



March 13, 2023

By Electronic Submission to Regulations.Gov

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Ur M. Jaddou
Director, USCIS
U.S. Department of Homeland Security
Camp Springs, MD 20746

Re: DHS Docket No. USCIS 2021-0010, RIN 1615-AC68
U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain
Other Immigration Benefit Request Requirements

Dear Secretary Mayorkas and Director Jaddou:

TechServe Alliance ("TechServe") submits these comments in response to RIN 1615-AC68 concerning the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) Fee Schedule and Changes to Certain other Immigration Benefit Request Requirements ("2023 Proposed Fee Rule.")

The 2023 Proposed Fee Rule would impact various USCIS-facilitated immigration services, from naturalization and DACA to genealogy documents to nonimmigrant employment H-1B visa programs. Our comments are limited to those provisions increasing H-1B visa program fees and the resulting disproportional impact on IT and engineering staffing firms.

TechServe Alliance is the national trade association representing IT and engineering staffing firms dedicated to advancing excellence and ethics. TechServe represents hundreds of companies and serves as the industry's voice before policymakers and the national and trade press. Our members are U.S.-based businesses providing just-in-time talent that builds critical systems and infrastructure for America's corporations, government, and other organizations. These companies include IT and engineering staffing firms, which supply clients with on-site consultants to support their IT and engineering projects, and IT solutions firms, which take on client projects and deliver a complete solution. Approximately 84% of our members generate less than \$30 million in annual revenue and qualify as a "small business" under the most recent Small Business Administration (SBA) guidelines.

TechServe's advocacy focuses on increasing the supply of domestic IT talent, including support for STEM education. We are pleased that Congress passed and the President signed the bipartisan CHIPS and Science Act which provides long-term incentives and funding for STEM fields. However, the near-term worker shortage for U.S. technology-related jobs continues unabated. As of Q4 2022, the unemployment rate for IT was 2.1%, and 2.2% for engineering positions. At any given time, there are hundreds of thousands of job openings in IT occupations.

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Our country continues to experience a severe shortage of technical talent, and some of our members rely on H-1B IT and engineering professionals to meet their clients' needs. For example, a project may require a highly skilled, in-demand Integration Architect with expertise in multiple programming languages (Java, C#, Ruby, XML, JavaScript, Perl) and various integration/messaging tools (MuleSoft, Tibco). While the typical IT staffing firm's workforce may be overwhelmingly composed of U.S. citizens and permanent residents, access to H-1Bs with high-demand skill sets is critical to assembling the team to ensure the timely completion of client projects *in the U.S.*

Comments on the Proposed 2023 Fee Rule: H-1B Visa Fees

H-1B Visa Electronic Registration Fee

In 2019, USCIS implemented an electronic system to allow petitioners to pre-register prospective H-1B visa beneficiaries for the annual cap lottery. USCIS initially implemented a \$10/registration fee to cover partial costs while promising to reevaluate program effectiveness and costs.

The 2023 Proposed Fee Rule sets the fee at \$215, a 2050% increase. Justifying the increase, DHS explains that USCIS lacks information on the direct cost of H-1B registration but estimated the indirect costs of the H-1B registration program using the same methods the agency uses to calculate other fees.¹ In this case, DHS based the fee on the costs to (1) inform the public; and (2) management and oversight. If this fee is implemented, DHS promises that USCIS will "gather data on the costs and burdens of administering the registration process in its next biennial fee review to determine whether a fee adjustment is necessary to ensure full cost recovery."²

While we understand some fee increases may be in order, an increase of greater than 2000% is excessive. We urge DHS to implement a more moderate increase directly tied to its *actual* costs.

TechServe Opposes the New \$600 Asylum Fee for I-129 and I-140 Submissions

The 2020 Proposed Fee Rule, enjoined by a federal court, included a \$50 fee for asylum seekers. DHS acknowledges asylum seekers' lack of resources and removes that fee from the Proposed 2023 Fee Rule.³ Instead, DHS seeks to shift the cost of the asylum program to employers filing H-1B visa petitions based solely on their perceived ability to pay.

The 2023 Proposed Fee Rule confirms that "[t]he proposed \$600 Asylum Program Fee would apply to all fee-paying receipts for Forms I-129, I-129CW, and I-140. For example, it would apply to all initial petitions, changes of status, and extensions of stay that use Form I-129." The NPRM further states that "DHS acknowledges that the scope of the proposed fee increases in this rule is significant. DHS proposes this cost-shifting approach with the

¹ 88 FR 500-501 (January 4, 2023). "The methodology for estimating the cost provides results that are similar to the USCIS Immigrant Fee, which was established as part of the FY 2010/2011 fee rule." See 75 FR 58979.

² 88 FR 501.

