

Immigration Newsletter

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Most USCIS Application Government Filing Fees Increasing

United States Citizenship and Immigration Services (USCIS) announced it will be increasing government filing fees effective December 23, 2016. Applications must be postmarked before the effective date or USCIS will reject the application and request the new fee. Examples of increases are listed in the chart. USCIS increased fees most recently during November 2010. There will be a lower government filing fee available for low income applicants filing for naturalization.

Amount of Increase	Type of Application
\$195	Fiance Petition
\$115	Family or Spouse Petition
\$80	Residency Renewal
\$120	Worker Petition
\$135	Nonimmigrant Worker Petition
\$155	Residency Application
\$2,175	Entrepreneur Petition
\$345	Waivers for J-1, U and T, Other
\$45	Provisional Waiver
\$45	Naturalization
\$570	Certificate of Citizenship

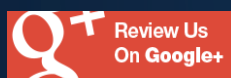
Some Individual Taxpayer Identification Numbers (ITIN) Will Need to Be Renewed

The Internal Revenue Service (IRS) announced recently that some Individual Taxpayer Identification Numbers (ITIN) will be expiring on January 1, 2017. There will be three types of numbers which will expire, these are:

- (1) ITINs with middle digits of 78 (e.g. XXX-78-XXXX),
- (2) ITINs with middle digits of 79 (e.g. XXX-79-XXXX), and,
- (3) ITINs which have not been used on a 2013, 2014, or 2015 tax return.

Taxpayers with expiring ITINs should file a new Form W-7 package. Failure to file a required renewal will result in the IRS refusing to pay the tax refund owed to the taxpayer. The IRS also advises that a taxpayer should NOT renew an ITIN if the taxpayer now has a valid social security number. Instead a request to the IRS to combine the records should be made to avoid the ITIN being used by anyone else and to give credit for prior tax filings. If you need assistance with a renewal or consolidation of an ITIN and Social Security Number, our office can assist with this process.

"At Barten Law, we understand that your immigration needs are important to you and your family. You deserve the highest quality representation and legal advice in all areas of immigration law."



TRUMP VOICES HIS PLAN FOR U.S. IMMIGRATION POLICY

On January 20, 2017 at noon, President-elect Donald Trump is scheduled to be sworn in. Barten Law P.C. provides this article with the information we have at this time. The details change daily and may change even after this newsletter is published. None of these proposals have been enacted. Some of Donald Trump's proposals are in his control and some would require Congress to pass bills which he could then sign into law, some require a Constitutional amendment with ratification by $\frac{3}{4}$ of state legislatures (38 of 50 States).

Trump's Plans to Build a Wall Along the Mexico-U.S. Border

According to President-Elect Trump's campaign website, the number one campaign promise was to build a wall between the U.S. and Mexico and have Mexico pay for it. Trump has said he will make Mexico pay in two different ways. According to Politifact.com, Trump says he will amend the financial regulations so no one would be able to send money outside the United States unless they show documentation of their legal status. Politifact.com also states almost \$24 billion a year is remitted to people from the United States, but it is unknown how much of it is sent by undocumented immigrants. Trump says the change would not go into effect if Mexico pays the United States a one-time payment of \$5 - \$10 billion, which is his estimate as to the cost of building a wall. Part of the expense will be to pay the U.S. landowners for the land on the border for easements and possibly eminent domain, environmental problems, engineering challenges and geological challenges of the border. CBP has also said that thick walls actually make their job of intercepting people more difficult which likely is why Trump has said part will be a fence instead of a wall.

Mexican President, Enrique Peña Nieto, told CNN Mexico would never agree to pay for the wall. Barten Law predicts Mexico will not agree to the payment, and if Trump were able to impose requirement of proving legal status, undocumented persons would merely have other persons with legal status send their remittances. On Trump's campaign website, he says a second way to raise the funds would be by increasing fees for visas and border crossing cards and by enforcing trade tariffs.

According to the U.S. government, <http://travel.trade.gov/view/m-2016-I-001/index.asp>, there were 4,207,346 arrivals by visa or border crossing cards from Mexico for 2016. To Barten Law, mathematically, in order to raise \$5 billion in one year, it would require a charge of approximately \$1,200 USD for each entry from Mexico into the U.S. Most visitor visas are valid for 10 years and cost \$160 USD, for multiple entries. Barten Law predicts the 1,000 mile wall will be at least partially built, then abandoned and U.S. taxpayers will pay most, if not all, of the expense.

