

Economic Policy Institute

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March 13, 2023

Ms. Samantha Deshommes,
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529

Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements
RIN 1615-AC68, DHS Docket No. USCIS-2021-0010

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Dear Chief Deshommes:

Thank you for the opportunity to submit written comments with respect to the proposed USCIS Fee Schedule changes. We hope you will take our comments into consideration as the agency works on finalizing it.

Introduction and about EPI:

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve economic conditions and raise labor standards for low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals. EPI submits these comments to United States Citizenship and Immigration Services (USCIS), within the U.S. Department of Homeland Security (DHS), in response to their opportunity to comment on proposed changes to the current Fee Schedule.

EPI has researched, written, and commented extensively on the U.S. system for labor migration, including in particular, many of the nonimmigrant, temporary work visa programs which USCIS plays a key role in managing and adjudicating petitions for. EPI has published extensively on U.S. work visa programs and provided expert testimony about them to both the U.S. Senate and House of Representatives. In addition, EPI's work focuses on improving labor standards across the immigration system, and USCIS's adjudication of petitions for lawful permanent residence, various forms of humanitarian relief, and Employment Authorization Documents plays a key role in allowing migrants to work lawfully and access workplace protections under U.S. law.

1) Congress should reconsider the statutory framework for USCIS and appropriate more funding for many of the agency's core functions

While the NPRM does not seek comment on this issue, I wish to begin my comment by addressing the elephant in the room that has left USCIS in the difficult position of having to choose which stakeholders in the immigration system will have to pay, and how much, in order for all stakeholders to access the benefits, protections, and mobility pathways that are available under U.S. law, and for which USCIS is the chosen gatekeeper. The reality that has constantly driven USCIS to impose greater and greater fees on its clients is the fact that USCIS's functions and staffing are nearly entirely funded by fees. USCIS is unique among large federal agencies in terms of having a fee-funded structure to fund nearly all of its operations.

In 1988, Congress established the authority for the Immigration and Naturalization Service (the predecessor agency to USCIS) to recover the full cost of immigration benefit processing through fees collected and deposited into the Immigration Examinations Fee Account (IEFA), although fees

have been charged for immigration services and benefits since the Immigration and Nationality Act of 1952 prescribed fees for certain services.¹

According to the Congressional Research Service, congressional appropriations in fiscal year 2014 accounted for 4% of USCIS's \$3.1 billion budget, with the rest coming from fees. The past few years, the USCIS budget been in the neighborhood of \$5 billion, most of which has come from fees charged for services. In fiscal year 2021, funding appropriated by Congress was \$118 million, accounting for just 2.6% of USCIS's total budget of \$4.5 billion that year.² In fiscal year 2022, according to the USCIS website, the IEFA "account comprise[d] approximately 90 percent of USCIS' total... spending authority."³

President Biden's proposed budget for fiscal year 2024, which was published on March 9, 2023,⁴ has requested that Congress provide USCIS with \$865 million, "to process an increasing asylum caseload, reduce the historically high immigration benefit request backlog, support the Citizenship and Integration Grant Program, and improve refugee processing to advance the Administration's goal of admitting 125,000 refugees."⁵ If we assume that the total USCIS budget will be approximately the same as the fiscal year 2022, at \$5.4 billion, the \$865 million requested by the President's budget would amount to 16% of the total USCIS budget, a significant increase in the total share of the budget.

While we commend President Biden for requesting that Congress fund a higher proportion of USCIS's funding, Congress desperately needs to reconsider the statutory framework for how USCIS is funded, and in particular, begin to provide more funding to cover the costs of processing applications for lawful permanent residence and naturalizations, and the processing of humanitarian visas and protections, and Employment Authorization Documents. Becoming a lawful permanent resident or a U.S. citizen is not something that should be cost-prohibitive, neither should it be for migrants seeking protections from persecution or because they have been victims of crimes or workplace violations.

In addition, having an immigration benefits system that is fee-funded can create perverse incentives. For example, if there is a large backlog of cases or a lack of funds for adequate staffing levels, USCIS will be incentivized to process more applications at a faster rate, to decrease the backlogs and receive more revenue, possibly leading to the rubber-stamping of applications, which could end up sacrificing important elements of review in applications that contain key worker protections—for example the appropriate wage to be paid to nonimmigrant workers, whether an employer is legitimate, and the validity of job contracts. In other words, USCIS should not be incentivized to value quantity over quality when it comes to adjudication. The best way to prevent

¹ See discussion in William Kandel, [U.S. Citizenship and Immigration Services \(USCIS\) Functions and Funding](#), Congressional Research Service, R44038, Updated May 15, 2015.

