

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2257-03]

RIN 1115-AG96

Adjustment of Immigration Benefit Application Fees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adjusts the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers to comply with section 457 of the Homeland Security Act of 2002, Public Law 107-296. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account (IEFA) and used to recover the full cost of processing immigration benefit applications and associated administrative costs. Federal guidelines require the Immigration and Naturalization Service (Service or INS) to establish and collect fees to recover the full costs of processing immigration benefit applications.

DATES: *Effective date:* This rule is effective January 24, 2003.

Comment date: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS Number 2257-03 on your correspondence. You may also submit comments electronically at *insregs@usdoj.gov*. When submitting comments electronically, you must include INS No. 2257-03 in the subject box so that your comments can be properly routed to the appropriate office. Comments are available for

public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514-3410.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does the Service Have To Charge Fees?

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

With reference to the fees for applications and petitions, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Public Law 100-459, sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization services. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101-515, sec. 210(d), 104 Stat. 2101, 2121 (November 5, 1990), Congress further provided that “fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” 8 U.S.C. 1356(m).

The House Conference Report to the bill, entitled “Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and

Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes,” H.R. Conf. Rep. No. 104-378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states, “(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the [IEFA].” *Id.*

In a final rule effective October 13, 1998, except the Form N-400, which took effect on January 15, 1999, the Service raised the majority of fees to recover the full costs of processing immigration benefit applications, and added a “surcharge” setting the fees at a level sufficient to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners.

What Is the Impact of Section 457 of the Homeland Security Act on the Current Fee Structure?

In section 457 of the Homeland Security Act of 2002, Congress provided that “Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking “services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” and inserting “services.” The deletion of this language has the effect of repealing the statutory basis for surcharges. The Service is, therefore, required to reduce immigration benefit application fees by an average of \$50, or 25%, for the surcharges applied to the majority of immigration benefit applications as stated in 63 FR 1775 (proposed rule January 12, 1998). The surcharge amount (as well as the costs of processing immigration benefit applications) was subsequently increased by inflation factors as per 66 FR 65811 (final rule December 21, 2001).

The following table displays the surcharges per application for asylum and refugee services, and for fee exemptions and fee waivers (adjusted for inflation).

TABLE 1.—SURCHARGES PER IMMIGRATION BENEFIT APPLICATION

Form No.	Description	Asylum/ refugee	Fee exemptions/ waivers	Total
I-17	Petition for Approval of School for Attendance by Nonimmigrant Student.	\$34.76	\$27.85	\$62.61
I-90	Application to Replace Permanent Resident Card	19.29	15.46	34.75

TABLE 1.—SURCHARGES PER IMMIGRATION BENEFIT APPLICATION—Continued

Form No.	Description	Asylum/ refugee	Fee exemptions/ waivers	Total
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	15.24	12.21	27.45
I-129	Petition for A Nonimmigrant Worker	18.81	15.08	33.89
I-129F	Petition for Alien Fiance(e)	16.38	13.12	29.50
I-130	Petition for Alien Relative	19.11	15.32	34.43
I-131	Application for Travel Document	16.50	13.22	29.72
I-140	Immigrant Petition for Alien Worker	19.88	15.92	35.80
I-191	Application for Permission to Return to an Unrelinquished Domicile	29.45	23.59	53.04
I-192	Application for Advance Permission to Enter as a Nonimmigrant	29.45	23.59	53.04
I-193	Application for Waiver of Passport and/or Visa	29.45	23.59	53.04
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	29.45	23.59	53.04
I-485	Application to Register Permanent Residence or to Adjust Status	38.53	30.88	69.41
I-526	Immigrant Petition by Alien Entrepreneur	60.85	48.75	109.60
I-539	Application to Extend/Change Nonimmigrant Status	20.94	16.77	37.71
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	70.79	56.72	127.51
I-601	Application for Waiver of Grounds of Excludability	29.45	23.59	53.04
I-612	Application for Waiver of the Foreign Residence Requirement	29.45	23.59	53.04
I-751	Petition to Remove the Conditions on Residence	22.01	17.64	39.65
I-765	Application for Employment Authorization	17.92	14.36	32.28
I-817	Application for Family Unity Benefits	20.92	16.76	37.68
I-824	Application for Action on an Approved Application or Petition	20.65	16.54	37.19
I-829	Petition by Entrepreneur to Remove Conditions	60.69	48.63	109.32
N-400	Application for Naturalization	39.77	31.87	71.64
N-565	Application for Replacement Naturalization Citizenship Document	23.55	18.87	42.42
N-600	Application for Certification of Citizenship	28.32	22.69	51.01
N-643	Application for Certificate of Citizenship in Behalf of an Adopted Child.	22.06	17.67	39.73

The following table displays the new immigration benefit application fees, minus the surcharge (rounded to the nearest \$1.00).

