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## Trow & Rahal Newsletter

January 2023

T&R wishes everyone a happy and healthy 2023! We are honored to be able to continue to serve you with your immigration matters. This month's newsletter includes information on the upcoming H-1B Cap season, January visa bulletin, proposed USCIS fee increases, new COVID-19 test requirement for travel from China, and expansion of interview waiver eligibility.

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### H-1B Cap Season is Here!

With the ringing in of the new year, we start the H-1B cap season. If employers have employees or potential hires that need to be placed into the H-1B lottery in March, please let us know as soon as possible. Employees for whom you should consider include are those who hold the following status:

- F-1 OPT or STEM OPT
- L-1 (if Indian national)
- TN (Canada or Mexico)
- H-1B1 (Chile or Singapore)

Anyone else can be considered who wishes to have a more secure visa status that can be extended beyond the H-1B maximum of 6 years if a timely green card application is started and filed.

The H-1B cap registrations are usually submitted at the end of March and the selection is done on or shortly before April 1<sup>st</sup>. Once selected in the H-1B lottery, petitioners have 90 days to submit the H-1B petition. For this reason, T&R strongly recommends doing an H-

1B assessment now with the registration in March so that any issues are addressed in advance if the case is selected in the lottery.

**Contact us early!** Please contact T&R as soon as possible if you wish to place an employee or potential hire in the H-1B cap. H-1B cap season for immigration attorneys is like the “tax season” for accountants and the earlier that you can provide information the better.

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## January Visa Bulletin

The big news of the January visa bulletin, released in December, shows retrogression in the EB-1 cutoff date for India and China to June 1, 2022 (Dates of Filing chart to be used as announced by the USCIS). This means that India and China nationals cannot file concurrent I-140 EB-1 petitions (Extraordinary Ability, Multinational Managers and Executives, Outstanding Researchers and Professors) and applications to adjust status. They will first need to file the immigrant visa petition (I-140) to obtain a priority date and then wait for that priority to become “current” before they can file their application to adjust status.

Here is the Dates of Filing chart for January:

Employment-Based	All Chargeability Areas Except Those Listed	China-Mainland Born	EI Salvador, Guatemala, Honduras	India	Mexico	Philippines
1st	C	01JUN22	C	01JUN22	C	C
2nd	01DEC22	08JUL19	01DEC22	01MAY12	01DEC22	01DEC22
3rd	C	01SEP18	C	01AUG12	C	C
Other Workers	08SEP22	01NOV15	08SEP22	01AUG22	08SEP22	08SEP22
4th	22JUL22	22JUL22	15APR18	22JUL22	15OCT20	22JUL22

There are no other changes in the January visa bulletin; all other cut off dates remain the same as December 2022.

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## Proposed USCIS Fee Increases

The Department of Homeland Security (DHS) published proposed increases to the filing

fees for immigration cases, especially employment-based petitions. The 60-day comment period ends on March 6, 2023. Unlike when the DHS proposed a rule to increase fees in 2020, which was enjoined by a federal court because proper administrative procedures were not met, the DHS is now following the required procedures. Therefore, it is likely that these fees will be implemented after review of the comments and the rule is finalized.

**What does the rule do?** It proposes to (1) increase significantly many immigration related filing fees, (2) increase the time for premium processing from 15 days to 15 business days, and (3) separate the fees for the I-485 application for adjustment of status to permanent resident and the accompanying applications for work and travel documents (right now they are bundled into one fee).

**What are the increases?** The entire rate proposal can be found in the Federal Register [Federal Register : U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements](#). Those most significant increases to the employment-based petitions include:

- **Form I-129:** Petitions filed on Form I-129 will have different fees:
  - **H-1B** – increase from \$460 to \$780.
  - **L-1** – increase from \$460 to \$1,385.
  - **O-1** – increase from \$460 to \$1,055.
- **H-1B registration fee:** increase from \$10 to \$215.
- **Form I-131:** Application for Travel Document - increase from \$575 to \$630
- **Form I-765:** Application for Employment Authorization – increase from \$460 to \$555 (online) or \$650 (paper).
- **Form I-485:** Application to Adjust Status – increase from \$1,140 to \$1,540 (over age 14).
- **Form I-526E:** EB-5 petition – increase from \$3,675 to \$11,160.

These are only a handful of the proposed fee increases and some are quite significant! The proposed increase in the H-1B registration fee for the H-1B cap will not affect this year's registration fee.

For applications that can be filed online, the proposed filing fees are less in some cases for filing online than if filed by paper (e.g. Form I-90 to replace or extend green card; I-765 employment authorization) to encourage online filings.

We will continue to monitor the proposed rule and advise if and when it becomes final.

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## New Covid-19 Test Requirement for Travel from China

As of today – January 5, 2023 – the U.S. Centers for Disease Control and Prevention (CDC) is implementing a new negative COVID-19 test requirement for passengers traveling to the United States from The People’s Republic of China (PRC) and the Special Administrative Regions (SAR) of Hong Kong and Macau. The negative COVID-19 test requirement applies to airline passengers age 2 and older regardless of nationality (including U.S. citizens and U.S. legal permanent residents) who have been in the PRC, Hong Kong or Macau, or transited through in the prior 10 days.

The CDC guidance issued on January 3rd indicates that the new requirement applies to airline passengers from the PRC, Hong Kong, or Macau, as well as travelers from certain designated foreign transit hubs (Incheon, Toronto and Vancouver international airports) who have been in China, Hong Kong or Macau within the last 10 days. These passengers must now provide a negative COVID-19 test taken within 2 days before departure or documentation of COVID-19 recovery before entering the United States. Documentation of recovery can be shown by either a positive COVID-19 test more than 10 days (but less than 91 days) before departure – or a positive test within 10 days before departure and evidence that COVID-19 symptoms began more than 10 days prior to departure.

Airlines will be required to confirm the negative COVID-19 test result or documentation of recovery for all passengers before they board; boarding will be denied if the correct documentation is not provided.

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## Expansion of Interview Waiver Eligibility

The U.S. Department of State (DOS) expands the eligibility for a waiver of a nonimmigrant visa interview at a U.S. consulate for certain nonimmigrant visas (F, H-1, J-2, H-3, H-4, J, L, M, O, P, and Q) through December 31, 2023. These visa applicants (and their spouses and children under age 21) applying to renew their visas can be eligible to have their in-person interview waived by the U.S. consulate if their prior visa in the same classification expired within the last 48 months. The U.S. consulate or embassy can also require an in-person interview on a case-by-case basis.

**Check the website of the U.S. consulate where you wish to apply:** We encourage visa applicants to check the website of the U.S. consulate for the procedures and requirements

for an interview waiver. Each U.S. consulate or embassy has different procedures for requesting an interview waiver. These change often and are regularly updated.

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