Trump's Plan to Pause Employment Based Residency

President-elect Donald Trump has said that he would like to "pause" issuance of green cards to workers from abroad in order to "hire from the domestic pool of unemployed immigrant and native workers." This proposal does not appear to harm immigrants who are already in the U.S. since it is targeted at people abroad. Donald Trump's proposal ignores that this program already requires aggressive recruitment domestically including posting job orders through the state workforce agency before receiving approval to petition for a worker. Further, individual applicants can file in federal court through writs of mandamus to ask courts to demand processing of applications.

Trump's Plan for an Entry Exam for Majority- Muslim Country Entrants

According to the Washington Post, Trump's position on banning all Muslim refugees and asylum seekers has changed. Previously, in a speech given on August 15, in Youngstown, Ohio, he called for a temporary ban on all Muslims coming to the United States to block people "with hostile attitudes" toward the United States and those who believe "sharia law should supplant American law." He also stated he would have the Department of Homeland Security identify countries that export terrorism and stop processing visas for people coming to the United States from those countries. He mentioned Afghanistan and Iraq in particular. According to www.insidehighered.com, the Middle East sends more than 100,000 students to U.S. universities. Trump's new position is that Muslim refugees and asylum seekers should be required to take an "entry exam" and he will order Department of Homeland Security to develop a test to determine "if hate is in their hearts." The Washington Post believes Congress would need to approve of this measure, and it would take at least two years before final approval could be obtained, if at all. Barten Law predicts that any entry exam will be flawed and ineffective in determining "hate" in someone's heart. Many persons who have conspired to commit terrorist acts are home grown and disenfranchised.

Trump's Plan to Refuse to Issue Visas to People from Uncooperative Countries

President-elect Donald Trump has campaigned that once he is in office the U.S. will no longer issue visas to citizens from countries who hinder return of their citizens for deportation. According to the New York Times, countries often refuse return because of (1) lack of proper identification, (2) problems confirming citizenship, and (3) poor record-keeping. There are visa sanctions provided under the immigration law found at INA Sec. 243(d) which may be imposed. In a statement of Daniel H. Ragsdale, Deputy Director of ICE prepared for Congress on July 14, 2016, twenty-three countries were labeled as "recalcitrant and uncooperative" and "systematically refuse or delay" removal to their countries. Cuba refuses 35,000 and China has refused return of 1,900 individuals and both countries are not expected to be swayed by sanctions. We are unable to find a complete list published by ICE, however, from gleaning information across a number of articles, the list may be: (1) Afghanistan, (2) Algeria, (3) Cape Verde, (4) Cuba, (5) Eritrea, (6) the Gambia, (7) Ghana, (8) Guinea, (9) India, (10) Iran, (11) Iraq, (12) Ivory Coast, (13) Liberia, (14) Libya, (15) Mali, (16) Mauritania, (17) Niger, (18) Sierra Leone, (19) Senegal, (20) St. Lucia, (21) Somalia, (22) Sudan, (23) Zimbabwe, and (24) the People's Republic of China.

The Department of State reported at the House committee on July 14, 2016, that it has made progress with Iraq, Cape Verde, Somalia, Zimbabwe, and Guinea. In addition, ICE states it is monitoring 62 additional countries with "strained cooperation" but are not considered "recalcitrant." The New York Times reports Chinese students, over 300,000 alone during the 2014-15 academic year, would be most affected if this were implemented. Trump has not been consistent on this issue at one point tweeting, "When foreigners attend our great colleges and want to stay in the U.S., they should be thrown out of our country," according to www.insidehighered.com. Unlike most of Trump's proposals, visa sanctions can be imposed immediately upon notification to the new Secretary of State. The Secretary of State would then direct consular officers to stop issuing visas to both immigrants and non-immigrants. Barten Law advises that persons in the U.S. from those countries who wish to travel abroad and need to update their visa do so before President-Elect Donald Trump takes office on January 20, 2017. The full statement may be found at : <https://www.ice.gov/sites/default/files/documents/Speech/2016/ragsdale-160714.pdf>. The Report Congress reviewed from ICE is found at: <https://oversight.house.gov/wp-content/uploads/2016/07/ICE-Weekly-Departures-and-Detention-Report1.pdf>.