TABLE 2.—CURRENT VERSUS NEW IMMIGRATION BENEFIT APPLICATION FEES

Form No.	Description	New fee	Current fee	Change
I-17	Petition for Approval of School Attendance by Nonimmigrant Student.	\$517	\$580	(\$63)
I-90	Application to Replace Permanent Resident Card	95	130	(35)
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	73	100	(27)
I-129	Petition for A Nonimmigrant Worker	96	130	(34)
I-129F	Petition for Alien Fiance(e)	81	110	(29)
I-130	Petition for Alien Relative	96	130	(34)
I-131	Application for Travel Document	80	110	(30)
I-140	Immigrant Petition for Alien Worker	99	135	(36)
I-191	Application for Permission to Return to an Unrelinquished Domicile	142	195	(53)
I-192	Application for Advance Permission to Enter as a Nonimmigrant	142	195	(53)
I-193	Application for Waiver of Passport and/or Visa	142	195	(53)
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	142	195	(53)
I-485	Application to Register Permanent Residence or to Adjust Status	186	255	(69)
I-526	Immigrant Petition by Alien Entrepreneur	290	400	(110)
I-539	Application to Extend/Change Nonimmigrant Status	102	140	(38)
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	332	460	(128)
I-601	Application for Waiver of Grounds of Excludability	142	195	(53)
I-612	Application for Waiver of the Foreign Residence Requirement	142	195	(53)
I-751	Petition to Remove the Conditions on Residence	105	145	(40)
I-765	Application for Employment Authorization	88	120	(32)
I-817	Application for Family Unity Benefits	102	140	(38)
I-824	Application for Action on an Approved Application or Petition	103	140	(37)
I-829	Petition by Entrepreneur to Remove Conditions	286	395	(109)
N-400	Application for Naturalization	188	260	(72)
N-565	Application for Replacement Naturalization Citizenship Document	113	155	(42)
N-600	Application for Certification of Citizenship	134	185	(51)
N-643	Application for Certificate of Citizenship in Behalf of an Adopted Child.	105	145	(40)

What Is the Impact of section 457 of the Homeland Security Act on Current Programs?

The Service recognizes that this statutory amendment has the effect of terminating the existing source of funding for the asylum and refugee programs and, accordingly, will impair the Service's ability to adjudicate applications for these programs. This amendment also terminates the existing source of funding for the adjudication of other applications for which the Service has granted a fee waiver under the relevant standards, thereby eliminating the ability of the Service to grant fee waivers and exemptions. However, the Service has no choice in taking this action to revise the current fee schedule because Congress has mandated that result, effective January 24, 2003.

Good Cause Exception

This interim rule is effective on January 24, 2003, although the Service invites post promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists to adopt this rule without the prior notice and comment period and delayed effective date ordinarily required by 5 U.S.C. 553(b) and (d), since section 457 of the Homeland Security Act of 2002, Public Law 107-296 takes effect on January 24, 2003.

Regulatory Flexibility Act

The Acting Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

Although the Service acknowledges that a number of small entities, particularly those filing business-related applications and petitions, such as Form I-140, Immigrant Petition for Alien Worker; Form I-526, Immigrant Petition by Alien Entrepreneur; and Form I-829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule, the rule will have a positive impact since the Service will be reducing the costs of petitions and applications.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

The Service has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that the Service has no alternative other than to eliminate the surcharge in order to comply with section 457 of Public Law 107-296.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that the fees for application and petition forms identified in this interim rule be reduced to comply with section 457 of Public Law 107-296. Since a reduction of these fees will reduce the cost burden on the public the Service has submitted

the required Paperwork Reduction Change Worksheet (OMB-83C) to the Office of Management and Budget (OMB) reflecting the new fees and cost burdens on the public, and OMB has approved the changes.

To ensure that the public is fully aware of these changes the new fees will be highlighted on the Services Web site at: <http://www.ins.usdoj.gov>.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for the following forms, to read as follows:

§ 103.7 Fees.

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Form I-17. For filing a petition for school approval or recertification—\$517 plus \$350 per additional campus listed on Form I-17B.

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Form I-90. For filing an application for a Permanent Resident Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—\$95.

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Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing (Form I-95), in lieu of one lost, mutilated, or destroyed—\$73.

Form I-129. For filing a petition for a nonimmigrant worker, a base fee of \$96. For filing an H-1B petition a base fee of \$96 plus an additional \$1,000 fee in a single remittance of \$1,096. The remittance may be in the form of one or two checks (one in the amount of \$1,000 and the other in the amount of \$96). Payment of this additional \$1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional \$1,000 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional \$1,000 fee also does not apply to certain filings by any

employer as provided in § 214.2(h)(19)(v) of this chapter.

Form I-129F. For filing a petition to classify nonimmigrant as fiancée or fiancé under section 214(d) of the Act—\$81.

Form I-130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—\$96.

Form I-131. For filing an application for travel documents—\$80.

Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—\$99.

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Form I-191. For filing applications for discretionary relief under section 212(c) of the Act—\$142.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—\$142.

Form I-193. For filing an application for waiver of passport and/or visa—\$142.

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Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—\$142.

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Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$186 for an applicant 14 years of age or older; \$160 for an applicant under the age of 14 years;

no fee for an applicant filing as a refugee under section 209(a) of the Act.

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Form I-526. For filing a petition for an alien entrepreneur—\$290.

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Form I-539. For filing an application to extend or change nonimmigrant status—\$102.

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Form I-600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$332.

Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$332.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—\$142.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—\$142.

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Form I-751. For filing a petition to remove the conditions on residence, based on marriage—\$105.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$88.

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Form I-817. For filing an application for voluntary departure under the Family Unity Program—\$102.

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Form I-824. For filing for action on an approved application or petition—\$103.

Form I-829. For filing a petition by entrepreneur to remove conditions—\$286.

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Form N-400. For filing an application for naturalization—\$188.

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Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—\$113.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—\$134.

Form N-643. For filing an application for a certificate of citizenship on behalf of an adopted child—\$105.

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Dated: January 23, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03-1853 Filed 1-23-03; 11:21 am]

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