

Immigration Newswire
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I-130 Petitions Can No Longer Be Filed at Consulates

Until a few days ago, U.S. citizens residing abroad could file I-130 immigrant petitions for their immediate relative spouse, parent, or child at the U.S. Consulate nearest his or her foreign residence, resulting in decreased processing times for their immediate relatives' immigrant visas. Pursuant to the Adam Walsh Child Protection and Safety Act of 2006, PL 109-248, however, effective January 23, 2007, U.S. Consulates are no longer accepting I-130 petitions from U.S. citizens residing abroad. All I-130 petitions must now be filed at the USCIS office having jurisdiction over the U.S. citizen petitioner's place of residence or, if the U.S. citizen has no U.S. residence, at the Vermont Service Center, 75 Lower Welden St., St. Albans, VT 05479. (As of yet, it is unclear whether USCIS offices outside the U.S. will be adjudicating I-130 petitions).

Under bispecialization, all I-130 petitions filed in the U.S. are now adjudicated by either the Vermont Service Center or the California Service Center.

The Adam Walsh Child Protection and Safety Act of 2006 ("Walsh Act") modified section 204(a)(1)(A)(vii) of the Immigration and Nationality Act to provide that a U.S. citizen who has been convicted of specified offenses against a minor may not file an I-130 petition unless the Secretary of Homeland Security determines that the petitioner does not pose a risk to the I-130 beneficiary.

Pursuant to the Walsh Act, USCIS has issued guidance to its adjudicators to search its databases for criminal history information regarding I-130 petitioners. If the I-130 petitioner has previously been convicted of a specified offense against a minor, the USCIS must issue a Request for Evidence for all police arrest records and court disposition documents, and must schedule the petitioner for fingerprinting. Because Consular officers do not have access to this criminal history record information, they are unable to determine whether a petitioner has a conviction for a specified offense against a minor that renders the petitioner ineligible to file an I-130 petition. The Department of State has now decided (6 months after implementation of the Walsh Act in July 2006) that it must immediately suspend I-130 processing in order to be in compliance with the new law (see [DOS cable](#)).

Passports Required for Air Travel

Also starting January 23, all U.S. citizens and nonimmigrants returning to the U.S. via air after traveling abroad are required to present passports. An additional

rule addressing passport requirements for arrivals by land and sea will be published at a later date, pursuant to recommendations made by the 9/11 Commission and the Intelligence Reform and Terrorism Prevention Act of 2004.

Department of Labor May Do Away With Labor Certification Substitutions

On 1/26/07, the Department of Labor submitted a rule to the Office of Management and Budget (OMB) which, if cleared by OMB, would eliminate substitution of beneficiaries into labor certifications previously approved for companies. It is uncertain how long it will take OMB to clear this rule for publication in the Federal Register, but the maximum is generally 90 days unless OMB suggests that the Department of Labor revise the rule before publication.

DOL has historically permitted a company with an approved labor certification to use it on behalf of an alien employee other than the one for whom the labor certification was initially approved, provided that the new, "substituted" beneficiary met all the requirements of the labor certification application at the time it was filed.

It is important to note that the DOL no longer releases copies of proposed regulations prior to submitting them to OMB, so it is unclear how any change in the regulations would affect any I-140 and I-485 applications that are pending, based on substitutions, when these changes go into effect. However, historically, when the DOL has changed its regulations, any applications pending when the changes went into effect were grandfathered under the old regulations. Therefore, any of our employer clients who have unused, approved labor certifications which could be used by new alien beneficiaries should contact our office immediately to discuss using those substitutions as soon as possible.

H-1B Season Is Fast Approaching

As most of our readers are aware, there is an annual [cap](#) on the number of new H-1Bs that USCIS can approve. The cap opens up each year on October 1, the start of the government's fiscal year. However, because H-1B petitions can be filed 6 months in advance of the employment start date, H-1B petitions for those subject to the cap can be filed as early as April 1, 2007.

Every year, since the cap was reduced to 65,000 H-1Bs per year, the cap has been filling up sooner and sooner. Last year, the cap was reached on May 26, creating a window of less than 2 months during which any new H-1B petitions could be filed for that year.

Any of our clients who wish to change status to H-1B or otherwise to obtain their first H-1B should contact us immediately so that we can begin preparing the petition in February for filing on April 1.

Address Change Now Available Online

USCIS has implemented an address change function [online](#) through which non-citizens can update their address on pending cases before USCIS as well as fulfilling their [AR-11](#) filing requirements. All noncitizens are required to submit form AR-11 within 10 days of each move. Consequences for failure to file the AR-11 include removal from the United States. USCIS published a [news release](#) describing the new online system.

USCIS Proposes Enormous Fee Increases

USCIS placed a Proposed Rule in the Federal Register on February 1, 2007 which proposes to significantly raise filing fees on all immigration applications and petitions, with the following justification:

The new fee schedule will improve service levels and ensure the security and integrity of the immigration system without causing backlogs to return. This fee review is based for the first time on an enhanced staffing model that is designed to align resources with the need to prevent future backlogs, providing for an efficient and effective workforce balance.

A copy of the [Proposed Rule](#) is available on the Federal Register web site. Pages 24 and 25 of the file provide a list of current fees vs. proposed fees. A few highlights:

- The current I-129 fee of \$190 is proposed to increase to \$320
- The current I-130 fee of \$190 is proposed to increase to \$355
- The current I-140 fee of \$195 is proposed to increase to \$475
- The current I-485 fee of \$325 is proposed to increase to \$905. This is the largest increase of any of the filing fees. USCIS proposes to eliminate filing fees for I-765 applications for employment authorization and I-131 applications for travel authorization filed with the I-485. The huge fee increase is purportedly to compensate for elimination of those filing fees, even though many adjustment of status applicants choose not to apply for work and/or travel authorization.
- The current N-400 fee of \$330 is proposed to increase to \$ 595.

The Proposed Rule creates a public comment period. Any comments submitted in response to the rule must be taken into consideration and responded to before the rule is finalized.

~ Disclaimer ~

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