

Transition – A Presidential Change Update

October 2025

Additional USCIS Guidance on \$100,000 H-1B Fee

Key Notes:

- USCIS has issued further guidance on scope, but conflicting and imprecise language means there is still confusion.
- The fee is being challenged in litigation.

On September 19, 2025, President Trump issued a Proclamation imposing a \$100,000 fee on H-1B petitions. The Proclamation took effect **September 21, 2025, at 12:01 a.m. EDT** for twelve months (with the possibility of an extension).

The language of the Proclamation appeared to apply to all H-1B workers who are outside of the United States on or after the effective date, creating confusion and causing many H-1B workers abroad to immediately adjust travel for return to the U.S. before the effective date. The government has since provided guidance clarifying the scope of petitions subject to the fee. The most recent guidance was issued by USCIS on October 20, 2025.

Also in October, two federal lawsuits have been filed that challenge the legality of the H-1B Visa Fee Proclamation. The [first lawsuit](#) filed against the Trump administration on the \$100,000 H-1B fee was *Global Nurse Force v. Trump*, which included a church, unions, a pastor, a professors' group and a nurse staffing company as plaintiffs. On October 16, 2025, the U.S. Chamber of Commerce filed a [complaint](#) against the Department of Homeland Security, the U.S. State Department, DHS Secretary Kristi Noem and Secretary of State Marco Rubio in the U.S. District Court for the District of Columbia. Either lawsuit may impact enforcement of the Proclamation if a preliminary injunction or other interim relief against the Proclamation is granted.

Below is a summary of the additional guidance provided by USCIS. The information provided by the government has been imprecise, and many questions remain about how this will work and who is affected.

Who is Clearly Within the Scope of the Fee?

- First-time H-1B petitions filed on or after September 21, 2025, for individuals outside the U.S. at the time of filing.
- H-1B petitions seeking a change of status, amendment, or extension of stay and USCIS determines the individual is not eligible to extend or change status (i.e., has not maintained status, is not in a valid status or departs the U.S. before a change of status is granted).

Who is Clearly Not Affected?

- Individuals for whom H-1B petitions were filed before September 21, 2025.
- Individuals inside the U.S. seeking a change of status, amendment, or extension of stay and USCIS determines they are eligible for the extension or change of status.
- Individuals returning to the U.S. with a valid H-1B visa in their passport.
- Individuals applying for a new H-1B visa to be stamped in their passport that is based on an already approved petition.

Who Remains in a Gray Zone and Application of the Fee is Uncertain?

- Individuals in the U.S. with a valid H-1B approval for whom a renewal is submitted, but without a request for extension of status, and instead a request for consular notification, port of entry notification, or pre-flight inspection.

- New H-1B petitions filed for someone outside the U.S. but who has previously been granted an H-1B (i.e., someone who previously worked for a U.S. company with an H-1B but is currently outside the U.S., and the application must be filed as consular notification, port of entry, or pre-flight inspection).

When is Payment Required?

- Prior to filing with USCIS. The petition must submit proof that payment has been scheduled from pay.gov.

Are There Exceptions to the Proclamation?

The proclamation provides that exceptions may be granted in the “extraordinarily rare circumstance” where the Secretary of DHS has determined that the worker’s presence in the U.S. is in the national interest, that no “American worker” is available to fill the role, that the worker does not pose a threat to the security or welfare of the U.S., and that requiring the payment would undermine the interest of the U.S.

Need to Seek Counsel

Given the material distinctions between individuals being in or out of the U.S. and the impact that travel can have on eligibility for an extension to be granted, we recommend foreign nationals contact us to address international travel before it is undertaken.

FOR MORE INFORMATION

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