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【移民法アラート】特定のH-1Bビザ保持者による米国入国を制限する大統領令、実施に移行

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Practices: 移民法

In the Masuda Funai September 22, 2025 Client Alert on the Presidential Proclamation titled “Restriction on Entry of Certain Nonimmigrant H-1B Workers,” Masuda Funai’s Immigration Group outlined five actions the Administration would need to take to implement this Presidential Proclamation and the \$100,000 payment to be collected for certain H-1B petitions.

On October 20, 2025, the U.S. Citizenship and Immigration Services (USCIS) announced on its website when and how this \$100,000 fee is to be collected and provided guidance on the criteria and procedure for employers to request an exception to this payment.

WHEN DOES THE \$100,000 FEE APPLY?

For certain impacted H-1B petitions filed at or after 12:01AM (Eastern) on September 21, 2025, the USCIS is requiring the petitioning employer to pay the \$100,000 by Automated Clearing House (ACH) from a U.S. bank through the government’s Pay.gov site. The payment receipt has to be included with initial H-1B filing. A credit card payment or check is not a payment option.

Impacted H-1B petitions include:

- **H-1B workers outside the United States:** Requests for new H-1B employment (H-1B cap subject or H-1B cap exempt) of an individual who is outside the United States and needs to apply for an H-1B visa or, if visa exempt, needs notification of the H-1B petition approval to a U.S. port of entry or pre-flight inspection station to enter the United States.
- **H-1B workers in the United States:**
 - A. H-1B petitions (H-1B cap subject or H-1B cap exempt) with request for consular notification.
 - B. After an H-1B petition (H-1B cap subject or H-1B cap exempt) is adjudicated by USCIS and a H-1B change of status request, an amendment of existing H-1B status or an extension of H-1B status is denied in the discretion of the USCIS. The USCIS will then change the change of status, amendment or extension request to consular notification.

C. H-1B petitions (H-1B cap subject or H-1B cap exempt) filed more than 60 days after the H-1B worker ceased employment with previous H-1B employer.

D. H-1B change of status petition (H-1B cap subject or H-1B cap exempt) is pending and the beneficiary departs the United States before USCIS approves the petition.

USCIS advises that if the \$100,000 payment is required but not provided at the time of filing, the petition will be denied. If a change of status, amendment or extension of stay request is denied in the discretion of the USCIS, it is assumed that USCIS will issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) before approving the H-1B petition with a request for consular notification.

Additionally, contrary to guidance previously provided by the White House, USCIS has not indicated that the \$100,000 fee is a one-time employer fee per beneficiary. Instead, if an employer has to file two consular notification petitions on behalf of the same beneficiary, the employer would be required to pay two (2) \$100,000 fees.

Given the late issuance of this USCIS guidance, for pending H-1B petitions filed after the start of the Presidential Proclamation subject to the \$100,000 payment, it is anticipated that USCIS will issue a request for the payment or documentation that an exemption has been granted (discussed below).

WHEN DOES THE \$100,000 FEE NOT APPLY?

A petitioning employer is not required to pay the \$100,000 payment for:

- **H-1B petitions filed before the Proclamation:** H-1B petitions filed before 12:01AM (Eastern) on September 21, 2025, even if the decision is issued after that date.
- **H-1B petitions requesting change of status, amendment or extension filed after the Proclamation and approved by USCIS:** H-1B petitions filed after 12:01AM (Eastern) on September 21, 2025 which contain an approved request a change of status to H-1B status, an amendment of existing H-1B status, or an extension of H-1B status for an H-1B worker inside the United States (including a H-1B change of employer petition) are not subject to the \$100,000 payment. Additionally, the H-1B worker does not become subject to the \$100,000 payment if after the petition has been approved, they depart the United States and apply for a new H-1B visa.

H-1B workers are not required to document payment of the \$100,000 payment if they are:

- **H-1B visa holders:** H-1B workers who have a valid, unexpired H-1B visa may continue to use that visa for travel to the United States and the \$100,000 payment does not apply. Additionally, current H-1B visa holders having a valid H-1B petition approval, such as for a change of employer, may continue to use their existing unexpired visa for travel to the United States (see below).

This interpretation, limiting the \$100,000.00 payment to new employment petitions for individuals outside the United States who need to apply for a new visa, or if visa exempt require notification to a U.S. port of entry or pre-flight inspection station, provides potential welcome relief for employers and international students (F-1 or J-1 visas) who are selected in the upcoming FY-2027 H-1B lottery and seek to change their immigration status

to H-1B classification. However, if the change of status request is denied in the discretion of USCIS, the \$100,000 payment would apply.

HOW TO REQUEST AN EXCEPTION TO THE \$100,000 PAYMENT?

Before filing the H-1B petition with USCIS, if the petitioning employer would like to request an exception to the \$100,000 payment, a request with supporting documents must be emailed to: H1BExceptions@hq.dhs.gov. There is no form to be completed or fee to be filed with the request.

Instead as part of the request, the petitioning employer must provide documentation that:

- The particular H-1B worker's presence in the United States is in the national interest,
- No American worker is available to fill the role,
- The H-1B worker does not pose a threat to the security or welfare of the United States, and
- Requiring the petitioning employer to remit the \$100,000 payment for the H-1B worker would significantly undermine the interests of the United States.

The narrow criteria to request an exception to the payment is in line with declarations made by Department of Commerce Secretary Howard Lutnik during the Proclamation signing ceremony in the Oval Office; specifically that the \$100,000 payment would be paid by an employer if the H-1B worker is "very valuable to the company and America", or the employer "is going to hire an American."

PENDING LITIGATION

There are already several lawsuits challenging this Presidential Proclamation with requests pending to enjoin its implementation. It is also assumed that there will be additional lawsuits filed based upon reasons, including but not limited to, the fact that the Administration has not followed normal procedures in implementing the \$100,000 fee. Two of the pending lawsuits include one filed October 16th by the U.S. Chamber of Commerce and one filed October 3rd by individuals and organizations in the academia, aerospace, agriculture, automotive, medical, and religious sectors.

ADDITIONAL SECTIONS OF THE PROCLAMATION WAITING FOR IMPLEMENTING GUIDANCE

Additional steps to be taken to implement other objectives of the Presidential Proclamation include:

- Guidance to be issued by the U.S. Department of State to prevent the misuse of B visitor visas.
- Review of comments and finalizing the proposed regulation to reformulate the H-1B Quota ("H-1B Lottery") selection process.
- Rulemaking by U.S. Department of Labor (DOL) to revise the prevailing wage levels "consistent with the policy goals of the Proclamation". This is anticipated once the government shutdown ends.

Additional information about the implementation of the Proclamation (including the \$100,000 fee) and the litigation challenging the Proclamation will be contained in future Masuda Funai Client Alerts when it becomes available.

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