Trump's Plan for the Future of Deferred Action for Childhood Arrivals (DACA)

More than 750,000 young people have received DACA work permits under President Obama's DACA program. President-Elect Trump said during his campaign that he planned to end the Deferred Action for Childhood Arrivals (DACA) program. Trump has not said how or when he plans to end the program. It is unknown if this means he will (1) tell USCIS to stop accepting new applications, (2) stop accepting renewal applications, or (3) revoke DACA for the young people who already have DACA benefits. According to the American Immigration Lawyers Association (AILA), individuals seeking to renew their DACA benefits would not incur additional risks by submitting a renewal application other than the potential for loss of the filing fee. Individuals filing a new DACA application for the first time may be increasing their risk of enforcement because it requires disclosure of personal information. Each individual must decide whether to accept that risk before filing a new application. Further, processing for new DACA applications are taking more than 9 months of government processing, renewals are taking less time and possibly may be approved before the inauguration. There is a chance that an application fee may be wasted if DACA is cancelled before the application has been processed. Many DACA applicants filed their own applications or through notaries or legal service providers who often did not screen for all immigration options. For some DACA recipients, circumstances have changed and other options are now available. Barten Law advises DACA recipients to meet with a qualified immigration attorney for further screening of immigration options. Ultimately, Barten Law cannot advise whether or not to file a new DACA application. Each individual must decide if they can tolerate the risk. As of the time this article was written, the senate wants to pass legislation to assist DACA recipients.

Trump's Plan to Cancel Citizenship for People Born on U.S. Soil if their Parents Are Not Documented

Trump has stated previously he did not believe people born to undocumented parents in the U.S. are citizens despite the 14th Amendment to the Constitution, which was ratified in 1868 after the Civil War to end slaves from being excluded from citizenship despite birth in the United States. It would require Congress to request an amendment to the Constitution as well as ratification by 38 of the 50 legislatures for this to occur. This does not mean that the Republican controlled Congress won't attempt to pass an amendment or legislation attempting to limit citizenship or groups bringing court cases to limit citizenship to the Courts, which is the hope of the National Review article, saying that "unfortunately" birthright citizenship is "the current understanding of the 14th Amendment."

Other than voluntarily renouncing citizenship under oath plus having citizenship in another country, there is no legal way for the U.S. government to cancel someone's citizenship by birth. For naturalized citizens, revocation of citizenship is extremely rare and requires proof the person intentionally provided fraudulent information. Claims that parents of U.S. citizens can immigrate do not realize U.S. citizens must be at least age 21 to sponsor a parent for residency.

Plans to Criminally Charge, Deport, and Track Visa Overstays

Trump has called for “enhanced penalties for overstaying a visa” and has stated that deporting people who have overstayed their visas will be a top priority. Trump campaigned that he plans to subject people who overstay their visa with criminal jail and fines. It is a criminal misdemeanor with a maximum penalty to those who illegally enter the U.S., not for those that enter on a visa. Currently, there is no criminal offense for overstaying a visa, only civil penalties such as deportation and bars to return. Trump could not easily impose criminal penalties on visa overstays. It would require Congress passing legislation.

In addition, Trump says he will implement biometric tracking for entries and exits on visas which was passed into law in 1996. The U.S. has yet to determine how the estimated 4-5 million people who have overstayed their visa would be found en masse. The U.S. diligently tracks entries at the airports but less so at the land ports. It does not track exits well, so it is unknown who is still here and who has left. According to a 2015 article from The Atlantic, “Why the U.S. Still Can’t Track Visitors Who Overstay Their Visas,” “\$600 million has been spent on failed projects, there is still no entry-exit system.” The most difficult part is the significant slow-down in traffic for vehicle crossing at the Canada and Mexico borders. DHS Secretary Jeh Johnson promised Congress that “aspects” of the exit tracking will be implemented in 2018. It is likely Trump will take credit for implementing. In 2015, over 527,000 people overstayed their visa. Barten Law predicts because of the sheer number of entries and exits and the complications of the system, it is very unlikely the tracking system will be fully implemented while Trump is in office.