² Department of Homeland Security, "[United States Citizenship and Immigration Services, Budget Overview, Fiscal Year 2023 Congressional Justification](#)," last visited March 13, 2023.

³ USCIS, "[Budget, Planning and Performance](#)," last updated on January 27, 2023, accessed on March 10, 2023.

⁴ Office of Management and Budget, "[President's Budget](#)," The White House, March 9, 2023.

⁵ Office of Management and Budget, [Budget of the U.S. Government, Fiscal Year 2024](#), The White House.

this is to ensure USCIS is adequately staffed and has the resources it needs to appropriately review applications and to do so in a timely manner. Additional congressional funding will also make USCIS more accountable to Congressional oversight.⁶

Finally, it is worth noting that Congress’s funding has prioritized another facet of the U.S. immigration system—i.e., enforcement—over the processing of immigration benefits, and shown a willingness to fund the enforcement agencies at very high levels. Between 2012 and 2021, the average annual amount appropriated for immigration enforcement funding was \$23.4 billion (in constant 2021 dollars).⁷ The President’s proposed 2024 budget requests \$25 billion for “United States Customs and Border Protection (CBP) and Immigration and Customs enforcement (ICE), an increase of almost \$800 million over the 2023 enacted level when controlling for border management amounts.”⁸ Compare these amounts to the funding provided to USCIS, which has never totaled more than \$1 billion. An additional investment in USCIS of just \$1 or \$2 billion per year above \$865 million requested by President Biden would go a long way towards reinforcing the immigration benefits system and ensuring it can operate properly, fairly, and in a timely fashion—and such an investment would represent a very small share of DHS’s total discretionary appropriations of \$60 billion. Such an investment would benefit all stakeholders in the immigration system, including migrant workers, asylum-seekers, employers, and family members of immigrants and U.S. citizens.

2) Until Congress adequately funds USCIS, EPI supports USCIS’s general framework to have a fee structure focused on charging the parties with the greatest ability to pay

Unless and until Congress updates the law and provides additional funding to USCIS to adequately fund and staff the immigration benefits system, we also support USCIS’s general proposed framework to have the fee structure focus on charging the parties who are most able to pay and have the greatest means: employers and investors. As a result, we support and appreciate USCIS’s overall efforts to limit increases on fees paid by workers and applicants for naturalization, and to focus fee increases on employers and investors. However, further adjustments are needed to the schedule, which are discussed below, to ensure access to key immigration benefits for migrant workers and support a fair immigration system that advances the national interest and promotes protection and integration for migrants.

⁶ See discussion in William Kandel, [U.S. Citizenship and Immigration Services \(USCIS\) Functions and Funding](#), Congressional Research Service, R44038, Updated May 15, 2015.

⁷ Daniel Costa, [Threatening migrants and shortchanging workers: Immigration is the government’s top federal law enforcement priority, while labor standards enforcement agencies are starved for funding and too understaffed to adequately protect workers](#), Economic Policy Institute, December 15, 2022.

⁸ The White House, [“President’s Budget,”](#) Office of Management and Budget, March 9, 2023.

3) EPI supports USCIS not charging for humanitarian applications and supports the new \$600 asylum fee to fund processing and adjudication of humanitarian applications

We strongly support USCIS continuing to refrain from charging for applications and petitions for refugee and asylum processing and other forms of humanitarian relief, as well as the use of fee waivers for applicants who are not able to afford the required fees. The United States has a moral obligation, as well as a legal obligation under U.S. and international law, to protect persons fleeing persecution. However, it is obvious that the growing number of applications for relief and the resulting backlogs require an adequate level of funding and staffing to process applications, and the costs for that can be significant. As a result, until Congress decides to act and provide additional funding for USCIS, we support the USCIS’s proposal to impose a \$600 Asylum Program Fee on employer applications for nonimmigrant and immigrant visas.

