



MID-MAY 2016 IMMIGRATION UPDATE

Posted on May 17, 2016 by Cyrus Mehta

Headlines:

1. [USCIS Proposes Fee Increases, New Fee for Annual Certification of EB-5 Regional Centers](#) – Among other things, USCIS proposes a new fee of \$3,035 to recover the full cost of processing the EB-5 Annual Certification of Regional Center, Form I-924A.
2. [USCIS Completes Data Entry of FY 2017 H-1B Cap-Subject Petitions, Begins Rejections](#) – USCIS has begun returning all H-1B cap-subject petitions that were not selected. USCIS said that due to the high volume of filings, the agency is unable to provide a definite time frame for returning these petitions.
3. [Employment-Based Final Action Dates Retrogress for June](#) – Final action dates have retrogressed in several categories in an effort to hold visa number use within the FY 2016 annual limit.
4. [SEC Announces Fraud Charges, Asset Freeze Against Vermont Ski Resort](#) – The SEC announced fraud charges and an asset freeze against a Vermont-based ski resort and related businesses allegedly misusing millions of dollars raised through investments solicited under the EB-5 Immigrant Investor Program.
5. [ICE Releases Quarterly International Student Data: F, M Students Up 6.2%](#) – The report notes that there are nearly 1.2 million international students with F (academic) or M (vocational) status studying in the United States.
6. **Firm In The News...**

Details:

1. **USCIS Proposes Fee Increases, New Fee for Annual Certification of EB-5 Regional Centers**

U.S. Citizenship and Immigration Services (USCIS) issued a proposed rule on May 4, 2016, to increase USCIS fees by a "weighted average" of 21 percent and add one new fee for EB-5 Regional Centers. In addition, among other things, USCIS proposes to clarify that persons filing a benefit request may be required to appear for biometrics services or an interview and pay the biometrics services fee. The weighted average increase is the percentage difference between the current and proposed fees by immigration benefit type. USCIS further explains its calculations in the notice.

Generally, USCIS said it anticipates that if it continues to operate at current fee levels, it will experience an average annual shortfall of \$560 million between Immigration Examinations Fee Account (IEFA) revenues and costs. This projected shortfall "poses a risk of degrading USCIS operations funded by IEFA revenue," USCIS said. The agency believes the proposed rule "would eliminate this risk by ensuring full cost recovery."

In addition to raising fees for existing petitions, USCIS proposes a new fee of \$3,035 to recover the full cost of processing the Employment Based Immigrant Visa, Fifth Preference (EB-5) Annual Certification of Regional Center, Form I-924A. USCIS explained that approved EB-5 Regional Centers must file Form I-924A annually, but there is currently no filing fee. As a result, USCIS does not fully recover the processing costs associated with such filings.

Also, the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act increased fees for certain H-1B and L-1 visa petitioners. Under this new law, USCIS explained, these petitioners must submit an additional fee of \$4,000 for certain H-1B petitions and \$4,500 for certain L-1A and L-1B petitions postmarked on or after December 18, 2015. The additional fees apply to petitioners who employ 50 or more employees in the United States, with more than 50 percent of those employees in H-1B or L-1 (including L-1A and L-1B) nonimmigrant status.

USCIS began rejecting petitions after February 11, 2016, that do not include the additional fee, when applicable. This fee is in addition to the Petition for a Nonimmigrant Worker (Form I-129) fee, the Fraud Prevention and Detection Fee, and the American Competitiveness and Workforce Improvement Act of 1998 fee (when required), as well as the premium processing fee (if applicable). The agency noted that these fees, when applicable, may not be waived. The fees under the new law will remain effective through September 30, 2025.

