



News & Types: Immigration Monthly Updates

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Practices: Immigration

## **LITIGATION COMMENCED OVER APRIL 1 USCIS FEE INCREASES**

As noted in our [January 31, 2024 alert](#) and [Business Immigration Monthly – February 2024](#), the U.S. Citizenship and Immigration Services (USCIS) will be increasing its filing fees scheduled to take effect on April 1, 2024.

For most employer-sponsored immigration petitions, the filing fees are increasing substantially. The slated fee structure is broken down by the particular visa classification requested and the number of full-time-equivalent (FTE) employees of the employer/petitioner. Additionally, employers/petitioners with 26 or more FTEs will be required to pay a \$600 Asylum Program Fee with each petition. The Asylum Program Fee is reduced to \$300 for employers/petitioners having 25 or fewer FTEs. Employers/petitioners holding 501(c)(3) non-profit status from the Internal Revenue Service (IRS) are exempt from paying the Asylum Program Fee. The USCIS proposed using the funds collected from the new Asylum Program Fee (anticipated to be \$313 million) to support its asylum program efforts including credible fear screenings, review of claims for Asylum, Withholding of Removal or requests for benefits under the international human rights treaty for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

A complaint filed in the U.S. District Court in Colorado on March 19, 2024 challenges the scheduled USCIS fee increase and the Asylum Program fee rule as procedurally invalid and contrary to law and requests a preliminary and permanent injunction. The complaint alleges (i) the USCIS Fee Rule, which would raise fees to over 200% for some classifications, violates the requirements of the Administrative Procedures Act (APA) for adequate notice and comment, (ii) the Asylum Program Fee is an arbitrarily imposed tax, and (iii) the doubling of the filing fee for the EB-5 Green Card Investor Program violates U.S. law. The complaint cites the failure of the USCIS to complete the fee study required by Congress and adjust fees “to achieve efficient processing.”

Additional information about the status of this litigation will be contained in our future Business Immigration Monthly Updates when they become available.

## **VICTORY FOR A PASSENGER REMOVED FROM THE “NO FLY LIST”**

Even before the terrorist attack of September 11, 2001, the U.S. government has restricted travel to the United States by placing individuals on a “No Fly List.” Notable travel banned individuals have included singer Yusuf Islam (f/k/a/ Cat Stevens), former U.S. Senator Ted Kennedy (D-MA) and former U.S. Representative John

Lewis (D-GA). There is no law or regulation that explains how individuals are added to or removed from such list.

Naturalized U.S. citizen Yonas Fikre, originally from Eritrea, learned he had been placed on the No Fly List while attending a luncheon at the U.S. Embassy in Khartoum, Sudan in 2009. For the next seven years Mr. Fikre was not permitted to return to the United States. During that time, he was questioned by the Federal Bureau of Investigation (FBI) and asked to be an informant on members and activities of his religious community in exchange for being removed from the No Fly List, a request he declined. Able to depart Sudan, Mr. Fikre traveled to the United Arab Emirates where, with the knowledge of the FBI, he was “arrested, imprisoned, and tortured” by UAE authorities over a period of 106 days, before being flown to Sweden where he had relatives. The Swedish government privately returned Mr. Fikre to his home in the United States in February 2015.

Mr. Fikre sued the FBI and requested confirmation that his rights had been violated and that he be removed from the No Fly List. Before the district court could rule on Mr. Fikre’s complaint, the government removed his name from the No Fly List and contended the case was moot, and the court agreed. Once denied his day in court, Mr. Fikre successfully appealed to the Ninth Circuit Court of Appeals which determined that when the government acts to voluntarily cease the challenged conduct, the government must demonstrate that such “allegedly wrongful behavior” cannot “reasonably be expected to recur.” Removing Mr. Fikre from the No Fly List without an explanation as to why he was placed on the list originally was not a guarantee that he would not be placed back on the No Fly List in the future. The government appealed this decision to the U.S. Supreme Court.

In its March 19, 2024 decision, Supreme Court Justice Neil Gorsuch, for the majority, explained that if the government contends that action it has taken would render a case moot (here removing Mr. Fikre from the No Fly List), the government must confirm that such action would not occur in the future (placing Mr. Fikre back on the No Fly List for the same reason).

#### **APRIL 2024 VISA BULLETIN UPDATE**

The U.S. Department of Status (DOS) recently issued the April 2024 Visa Bulletin.

For *employment-based immigration* only the following foreign nationals may either apply for permanent resident status through adjustment of status (“AOS”) or have their AOS application approved if all qualifying and documentation requirements are met in April 2024. Also, the following foreign nationals who will complete the Immigrant Visa processing at a U.S. Consular Post and who have submitted all the required documentation become eligible to have their interview scheduled in April 2024.

#### **First Preference**

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers

recognized for their Extraordinary Ability) whose priority date is before September 1, 2022 – an advancement of 47 days from March 2024.

- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before March 1, 2021 – an advancement of 123 days from March 2024.

### Second Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before January 15, 2023 – an advancement of 54 days from March 2024.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before February 1, 2020 – a one-month advancement from March 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before April 15, 2012 – an advancement of 45 days from March 2024.

### Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before November 22, 2022 – an advancement of 75 days.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2020 – no advancement from March 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before August 15, 2023 – an advancement of 45 days from March 2024.

The DOS, which manages the Visa Bulletin, anticipates “very little to no forward movement in the coming months” for the employment-based immigration due to the advancements made in April 2024.

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