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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE – FEBRUARY 4, 2024

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Headlines:

USCIS Announces Registration Period, Instructions, and Updates for FY 2025 H-1B Cap Season – U.S. Citizenship and Immigration Services announced that the initial registration period for the fiscal year 2025 H-1B cap season will open at noon ET on March 6, 2024, and run through noon ET on March 22, 2024.

USCIS Issues Final Rule With New Filing Fees – U.S. Citizenship and Immigration Services published a final rule, effective April 1, 2024, to adjust certain immigration and naturalization benefit request fees. The final rule includes fee increases for various categories.

Global: The Netherlands – This article discusses the principle of single nationality in Dutch law and the proportionality test, and how they work in practice.

Details:

USCIS Announces Registration Period, Instructions, and Updates for FY 2025 H-1B Cap Season

U.S. Citizenship and Immigration Services (USCIS) has announced that the initial registration period for the fiscal year 2025 H-1B cap season will open at noon ET on March 6, 2024, and run through noon ET on March 22, 2024. During that period, prospective petitioners and their representatives, if applicable, must use a USCIS online account to register each beneficiary electronically and pay the associated registration fee.

The final rule makes several changes. For example:

- Instead of selecting by registration, USCIS will select registrations by

unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf.
- Start date flexibility will be provided for certain H-1B cap-subject petitions. Filing will be permitted with requested start dates that are after October 1 of the relevant fiscal year.
- Registrations must include the beneficiary's valid passport information or valid travel document information, and a beneficiary is prohibited from being registered under more than one passport or travel document. USCIS said the modification to allow for a valid travel document "is intended to narrowly accommodate stateless individuals, refugees, and others who are unable to obtain valid passports, and is directly in response to public comments."

Details:

- USCIS final rule, 89 Fed. Reg. 7456 (Feb. 2, 2024).

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USCIS Issues Final Rule With New Filing Fees

U.S. Citizenship and Immigration Services (USCIS) published a final rule, effective April 1, 2024, to adjust certain immigration and naturalization benefit request fees. The final rule includes fee increases for various categories, such as:

- I-129 H-1B (named beneficiaries), from $460 to $1,080
- I-129 H-1B (named beneficiaries, small employers and nonprofits), from $460 to $540
- I-129 L Nonimmigrant Workers, from $460 to $1,385
- I-129 L Nonimmigrant Workers (small employers and nonprofits), from $460 to $695
- I-526/526E Immigrant Petition by Standalone Regional Center, from $3,675 to $11,160

Among other things, the final rule also:

- Imposes a new Asylum Program Fee to be paid by employers who file either a Form I-129, Petition for a Nonimmigrant Worker, Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, or Form

I-140, Immigrant Petition for Alien Worker. The fee will be $0 for nonprofits; $300 for small employers (defined as firms or individuals having 25 or fewer full-time employees); and $600 for all other filers of Forms I-129 and I-140.
- Allows for half-price Employment Authorization Document applications for adjustment of status applicants and a reduced fee for adjustment of status applicants under the age of 14 in certain situations; and
- Implements a standard $50 discount for most online filers. The discount does not apply "in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee."

Details:

- USCIS final rule, 89 Fed. Reg. 6194 (Jan. 31, 2024).
- USCIS FAQ on fee rule (Jan. 31, 2024). The FAQ includes a full list of the revised forms effective April 1, 2024, along with the new fees. USCIS said it will accept prior editions of most forms during a grace period from April 1, 2024, through June 3, 2024. During the grace period, USCIS will accept both previous and new editions of certain forms, filed with the correct fee.

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Global: The Netherlands

This article discusses the principle of single nationality in Dutch law and the proportionality test, and how they work in practice.

One solid principle of Dutch nationality law is that dual nationality must be avoided. As a result of the Tjebbes ruling by the European Union (EU) Court of Justice, this principle is mitigated by a proportionality test for cases of automatic loss of Dutch nationality. A provision to this effect was introduced in the Netherlands Nationality Act (NNA) on April 1, 2022.

The most frequent cases of automatic loss of Dutch citizenship result from:

1. Voluntary acquisition of another nationality; or
2. Prolonged stay abroad in the possession of two (or more) nationalities.

There are exemptions. For example, acquiring a second nationality does not lead to loss of Dutch nationality if one is married to a person of the new

nationality. Nevertheless, these cases occur frequently, and for many of the affected individuals, it is not so much the fact of losing Dutch nationality but rather the automatic character of the loss that strikes the most. It happens by act of law; a decision by a Dutch authority to revoke the nationality is not necessary. The victim often only finds out that they are not Dutch anymore when they try to renew their Dutch passport.

The Tjebbes Ruling

As of April 1, 2022, a new provision was included in the NNA following the Tjebbes ruling by the EU Court of Justice of March 12, 2019. Through a new subcategory of the "option procedure," this group of persons can request to regain their Dutch citizenship. The option procedure is, next to naturalization, a way to request Dutch nationality, in particular for persons of Dutch descent and former Dutch nationals. By submitting an option request based on the new provision, a proportionality test can be requested. The test examines whether the loss of Dutch citizenship was in effect disproportionate.

This criterion was applied in the Tjebbes ruling, in which the EU Court mentioned several circumstances that may be weighed in the proportionality test, mainly related to the person's rights of free movement and residence in the EU territory and whether these have been lost due to the loss of nationality.

Nationality law is increasingly influenced by EU law. This has softened somewhat the strictness of the Dutch law in avoiding dual nationality. Former Dutch nationals now have a formal remedy against disproportionality of the loss of their nationality.

In practice, the standard to meet is high. Case law will determine how effective this proportionality test will turn out to be.

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