USCIS said it is revising the instructions for the Petition for a Nonimmigrant Worker, Form I-129, and the Nonimmigrant Petition Based on Blanket L Petition, Form I-129S, to include these fees. USCIS said it is proposing to publish these new statutory fees "in the interest of transparency, information and clarity." USCIS noted that it collects this revenue, but does not spend it. One half of the revenue collected from such fees under the new law goes to the General Fund of the Treasury. The other half is deposited by DHS into the 9-11 Response and Biometric Exit Account to fund a biometric entry-exit data system to track the lawful entrance and departure of all noncitizens at U.S. airports and land border crossings. Through this rule, USCIS also said it expects to collect sufficient fee revenue to fully support the USCIS Refugee, Asylum, and International Operations Directorate (RAIO); Systematic Alien Verification for Entitlements (SAVE); and the Office of Citizenship. This would allow USCIS to discontinue diverting fee revenue to fund these programs, thereby increasing resources to fund the personnel needed to improve case processing, reduce backlogs, and achieve processing times that are in line with the commitments in the FY 2007 Fee Rule, which USCIS is still committed to achieving. In addition, USCIS is evaluating the feasibility of calculating processing times using data generated directly from case management systems, rather than with self-reported performance data provided by Service Centers and Field Offices. USCIS said preliminary findings suggest that USCIS will be able to publish processing times sooner and with greater transparency by showing different processing times for each office and form type. USCIS is also considering publishing processing times using a range rather than using one number or date. This approach would show that, for example, half of cases are decided between X and Y number of months.

USCIS also proposes to establish a three-level fee for the Application for Naturalization (Form N-400). First, the agency would increase the standard fee for Form N-400 from \$595 to \$640. Second, the agency would continue to charge no fee to an applicant who meets the requirements of Immigration and Nationality Act §§ 328 or 329 with respect to military service and applicants with approved fee waivers. Third, the agency would charge a reduced fee of \$320 for naturalization applicants with family income greater than 150% and not more than 200% of the Federal Poverty Guidelines.

Written comments must be submitted by July 5, 2016. The proposed rule is at <https://www.gpo.gov/fdsys/pkg/FR-2016-05-04/html/2016-10297.htm>. A related

announcement is at

<https://www.uscis.gov/news/alerts/federal-register-comment-period-proposed-uscis-fee-schedule>.

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2. USCIS Completes Data Entry of FY 2017 H-1B Cap-Subject Petitions, Begins Rejections

U.S. Citizenship and Immigration Services (USCIS) announced on May 2, 2016, that it has completed data entry of all fiscal year 2017 H-1B cap-subject petitions selected randomly. USCIS has begun returning all H-1B cap-subject petitions that were not selected. USCIS said that due to the high volume of filings, the agency is unable to provide a definite time frame for returning these petitions.

USCIS asked petitioners not to ask about the status of submitted cap-subject petitions until they receive a receipt notice or a returned unselected petition. USCIS will issue an announcement once all the unselected petitions have been returned.

Additionally, USCIS said it is transferring some Form I-129 H-1B cap-subject petitions from the Vermont Service Center to the California Service Center to balance the distribution of cap cases. Those whose cases are transferred will receive notification in the mail. After receiving the notification, petitioners should send all future correspondence to the center processing the petition. Those who are filing Form I-907, Request for Premium Processing, should send the completed I-907 with the appropriate fee to the center processing the petition.

The announcement is at

<https://www.uscis.gov/news/alerts/uscis-completes-data-entry-fiscal-year-2017-h-1b-cap-subject-petitions>.

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3. Employment-Based Final Action Dates Retrogress for June

The Department of State's Visa Bulletin for the month of June reports that during the past two months, there have been extremely high levels of employment-based demand for adjustment of status cases filed with U.S. Citizenship and Immigration Services. This has necessitated retrogression of

final action dates in several categories in an effort to hold visa number use within the FY 2016 annual limit.

For India, the second preference final action date has retrogressed. This date is expected to advance slowly during the last three months of the fiscal year, at a pace consistent with that of the India employment-based third preference date.

For China, both the second and third preference final action dates have retrogressed. Neither of these dates is expected to advance before the end of the fiscal year.

The bulletin states, "Every effort will be made to return the retrogressed dates to those listed in the May 2016 Visa Bulletin as quickly as possible, once the FY-2017 annual limits take effect October 1, 2016. Speculation on how quickly, or when, a full recovery might occur might not be possible until late summer."

The Visa Bulletin for June 2016 is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-june-2016.html>.

