribed program.

On October 29, 2020, the Administration proposed to eliminate the H-1B visa lottery and instead select the petitions based on the salary offered. That means the employers that offer the highest wages to their prospective foreign workers would have the highest chance of getting their petitions accepted. The rule is currently in the comment stage. If implemented, this regulation would change how employers prepare for hiring of H-1B workers and will require employers to increase the salaries offered to potential H-1B workers to increase their chances of being selected for the H-1B program.

PREMIUM PROCESSING FEE INCREASE

This optional fee allows employers and business owners to apply for expedited review of their applications for immigration-related benefits. Effective October 19, 2020, USCIS increased this fee from \$1,440 to \$2,500 for certain applications. The increase has already taken effect, and nothing indicates that it will be reversed in 2021. Roetzel immigration attorneys will advise you as to which situations warrant payment of the increased premium processing fee.

CONTINUED EFFECT OF COVID-19 ON EMPLOYMENT-BASED IMMIGRATION

To combat the outbreak of the COVID-19 pandemic, the President temporarily suspended the entry of certain immigrant visa applicants to the U.S. through December 31, 2020. The suspension includes applicants for employment-based visas, as well as their dependent spouses and children, with limited exceptions. It is unclear whether the current bans will be extended, revised, or done away with entirely in 2021, with the unknown future course of the pandemic and the fate of the Presidential election still not entirely certain. Because not all positions or circumstances are covered by the visa ban, Roetzel attorneys can help employers make informed decisions while considering their 2021 employment needs.

CONCLUSION

It remains to be seen how these circumstances, and the likely new Administration, will affect U.S. immigration policies. That said, whatever rules, regulations, or proclamations are in place prior to the end of 2020, will affect the beginning of 2021. Roetzel will continue to monitor and provide updates to prepare its clients for the changes that 2021 might bring.

Please contact [Lidia Ebersole](#) or [Stephanie Olivera Mittica](#) if you have questions regarding how to prepare for 2021 when considering your business and employment immigration needs.

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