Trump’s Plans to Deport 2 Million to 3 Million Undocumented Immigrants with Criminal Arrests

President-Elect Trump claimed there are 2 to 3 million undocumented immigrants with criminal convictions that he will push for deportation. According to Politifact.com, this number is half-true. Immigration Customs Enforcement (“ICE”) estimated there are approximately 820,000 undocumented persons with criminal convictions. However, ICE estimates there are approximately 1,080,000 legal immigrants with criminal convictions which potentially make them deportable and subject to immigration court proceedings. By statute, there are two main legal ways to deport or remove people from the United States. At air, land, and sea port borders, Customs and Border Protection (“CBP”) Agents are typically able to expedite deportation or grant voluntary return. It is Barten Law’s prediction that voluntary returns will no longer be offered, only expedited removal, and this would be very easy for CBP to implement.

For the people inside the United States, Immigration Customs Enforcement (“ICE”) Agents may remove previously deported immigrants without legal process or turn them over for criminal prosecution before removing the person. ICE agents may also expedite deportation in the event the immigrant has an aggravated felony conviction or if the ICE agent can convince the immigrant to give up their right to an immigration court hearing. Legal and undocumented immigrants without prior deportation orders who already live in the U.S. have the right to request full immigration court proceedings which currently takes an average of 2 ½ years to complete. Trump’s campaign has promised to hire three times as many ICE agents. No mention has been made of hiring more prosecutors or immigration judges backlogging the system further. According to Ice.gov, ICE currently has more than 20,000 employees and a budget of \$6 billion. It will require Congressional approval to hire 5,000 more ICE Agents plus the thousands more support personnel. According to NBC.com, “even if Congress did agree to bankroll a new Trump deportation force, staffing up and training new agents could take months. ICE notoriously has one of the highest employment turnover rates in the federal government,” and “ranks last in employment satisfaction rankings.” Barten Law predicts that immigration court cases will be backlogged further. Persons detained in jail at taxpayer’s expense will vastly increase. The payroll for hiring additional ICE Agents, prosecutors, and immigration judges will likely not be fully funded.

In addition, according to a Fox.News.com interview of Kris Kobach, an advisor to Trump, anyone arrested will be deported. ICE will no longer wait until a conviction is obtained before deporting the person. It is Barten Law’s prediction, if this were to happen, many persons arrested would never face the charges brought against them. Eventually, the charges may be dismissed for want of prosecution or it will leave outstanding arrest warrants.

E-verify and the National Identity Card Mandate

Currently employers may use form I-9 to collect the documents evidencing the right to work in the U.S. through a paper form or by electronic verification. The electronic verification program is called E-verify and is required in a few states. Trump would like to apply the electronic verification program nationally. The CATO Institute argues that the E-verify system harms U.S. citizens who are sometimes delayed a significant period of time waiting for approval in order to begin work. The CATO Institute states that “mandating E-verify would force every American to ask the government for permission to work.” Further, the CATO Institute is concerned this will lead to a push for a National Identity Card, which it opposes.

Trump’s Plan to Increase the Prevailing Wage for H-1B Work Visas and New Recruitment

Currently, employers hiring for entry level jobs for H-1B visas are required to pay the prevailing wage as determined by the Department of Labor. There are four levels of prevailing wage for each job title, with the lowest wage for an entry level job and the second lowest wage for a position that requires some experience. Trump has called for these employers to be required to pay the prevailing wage at the level of an employee at either of the two highest wages, which the Department of Labor assigns to jobs with five or more years of experience when hiring for H-1B employees. In addition, employers would be required to prove they recruited from the local unemployment office first before filing the H-1B petition with USCIS. Both of these requirements would create dramatically greater hurdles for employers who rely on H-1B workers. Barten Law predicts that employers with deep pockets such as Google, Facebook, and Microsoft will continue to dominate the H-1B program. Smaller employers desperate for one or two employees with unique skills will continue to be shut out of the program.

Trump’s Plan to Lower Caps on Immigration

Trump is calling for a commission to roll back the amount of legal immigration to “historic norms.” Since the number of persons who may immigrate and the categories to immigrate are set by statute, it would require Congress to pass new legislation to reduce the limits for most programs. Trump could demand additional background checks which could delay processing. Trump could also reduce the number of refugees approved for admission.