4) USCIS should not bifurcate the I-129 fee for H-2A and H-2B workers based on whether the petition has a named or unnamed beneficiary

We believe that the proposed bifurcation of the I-129 petition fee for H-2A and H-2B petitions, which USCIS justifies because of a reduced adjudication workload for petitions with unnamed beneficiaries, is misguided and should be abandoned. Charging different fees for petitions with named vs. unnamed beneficiaries could have a significant detrimental effect on the already limited ability of workers in the United States while in H-2A and H-2B status from changing employers as well as job terms and conditions, and could discourage employers from hiring returning workers or H-2A or H-2B workers who are already in the United States in such status. This restriction would hamper the agency’s stated efforts to improve worker mobility between employers (what USCIS has referred to as “portability”) in the H-2A and H-2B visa programs and further degrade conditions for migrant workers.⁹

A bifurcation the application fee like the one USCIS has proposed, where the fee for named beneficiaries is more than doubled while the fee for petitions with unnamed beneficiaries is only modestly increased, will create a strong incentive for employers to submit petitions with unnamed beneficiaries. Most of the employers who will be required to pay the higher named beneficiary fee are those petitioning for a transfer or an extension of stay for an H-2A or H-2B worker who is already employed in the United States, or if the employer is seeking to hire an H-2A or H-2B worker who was previously employed in the United States in either status.

⁹ See for example, discussion of portability in U.S. Citizenship and Immigration Services, Department of Homeland Security, and Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, [*Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers*](#), Temporary Rule, CIS No. 2731-22, DHS Docket No. USCIS-2022-0015; RIN 1205-AC14 and 1615-AC82; 87 Fed. Reg. 76816 (December 15, 2022).

Instead of hampering mobility between employers for H-2A and H-2B workers, USCIS should be exploring ways to encourage and facilitate it. The lack of worker mobility is the core flaw of U.S. temporary work visa programs,¹⁰ including the H-2 programs, and one which DHS has identified in the past and signaled it intends to address in upcoming rulemaking. It would therefore be counterproductive and contradictory to set a fee schedule that disincentives employers to hire temporary migrant workers who are already in the United States, thus creating yet another obstacle for H-2A and H-2B workers seeking to change jobs. For this reason, we recommend that USCIS abandon its proposal to bifurcate the I-129 fee based on the whether the petition includes a named or unnamed beneficiary or beneficiaries. Even if the fee is increased, the fee for a petition with a named beneficiary should be the same as the fee for an unnamed beneficiary.

5) USCIS should not increase fees for lawful permanent residence and naturalization or at least minimize the proposed increases

There is ample, credible research showing that when a migrant obtains lawful permanent resident (LPR) status or citizenship, there are economic gains that come with it¹¹ as well as a reduction in poverty.¹² Obtaining LPR status or citizenship also facilitates deeper integration and allows migrants to more fully participate in civic life. As a result, USCIS should seek to keep fees for lawful permanent residence and naturalization as low as possible.

However, many of the updated fees proposed would significantly increase for applications for LPR status and citizenship. For example, the fee for form I-485, “Application to Register Permanent Residence or Adjust Status (with biometric Services),” has increased by \$315, or 26%. Filing a Form I-485 with an I-765 (for adjustment to LPR status and employment authorization) will increase by \$965, or 79%. These costs will mostly be borne by the migrants themselves, many of whom will be low-wage workers, thus they will represent a significant obstacle to becoming a lawful permanent resident. (Compare this to an increase of only \$15 for processing Form I-140, an Immigrant Petition for an Alien Worker, which will often be paid by employers and not the migrants themselves.)

As a result, USCIS should explore all possible means to reduce fees for LPR status and naturalization and continue to redistribute a portion of the cost of naturalization and LPR applications among other application fee types. Until Congress authorizes the appropriate level of

¹⁰ See for example, Daniel Costa, [Temporary work visa programs and the need for reform: A briefing on program frameworks, policy issues and fixes, and the impact of COVID-19](#), Economic Policy Institute, February 3, 2021.

¹¹ See for example, Madeleine Sumption and Sarah Flamm, [The Economic Value of Citizenship for Immigrants in the United States](#), Migration Policy Institute, September 2012; and Cecilia Rouse, Lisa Barrow, Kevin Rinz, and Evan Soltas, [The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants](#), Council of Economic Advisors, The White House blog, September 17, 2021.

¹² See for example, Heidi Shierholz, [The effects of citizenship on family income and poverty](#), Economic Policy Institute, February 24, 2010.

funding the agency requires, USCIS will continue have to make difficult choices in the fee schedule to support the processing of these important services.