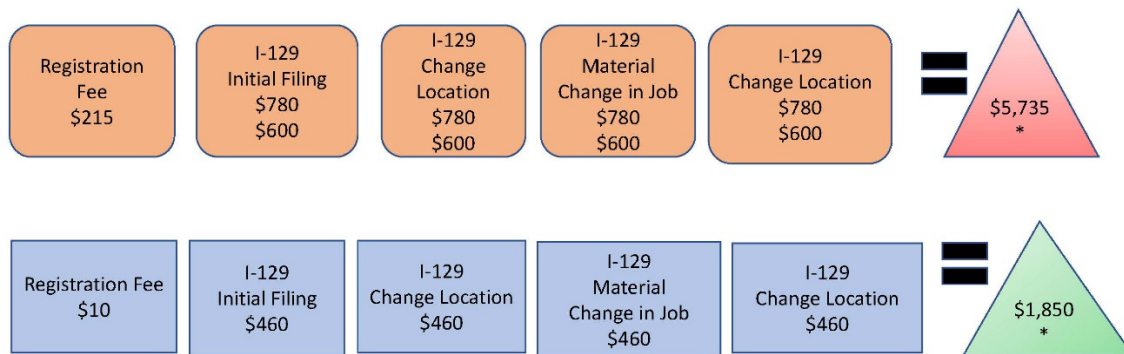
³ 88 FR 464.

Asylum Program Fee to place greater emphasis on the ability-to-pay principle for determining user fees.”⁴

Fees would skyrocket if employers must pay the \$600 fee for every I-129 and I-140 petition filed, including for a new petition, an extension, or a change of status.⁵ In total, fees (not including premium processing) for a new petition would increase from \$470 to a *minimum* of \$1595 (a 239% increase). If an employer files I-129s for extensions or status changes, the increase will amount to thousands of dollars.

These additional fees will significantly impact IT and engineering staffing firms, which file for status changes for a new job site more often than other employers. U.S.-based IT staffing firms place consultants on IT projects at different clients. IT projects are, by their nature, of limited duration. Given the role of IT and engineering staffing firms in shifting talent to where and when it is needed, the proposed fee increase for every change of status would have a significant adverse impact on these firms. The graphic below shows the dramatic increase in the cost between the current fee (blue) and the proposed fees (orange).

H-1B Visa Worker Short-Term Assignments, 4-6 Months



*Does not include legal fees or premium processing fees, if any. The proposed fee is orange; the current fee is blue.

Here are some examples of the potential impact on our members:

- A small business member firm with revenue under \$7 million, 40 U.S. employees, and five to six H-1B visa employees is concerned that the additional fees will price them out of the market for projects. While 85% of the firm’s employees are U.S. workers, they often rely on H-1B visa workers to fill essential talent gaps. If these workers are unavailable or the immigration fees are too high, the entire project may be sent offshore. Fee increases, particularly the \$600 asylum fee per

⁴ USCIS acknowledges no connection between the sponsoring employers and asylum seekers, and that the sponsoring employers receive no benefit. USCIS admits that the costs for free services have been shared across all other fee-paying requests; this is the first time USCIS has proposed transferring the costs of one program – asylum in this case – to another program, H-1B visas. 88 FR 464.

⁵ 88 FR 453.

I-129 filing, would negatively impact their business—the economy is precarious right now; customers are pulling back, and 2023 budgets have not been approved. If costs increase dramatically, small businesses may have to abandon the H-1B visa program for workers.

- Larger staffing firms, including one with 2,000 U.S. employees and about 160 H-1B visa workers, are also concerned about the significant fee increases. Narrow profit-margin contracts with end clients are often fixed-price and do not include provisions to pass on these increased fees to their clients. This company filed about 100 I-129 forms last year, translating to \$92,900 in additional costs resulting from a \$329 I-129 fee increase and an additional \$600 asylum program fee.

USCIS heard these same concerns during the January 11, 2023, listening session. One of the callers, law professor and immigration attorney Dagmar Butte said, “[Adding the \$600 supplemental fee to all I-129s will plac[e] a heavy burden, particularly on smaller businesses because we are required to file amended petitions where there are material changes in the job, including changes in the job site for H-1Bs. All those filings we have to do in order to be compliant. And if each time another \$600 gets tacked onto the fees already being paid, I think that's going to really hurt smaller employers in particular.”

In addition to the inherent unfairness of imposing substantial new fees on thousands of small businesses wholly unrelated to their activities or use of USCIS resources, other organizations, including the Small Business Administration, have questioned the legality or appropriateness of such fees. Accordingly, TechServe urges USCIS not to adopt a new \$600 asylum fee in the Final Rule. Alternatively, if DHS adopts such a fee, it should only apply to the initial I-129 or I-140 filings and not subsequent transfers, extensions, and changes of status which, again, would disproportionately impact IT and engineering staffing firms.

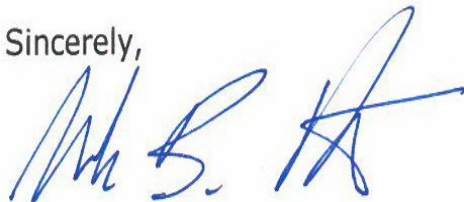
TechServe Opposes Increased Fees for I-129 Submissions

DHS is also proposing to increase the fee for Form I-129 petitions for H-1B visas by \$320, from \$460 to \$780. This amounts to a 70% increase. This significant increase would also apply to each I-129 petition filed, including the initial application, transfer, or extension. IT and engineering staffing firms would again be disproportionately impacted. Accordingly, TechServe opposes such a dramatic fee increase. Alternatively, if DHS were to adopt an increase, it should only apply to the initial filing of a petition.

Conclusion

TechServe Alliance urges DHS to withdraw its proposed asylum fee and implement more modest fee increases than set forth in its NPRM. Thank you for your consideration.

Sincerely,



Mark B. Roberts
Chief Executive Officer