



## IMMIGRATION UPDATE - OCTOBER 19, 2020

*Posted on October 19, 2020 by Cyrus Mehta*

### Headlines:

**Lawsuit Challenges New DOL Prevailing Wage Rule for H-1Bs; Other Lawsuits to Follow** – A lawsuit filed by a group of technology consulting firms is challenging the Department of Labor's interim final rule on prevailing wages for H-1B workers.

[USCIS Increases Premium Processing Fees](#) – A new law requires USCIS to establish and collect additional premium processing fees, and to use those additional funds for expanded purposes.

[Judge Rules Against DHS in Exclusion of New Yorkers From 'Trusted Traveler' Programs](#) – A federal judge ruled that the Department of Homeland Security's decision to exclude New York residents from trusted traveler programs such as Global Entry was unlawful and resulted in the wrongful exclusion of more than 800,000 New Yorkers from such programs.

### Details:

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### **Lawsuit Challenges New DOL Prevailing Wage Rule for H-1Bs; Other Lawsuits to Follow**

A lawsuit filed October 16, 2020, by a group of technology consulting firms, *ITServe Alliance Inc. et al. v. Scalia et al.*, is challenging the Department of Labor's (DOL) interim final rule on prevailing wages for H-1B workers. The plaintiffs argue that DOL "dramatically altered the manner in which it calculates prevailing wage rates for the H-1B program" and made the prevailing wage rates "exponentially higher" without prior notice or an opportunity to comment.

They also argue that the new wage rates are "set under a novel standard that conflicts with the governing statutory criteria" and are "arbitrary and capricious because the agency relied on outdated, incorrect, or limited empirical data, failed to consider readily available, relevant data and empirical studies, and engaged in reasoning that conflicts with basic economic theory."

The plaintiffs seek a preliminary and permanent injunction to stop DOL from imposing the new wage rates, which they say will "upend" their businesses. Several other lawsuits challenging the DOL rule and a related rule from the Department of Homeland Security on specialty occupations and the employer-employee relationship are expected to be filed the week of October 19.

#### Details:

- "Lawsuit Challenging H-1B Wage Increase Filed in the U.S.," Economic Times, <https://economictimes.indiatimes.com/nri/visa-and-immigration/lawsuit-challenging-h-1b-wage-increase-filed-in-the-us/articleshow/78715971.cms>
- "Tech Consultants File First Challenge to H-1B Wage Hikes," Law360, <https://www.law360.com/articles/1320509/tech-consultants-file-first-challenge-to-h-1b-wage-hikes> (available by registration)
- DOL interim final rule, <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22132.pdf>
- DHS interim final rule, <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22347.pdf>

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### **USCIS Increases Premium Processing Fees**

Effective October 19, 2020, U.S. Citizenship and Immigration Services (USCIS) is increasing fees for premium processing as required by the Emergency Stopgap USCIS Stabilization Act, which was part of the Continuing Appropriations Act signed into law on October 1. The new law requires USCIS to establish and collect additional premium processing fees, and to use those additional funds for expanded purposes.

The fee for premium processing will increase from \$1,440 to \$2,500 for all filings except those from petitioners filing Form I-129, Petition for a Nonimmigrant Worker, requesting H-2B or R-1 nonimmigrant status. The

premium processing fee for those petitioners is increasing from \$1,440 to \$1,500.

Any Form I-907, Request for Premium Processing, postmarked on or after October 19, 2020, must include the new fee amount. For filings sent by commercial courier (such as UPS, FedEx, or DHL), the postmark date is the date reflected on the courier receipt.

USCIS said the new law also gives the agency the ability to expand premium processing to additional forms and benefit requests, but it is not yet taking that action. "Any expansion of premium processing to other forms will be implemented as provided in the legislation," USCIS said.

#### Details:

- USCIS announcement, <https://www.uscis.gov/i-129>
- Instructions on premium processing, USCIS, <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing>
- Continuing Appropriations Act, <https://www.congress.gov/bill/116th-congress/house-bill/8337/text#H59AB3AEBE3FA47A2948DFC6C42C218C1>

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## **Judge Rules Against DHS in Exclusion of New Yorkers From 'Trusted Traveler' Programs**

A federal judge ruled on October 13, 2020, that the Department of Homeland Security's (DHS) decision to suspend the eligibility of New York residents to enroll or re-enroll in the Trusted Traveler Programs (TTPs) operated by U.S. Customs and Border Protection (CBP) (the TTP decision) was unlawful. The judge also formally vacated the TTP decision to ensure that it will not be reinstated. The TTP decision resulted in the wrongful exclusion of more than 800,000 New Yorkers from TTPs, such as Global Entry.

As background, in June 2019, New York enacted the "Green Light Law" authorizing the New York State Department of Motor Vehicles to issue driver's licenses to residents without reference to immigration status. The law also prohibited disclosure of and access to DMV records by federal immigration officials absent a court order. In response, DHS implemented the TTP decision

to exclude New York residents from TTPs. New York later amended its law to permit sharing of New York DMV records as necessary for individuals seeking to enroll in TTPs. However, the judge said the case was not moot due to lingering effects and that vacating the order was needed so it could not be reinstated. Judge Jesse M. Furman also said that the exclusion of New York was arbitrary and capricious and that government officials had made things worse "by repeating their misleading, if not false, representations, in some instances under oath."

New York Governor Andrew Cuomo said the state will seek civil damages from DHS. Among other things, Gov. Cuomo noted that congestion at airports while the coronavirus was spreading from Europe increased as a result. A spokesperson for Gov. Cuomo said the judge's conclusion "confirms what we already knew: a radicalized Department of Homeland Security tried to extract economic pain on New Yorkers in the name of politics and then lied to the American people about it."

#### Details:

- "Judge: NY's Ejection From Trusted Traveler Program Was Wrong," Associated Press, <https://apnews.com/article/new-york-us-news-courts-94e6a220a24c87845e44ac97f67407f2>
- "DHS Admits It Made False Statements in Defense of Denying Global Entry to New Yorkers," CNN, <https://www.cnn.com/2020/07/23/politics/global-entry-new-york-dhs/index.html>
- Decision: New York v. Wolf, 2020 U.S. Dist. LEXIS 189428 (S.D.N.Y. Oct. 13, 2020) (subscription required)

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