6) USCIS should not increase fees for Employment Authorization Documents

Granting access to Employment Authorization Documents (EADs) for migrants, which allows them to work lawfully in the United States, is one of the most vital services that USCIS provides. Migrants who previously lacked work authorization will go from having no workplace rights in practice—even if they have them on paper—to having full labor and employment rights, which also leads to economic and employment gains, as research and surveys about DACA recipients have shown.¹³ However, in recent years, backlogs at USCIS have led to significant delays in processing EAD applications, leading to horror stories of workers who lost their jobs because USCIS could not process their paperwork in a timely fashion, many of which were reported in the press.¹⁴ Losing your job, as well as the right to be employed in the United States—and the labor and employment rights that accompany having an EAD—is nothing short of a nightmare, leading to the inability of migrants to provide for themselves and their families. USCIS should do everything in its power to prevent these scenarios from occurring ever again.

Understandably, USCIS has increased fees for processing the Form I-765, which is the application for an EAD: The fees are proposed to increase by \$145, or 35% for online filers and \$240, or 59%, for paper filers. However, we are very concerned about these increases and their impact on low-wage workers. EAD applications are one of the most common immigration forms that migrant workers must file—and obtaining an EAD is fundamental to their ability to preserve their jobs and livelihoods—but are usually paid for by the migrants themselves, not their employers, and in most cases must be renewed every two years. These increases will thus result in an ongoing significant economic burden on migrant workers.

Some migrant workers will have to pay the EAD processing fee even more often. Over 400,000 migrants have Temporary Protected Status (TPS)—and those who work must file and pay for an EAD even more frequently than most other applicants: every 18 months. While the TPS filing fee has been reduced by \$55, the savings will be more than offset by the steep increases in EAD costs, which are proposed to increase by \$155 for paper filers. This can create a significant hardship for TPS-holders, major shares of whom are employed in low-wage occupations.¹⁵

In addition, another area we are particularly concerned about is access to EADs for migrant workers in labor disputes. Earlier this year, DHS took a positive step to further worker rights by

¹³ See for example, Tom K. Wong, Claudia Flores, and Ignacia Rodriguez Kmec, [2021 Survey of DACA Recipients Underscores the Importance of a Pathway to Citizenship](#), Center for American Progress, February 3, 2022.

¹⁴ See for example, Dara Lind, [“U.S. Work-Permit Backlog Is Costing Immigrants Their Jobs,”](#) Bloomberg, March 15, 2022.

¹⁵ Nicole Prchal Svajlenka, [“What Do We Know About Immigrants With Temporary Protected Status?”](#) Center for American Progress, February 11, 2019.

clarifying and streamlining the process to protect migrant workers in labor disputes—a move that we applauded.¹⁶ However, we wish to highlight that the migrant workers who would be eligible for this key protection will be subject to USCIS’s increased fees for EADs, by as much as \$240 more than the current fee. A nearly 60% increase may prove an insurmountable barrier for these workers, given that many of the applicants for this protection are likely to be employed in low wage industries with high rates of workplace violations, such as wage theft.

As a result, we urge USCIS not to increase the EAD fees. In the alternative, USCIS should consider sliding scale fees for migrants with earnings below a certain salary level. In addition, we appreciate that USCIS offers fee waivers to a number of categories of humanitarian migrants when they initially apply for an EAD; but USCIS should consider a waiver or a reduced fee for EAD renewals for humanitarian migrants and TPS-holders.

7) Conclusion

We wish to reiterate that USCIS needs to be adequately resourced so that it can fulfill its critical mission that undergirds a fair and humane immigration system and allows its employees to have job security. Unless and until Congress steps up to make the necessary statutory changes and appropriates enough funding so that USCIS can operate fairly and efficiently, the vast majority of USCIS’s funding will continue to come from fees charged for services. We appreciate that USCIS has signaled the appropriate priorities by focusing the bulk of the significant increases in the proposed fee schedule on processes and applications that are paid for by those with the greatest means and ability to pay: employers and investors. However, we hope that our recommended adjustments to the proposal are considered, as they will help ensure access to critical immigration benefits for migrants and low-wage workers.

Best regards,

Daniel Costa
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Economic Policy Institute

¹⁶ Daniel Costa, “[The Department of Homeland Security took a positive step by clarifying and streamlining the process to protect migrant workers in labor disputes](#),” *Working Economics* blog (Economic Policy Institute), January 13, 2023.