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4. SEC Announces Fraud Charges, Asset Freeze Against Vermont Ski Resort

On April 14, 2016, the Securities and Exchange Commission (SEC) announced fraud charges and an asset freeze against a Vermont-based ski resort and related businesses allegedly misusing millions of dollars raised through investments solicited under the EB-5 Immigrant Investor Program.

The SEC alleges that Ariel Quiros of Miami, William Stenger of Newport, Vermont, and their companies made false statements and omitted key information while raising more than \$350 million from investors to construct ski resort facilities and a biomedical research facility in Vermont. Investors were told they were investing in one of several projects connected to Jay Peak, Inc., a ski resort operated by Quiros and Stenger, and that their money would only be used to finance that specific project. Instead, "in Ponzi-like fashion, money from investors in later projects was misappropriated to fund deficits in earlier projects," the SEC said. More than \$200 million was allegedly used for other-than-stated purposes, including \$50 million spent on Quiros's personal expenses and in other ways never disclosed to investors.

According to the SEC's complaint, Quiros improperly tapped investor funds for such things as the purchase of a luxury condominium, payment of his income taxes and other taxes unrelated to the investments, and acquisition of an unrelated ski resort.

Andrew Ceresney, Director of the SEC's Division of Enforcement, said the defendants "diverted millions of EB-5 investor dollars to their own pockets, leaving little money for construction of the research facility investors were told would be built and thereby putting the investors' funds and their immigration petitions in jeopardy."

The SEC's complaint charges Quiros, Stenger, Jay Peak, and a company owned by Quiros called Q Resorts Inc. as well as seven limited partnerships and their general partner companies with violating the antifraud provisions of § 17(a) of the Securities Act of 1933 and § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. Four other companies are named as relief defendants in the SEC's complaint for the purpose of recovering investor funds transferred into their accounts. The SEC seeks preliminary and permanent injunctions, financial penalties, and disgorgement of ill-gotten gains plus interest. The agency also seeks conduct-based injunctive relief against Quiros and Stenger along with an officer-and-director bar against Quiros.

The SEC's announcement is at

<https://www.sec.gov/news/pressrelease/2016-69.html>. The complaint is at <https://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

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5. ICE Releases Quarterly International Student Data: F, M Students Up 6.2%

U.S. Immigration and Customs Enforcement (ICE) recently released the latest "SEVIS By the Numbers," a quarterly report on international student trends prepared by the Student and Exchange Visitor Program (SEVP). The report notes that nearly 1.2 million international students with F (academic) or M (vocational) status are studying in the United States.

Based on data extracted from SEVIS March 7, international student enrollment at U.S. schools increased 6.2 percent compared to March 2015. In March, there were 8,687 U.S. schools with SEVP certification to enroll international students, a three percent decrease from the previous year.

Forty percent of international students studying in the United States, equaling almost 479,000 individuals, were enrolled in science, technology, engineering, and mathematics (STEM) coursework. Approximately 417,000 international students from Asia pursued STEM studies, an increase of 17 percent since March 2015.

The report includes a section on M vocational students in the United States. In March, more than 75 percent of the M-1 student population was male. Canada was the only country of the top ten countries of origin where most M-1 students, at 51 percent, were female. Male students from China comprised 23 percent of the total M-1 student population. Sixty-four percent of M-1 students majored in transportation and materials-moving, with a focus on air, ground, or marine transportation.

Among U.S. schools, New York University, the University of Southern California, Northeastern University, Columbia University, and the University of Illinois ranked one through five for schools with the highest international student populations. More than 10,000 international students were enrolled at each school in March.

The report also notes that 77 percent of all international students were from Asia. The top 10 countries of citizenship for international students were China, India, South Korea, Saudi Arabia, Canada, Vietnam, Japan, Taiwan, Brazil, and Mexico.

The announcement is at

<https://www.ice.gov/news/releases/ice-releases-quarterly-international-student-data>. The full report is at

<https://www.ice.gov/sites/default/files/documents/Report/2016/sevis-bythenu-mbers-0416.pdf>.

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6. Firm In The News

Cyrus Mehta was a Moderator on a panel entitled *Working Effectively With Corporate Clients*, 2016 AILA Upper Midwest Immigration Law Conference, Minneapolis, MN, May 13, 2016.

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