Trump’s Plan for Sanctuary Communities

President-Elect Trump campaigned that he would withdraw federal funding to sanctuary communities. The States do not have constitutional authority to pass or enforce immigration laws. The federal government is the only authority, the Congress passes bills, the President signs the bill into law, and the federal agencies under the President – ICE and CBP - implement the laws. There are dozens of sanctuary cities in the United States and more than 100 jurisdictions that have policies limiting compliance with U.S. Immigration Customs Enforcement. In sanctuary communities, the state and local officials no longer use their jails and budgets to implement the federal immigration laws. The federal government does not reimburse the state and local governments for the resources spent on jailing people for ICE. In sanctuary communities, if someone is arrested and taken to jail, once the local court releases the person, the jail will not hold them for extended days or weeks on ICE immigration detainers in order for ICE agents to pick them up. In some sanctuary cities, the local police authorities focus on the state and local criminal laws in determining whether to arrest and do not ask immigration status. No jurisdiction in Iowa limits itself to not asking about immigration status.

The U.S. government often refuses to reimburse counties for jailing persons on immigration detainers and with county budgets limited, many no longer will detain. The map of sanctuary policies may be found at: <http://cis.org/Sanctuary-Cities-Map>. Most of the sanctuary communities in Iowa are based upon whether the local jail will hold someone beyond the order for release by the local court, only if the request also includes an order from a Judge to hold the person longer. These counties are: Allamakee County, Benton County, Cass County, Clinton County, Delaware County, Dubuque County, Franklin County, Fremont County, Greene County, Ida County, Iowa County, Linn County, Jefferson County, Johnson County, Marion County, Monona County, Montgomery County, Polk County, Pottawattamie County, Sioux County, Story County, Wapello County, Winneshiek County. Barten Law predicts a significant increase in federal costs, funded by taxpayers, to house people held on detainers.



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Visa and Immigration Services

- » Family-sponsored Immigration
- » Citizenship/Naturalization
- » Special Immigrant Juveniles
- » Permanent Employment EB-1 through EB-4
- » Removal/Deportation Defense
- » Asylum
- » Waivers
- » Fiancé Visa (Including LGBT)
- » H-1B Specialty Occupations
- » Consular Processing



Preference Categories: December 2016 Bulletin

The first priority date listed are cases which beneficiaries may file for adjustment of status or immigrant visa for residency December 1, 2016.

Final Action: Family-Sponsored

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01DEC09	01DEC09	01DEC09	15APR95	15SEP05
F2A	22FEB15	22FEB15	22FEB15	15FEB15	22FEB15
F2B	08MAY10	08MAY10	08MAY10	15FEB15	01MAR06
F3	15FEB05	15FEB05	15FEB05	08DEC94	15AUG94
F4	22DEC03	01OCT03	01APR03	15MAY97	22MAY93

Dates for Filing: Family-Sponsored

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JAN11	01JAN11	01JAN11	01JUN95	01MAY06
F2A	22NOV15	22NOV15	22NOV15	22NOV15	22NOV15
F2B	08FEB11	08FEB11	08FEB11	01JUN96	01FEB07
F3	22AUG05	22AUG05	22AUG05	01MAY95	01JAN95
F4	01JUN04	01JUL04	01MAY04	01DEC97	01APR94

Final Action: Employment-Based

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	22SEP12	C	01FEB08	C	C
3rd	01JUL16	01JUL13	01JUL16	15MAR05	01JUL16	01JUN11
Other Workers	01JUL16	01NOV05	01JUL16	15MAR05	01JUL16	01JUN11
4th	C	C	15JUL15	C	15JUL15	C
Certain Religious Workers	C	C	15JUL15	C	15JUL15	C
5th Non-Regional Center (C5 and T5)	C	22MAR14	C	C	C	C
5th Regional Center (I5 and R5)	C	22MAR14	C	C	C	C

Dates for Filing: Employment-Based

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01MAR13	22APR09	C	C
3rd	C	01MAY14	01 JUL 05	C	01SEP13
Other Workers	C	01AUG09	01JUL05	C	01SEP13
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Non-Regional Center (C5 and T5)	C	15JUN14	C	C	C
5th Regional Center (I5 and R5)	C	15JUN14	C	C	C