

Department of State Proposes Changes to Fees for Consular Services

In February the U.S. Department of State issued proposed rules for changing the fees charged by U.S. Embassies and Consulates for key consular and visa services.

The comment period for the proposed rules closed on March 9; the revised rules will come into force later in the year.

The proposed changes would both increase and decrease individual fees currently being charged for key consular and visas services. Under Consular Services, adult applicants for U.S. passports (persons seventeen years of age and older) would have to pay an application fee of \$70 instead of \$55, although the current fee of \$40 for minor applicants would remain unchanged. The fee for registering the birth abroad of a U.S. citizen from would rise from \$65 to \$100, while fees for handling the death of a U.S. citizen overseas would be reduced from the current level of \$265 to \$200.

For Immigrant visa applicants the current application fee for an immigrant visa, \$355, would be reduced for family based immediate relative and preference visas to \$330. However, the application fee for employment based immigrant visas would be increased significantly to \$720. There will also be an increase in the immigrant visa security surcharge from \$45 to \$74.

In December the State Department



announced proposed increases to the fees charged for certain non-immigrant visa services. Under these rules the current machine readable visa fee of \$131 levied against nearly all non-immigrant visa applicants will increase to \$140 for B1/B2 tourist and business travellers, students, exchange visitors, and other applicants for non-petition based non-immigrant visas. Applicants for petition-based non-immigrant visas such as the L, H, O, P Q and R visas would have to pay a \$150 machine-readable visa fee. The most significant change in the rules governing visa fees for non-immigrant applicants would greatly increase the visa application fee for E trader/investor visa applicants to \$390 and increase the fee for K fiancée visa applicants to \$350.

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US immigration

U.S. Immigration Reform Efforts Ongoing

Although the ongoing debate over health care reform legislation in the U.S. Congress has dominated the airwaves in recent months, efforts to enact comprehensive immigration reform legislation have continued behind the scenes.

Two powerful Senators, Richard Lugar (Republican from Indiana) and John Kerry (Democrat from Massachusetts) recently introduced legislation known as the "Startup Visa Act of 2010" designed to amend existing immigration law to make it easier for immigrant entrepreneurs to invest in start-up ventures in the U.S.

The Act proposes to create a new

work-related immigrant visa category, EB-6, for immigrant entrepreneurs, who would be allowed to receive a two year visa if they can show that a qualified U.S. investor is willing to dedicate a substantial sum—a minimum of \$250,000-- into a start-up venture that the immigrant would operate. This is considerably less than the \$1,000,000 initial investment currently required under the EB-5 investment immigrant visa category. After the entrepreneur has secured the initial capital and been granted EB-6 status, he or she would have two years to show that the investment had either generated at least five full-time jobs in the U.S. attracted an additional \$1 million in investment capital, or achieved \$1

million in revenue, after which he or she would then receive permanent legal resident status.

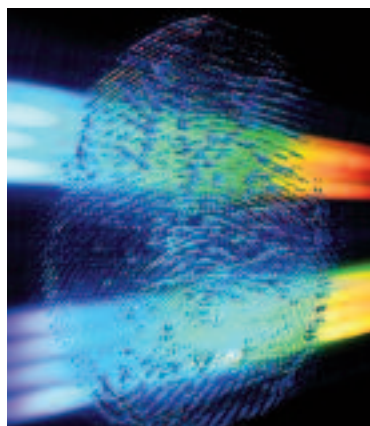
While the Startup Visa Act of 2010 is a long way from becoming law, it has already gathered support from venture capitalists across the country and represents a serious effort to enact immigration policies that encourage job creation and growth. As the economic climate slowly improves, the willingness of key members of Congress like Kerry and Lugar to propose serious immigration reform is a hopeful sign that meaningful reform of the U.S.'s disfunctional immigration laws and regulations is still possible.

US Embassy Launches New Electronic Visa Form

Beginning in February 2010 the U.S. Embassy in London began phasing in use of the new online electronic visa form DS 160.

On March 1, 2010 use of the form became mandatory for all non-immigrant visa applicants. Although the launch was not without problems—the worldwide system crashed repeatedly in the first week of operation—once it is fully operational it should provide an efficient mechanism for completion and submission of the visa application.

The DS 160 is designed to replace the previous visa forms DS 156, DS 157, and DS 158 and provides "one-stop shopping" for applicants of all non-



immigrant visa categories. Drop-down menus allow information to be solicited based on the visa category being applied for, and the form allows for the uploading of a digital photograph, eliminating the need for applicants to bring individual passport-size photos to the visa interview. Applicants sign the electronic application, confirming the

accuracy of its contents, by transmitting it electronically to the Embassy before the scheduled visa interview.

Although the form is designed to be user-friendly, it can be complicated to navigate and frequently times out, and uploading the photo can be cumbersome. We assist clients who are applying for non-immigrant visas by filing out the DS 160 on their behalfs and arranging for them to review the contents and electronically sign the form at our offices before their visa interview takes place. We also take their digital photos and upload them to the form. This reduces the hassle of using the new form and makes the entire visa application process more efficient and less stressful.

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On April 1, 2010 the U.S. Citizenship and Immigration Services (“USCIS”) will accept H1B petitions for the Fiscal Year (“FY”) 2011 H1B Cap.

Employers should now identify their H1B cap employees and forward all documents in support of the applications to their counsel for timely preparation to meet the April 1 deadline. Successful applicants can commence employment on October 1, 2010 – the start of FY 2011.

H-1B Cap

Congress has established an annual H1B cap of 65,000 (the cap reverted to 65,000 in 2003, down from 195,000 in the previous years). In FYs 2008 and 2009, the number of petitions filed during the first few days in April exceeded the cap, resulting in a random computer-generated lottery for available H1B visas. Last year (FY 2010), due to the economic downturn and restrictions placed on employers hiring foreign nationals, the cap was not reached until December 21, 2009. Though it is not anticipated that the cap will be exhausted in April this year, employers are encouraged to identify potential applicants and start the process to obtain their H1B visas immediately to ensure they meet their hiring needs for the coming fiscal year.

Background

The H1B program is utilized by US businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in a



specialized field, such as scientists, engineers, or computer programmers.

This classification applies to persons in a “specialty occupation”, which is defined as one that requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor’s degree (or equivalent) as the minimum requirement for entry into the occupation.

As part of the H1B program, the Department of Homeland Security (DHS) requires US employers to meet specific labour conditions to ensure that American workers are not adversely impacted, while the Department of Labour’s Wage and Hour Division safeguards the treatment and compensation of H1B workers.

To obtain an H-1B classification, the

US employer must obtain a certified Labour Condition Application (“LCA”) from the US Department of Labour, which certifies that the employer will pay the foreign national a salary that is within the prevailing wage for similar positions and will not adversely affect the working conditions of similarly employed US workers. (The prevailing wage is defined as the average wage paid to similarly employed workers in the requested occupation in the area of intended employment). After obtaining the LCA, the US employer must submit a petition to the USCIS along with evidence of the foreign national’s qualifications and documentation that the position qualifies as a specialty occupation. If a license is required to practice an occupation, evidence of this must also be submitted.

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The changes reflect the Department's updated estimates of the actual cost of the individual services being provided. The steep increases in the E and K visa fee reflects the fact that these cases are labour-intensive for consular personnel and consume more time than other non-immigrant visa categories.

The new fee schedule will go into effect in the spring of 2010.

magrath LLP solicitors 66/67 Newman Street London W1T 3EQ
tel 020 7495 3003 fax 020 7317 6766 www.magrath.co.uk

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