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OCTOBER 12, 2020 | ILENE ZAITOUNA

Expansion of Premium Processing Availability with Increased Fees (“Emergency Stopgap USCIS Stabilization Act”)

In a dramatic action, the U.S. Congress on September 30, 2020 took action to enable USCIS to stabilize its budget, precluding USCIS from following through on its threat to furlough a large portion of its workforce, and expanded the accelerated processing times available under its Premium Processing Program to a wide variety of additional immigration categories. What follows is a summary of the myriad provisions of this new legislation.

Analysis

The new Act expands the availability of premium processing beyond the employment-based petitions to which it has otherwise been limited; it also expands premium processing to new categories of employment-based non-immigrant petitions.

The Act also accelerates the processing of applications filed by spouses and children of employment-based non-immigrants when filed in association with the principal worker’s petition (note that these I-539 applications, until now, had been separated from the premium processed petitions filed by the principal workers, causing much slower processing of applications for those dependents).

New Categories for Which Premium Processing will be Available (in Addition to All the Pre-existing PP-Eligible Categories)

1. Employment-based nonimmigrant petitions, together with the associated applications for dependents.
2. Petitions in the EB-1, EB-2 and EB-3 categories as lead to permanent residency. For the first time, premium processing will be available for EB-1(C) (transferee executives and managers) and also for EB-2 (national interest waiver) applications.
3. Applications for change of status or extension of stay for all non-immigrant categories.
4. Applications for employment authorization.
5. Other categories which USCIS may deem appropriate to add to this list.
6. A glaring omission from the list of premium processing-eligible applications are those seeking advance parole travel permission and/or re-entry permits (for green card holders who will need to remain outside the U.S. for extensive periods of time). Also, I-485 Adjustment of Status applications, by their nature of requiring security checks as well as in-person interviews, have not been made eligible for PP.

New Filing Fees and Guaranteed Processing Times

7. For categories which have, until now, already been premium processing-eligible, the fee to secure PP increases from \$1,440 to \$2,500 (except for H-2B and R-1 for which the new fee will be \$1,500). Processing turnaround time for these pre-existing categories remains at 15 days.
8. For newly-eligible categories, while the fees technically remain open and to be set by regulation, it is anticipated that the maximum fees listed in the Act will be charged by USCIS. Those are:
 - EB-1(C) transferees – fee to be no more than \$2,500, with a processing time not to exceed 45 days.
 - For change of status to the F, J and M categories, the fee shall not exceed \$1,750 and processing time shall be no longer than 30 days.
 - For change of status to the E, H, L, O, P or R categories, the fee shall not exceed \$1,750 and processing time shall not exceed 30 days.
 - For employment authorization applications, the fee shall be \$1,500 and processing time shall be no longer than 30 days.

We expect new form instructions and updated editions of forms to be released by USCIS in the near future. It also remains unclear what impact the expansion of premium processing categories will have on filings submitted under regular (non-premium) processing, the assumption being that processing times for those categories will lengthen, potentially by significant margins.

Please feel free to contact any attorney in our immigration law group at Jaffe if you should have questions or wish to utilize premium processing under the new scheme.

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