

IMMIGRATION PRACTICE

# ALERT

## NEW FEES FOR CERTAIN H-1 AND L-1 VISAS AND FOR VISA WAIVER TRAVELERS

By Alka Bahal

### USCIS Implements H-1B and L-1 Fee Increase According to Public Law 111-230

Public Law 111-230 became effective on August 13, 2010, immediately increasing the fees paid by certain high-volume users of the H-1B and L-1 programs. The fee increase is scheduled to remain in effect through Sept. 30, 2014. Employers with 50 or more employees in the United States and whose U.S. workforce is 50 percent (or more) in H-1B or L (including L-1A, L-1B and L-2) nonimmigrant status must submit an additional fee of \$2,000 for each H-1B petition and \$2,250 for each L-1 petition filed for a new employee. (The fee does not apply to petitions to extend or amend the current H or L status for the same employer-employee.) Both full-time AND part-time employees must be counted, and the calculation should be performed at the time a new H-1B or L-1 petition is filed.

The \$2,000/\$2,250 per application fee is in addition to the Form Filing Fee (\$320), the Fraud Prevention and Detection Fee (\$500), the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) Fee for H-1B petitions (\$750 or \$1,500) and the optional premium processing fee (\$1000). The U.S. Citizenship and Immigration Service (USCIS) has indicated it expects this additional fee to be paid by the employer.

USCIS has also stated it is in the process of revising the Petition for a Nonimmigrant Worker (Form I-129) and instructions to comply with Public Law 111-230. Petitioners are advised to either include the new fee, a statement or other evidence outlining why the new fee

does not apply. Where USCIS does not receive such explanation and/or documentation with the initial filing, it has advised it may issue a Request for Evidence (RFE) to determine whether the petition is covered by the public law. An RFE may be required even if such evidence is submitted, if questions remain.

### New Fee for Electronic Travel Authorization Required for Visa Waiver Travelers

On August 6, 2010, the U.S. Department of Homeland Security (DHS) published an interim final rule in the *Federal Register* to amend its regulations to require travelers from Visa Waiver Program (VWP) countries to pay operational and travel promotion fees when applying for an Electronic System for Travel Authorization (ESTA) beginning September 8. DHS will accept comments through October 8. The new fees include a processing charge of \$4, which all applicants requesting an electronic travel authorization must pay, and an authorization charge of \$10 that only applies when an application is approved and authorization to travel is granted. (This fee does not apply if electronic travel authorization is denied.)

The new fees are expected to recover the costs incurred by Customs and Border Protection (CBP) of providing and administering the ESTA system and will apply only to new registrations made on or after September 8, 2010. Payments must be made by credit card or debit card when applying for or renewing an ESTA online at the secure ESTA government web site.

ESTA is an electronic travel authorization that all

nationals of VWP countries must obtain prior to boarding a carrier to travel by air or sea to the United States under the VWP. This travel authorization has been mandatory since Jan. 12, 2009. ESTA applications may be submitted at any time prior to travel. Once approved, authorizations are generally valid for multiple entries into the United States for up to two years or until the applicant's passport expires or other specific circumstances give rise to a need to reapply, whichever comes first. Under the new interim final rule, travelers with an approved ESTA will not need to pay the ESTA fees when updating an ESTA application. However, travelers with new passports who are re-applying for an ESTA will need to pay the ESTA fees at the time of application.

Citizens interested in commenting on this rulemaking—identified by docket number USCBP-2010-0025—may submit written comments by visiting the [Federal eRulemaking Portal](#) and following the

instructions for submitting comments or by mail at: Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, (Mint Annex), Washington, D.C. 20229.

The VWP is administered by DHS and enables eligible nationals of 36 designated countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Additional information regarding the VWP and ESTA is available at [CBP.gov](#).

For more information regarding the information in this Alert, please contact Alka Bahal, co-chair of Fox Rothschild's Corporate Immigration Practice Group, at 973.994.7800, [abahal@foxrothschild.com](mailto:abahal@foxrothschild.com) or [immigration@foxrothschild.com](mailto:immigration@foxrothschild.com) or any member of our [Immigration](#) or [Labor & Employment](#) practices.



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