

March 13, 2023

Carol Cribbs
Deputy Chief Financial Officer
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Dear Ms. Cribbs:

Re: Business Roundtable Comments on “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” Department of Homeland Security Docket No. USCIS 2021-0010

INTRODUCTION

Business Roundtable appreciates the opportunity to respond to the Notice of Proposed Rulemaking (NPRM) that U.S. Citizenship and Immigration Services (USCIS) published on January 4, 2023, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.”

Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America’s leading companies who promote a thriving U.S. economy and expanded opportunity for all Americans through sound public policy. As major employers in every state, Business Roundtable CEOs lead companies that support 37 million American jobs and almost a quarter of U.S. GDP. Additionally, Business Roundtable members pay 37% higher annual wages than the national average.

BRT has long supported bipartisan reforms to fix the broken U.S. immigration system — from securing our border to a permanent solution for Dreamers to modernizing the legal immigration system.ⁱ We have also long advocated for greater efficiency in the legal immigration system and modernization of immigration processes.ⁱⁱ

We acknowledge that USCIS relies on user filing fees as its main source of funding, and that the agency must adjust its fee levels to cover operating expenses. Nevertheless, our members’ companies have serious concerns about the proposed fee increases, especially given current challenges and delays they continue to experience in case adjudications.

As related to the proposal, we encourage USCIS to:

- Consider the impact of fee increases on talent acquisition and U.S. competitiveness;
- Explain with sufficient detail how new fee levels are determined and will be adjusted in the future; and
- Establish measurable milestones to show how it is using the higher fees to reduce barriers to legal immigration.

With any increased fees, we encourage USCIS to make agency-wide improvements:

- Improve case processing and restore predictable adjudication timelines;
- Transition to electronic filing and eliminate unnecessary administrative burdens;
- Address the harms caused by the green card backlog; and
- Ensure consistency in adjudications and customer service.

Business Roundtable applauds the agency's willingness to solicit public feedback in its efforts to improve government efficiency. We encourage USCIS to consider all information provided through public comments before finalizing fees, and we stand ready to assist further modernization efforts. Details and recommendations follow.

COMMENTS ON THE PROPOSED FEE INCREASES

Business Roundtable shares the agency's goal of ensuring that USCIS has proper funding to operate and execute all aspects of its mission. We acknowledge that USCIS has not raised immigration filing fees since 2016, and that the extent of the proposed increases is due in part to this delay. Challenges associated with the COVID-19 pandemic exacerbated funding concerns, and USCIS experienced a funding crisis in 2020 that nearly forced the agency to furlough a large percentage of its workforce.ⁱⁱⁱ

Nevertheless, our members' companies have serious concerns about the scale and opaqueness of the proposed fee increases as detailed below.

USCIS should consider the impact of fee increases on talent acquisition and U.S. competitiveness.

Business Roundtable surveyed our members' companies to understand their perspectives on the proposed fee increases. Seventy-five percent of responding companies reported that if implemented as proposed, these fee increases would have an adverse effect on their talent acquisition strategy. We have concerns that the proposed fee increases could aggravate existing barriers to accessing needed talent, which, in turn, would hinder U.S. competitiveness.

USCIS should explain with sufficient detail how new fee levels are determined and will be adjusted in the future.

USCIS has proposed to significantly increase fees, but in many cases does not provide sufficient detail on how it has determined these new fee levels. For example, the NPRM would raise the fee to file an electronic H-1B registration by more than 2,000 percent but does not fully explain the reasons behind this dramatic increase. We ask that the agency provide as much transparency as possible into (1) how it calculates final fee amounts and justifies them based on workload and (2) the metrics the agency will use to review and adjust fees in the future.

Additionally, the agency stated in its Fiscal Year 2022 Progress Report that in tandem with its plan to issue this new fee rule, "[g]oing forward, USCIS will require continued congressional support to help *eliminate* its current net backlogs and meet its humanitarian mission."^{iv} We understand that final fee amounts may change depending on whether Congress provides any supplemental funding to the agency. For example, the proposed regulation imposes a \$600 Asylum Program Fee on each Form I-129 and I-140, but states that USCIS will "re-evaluate the Asylum Program Fee based on the status of the Asylum Processing [Interim Final Rule] and any funding appropriated for it when DHS develops its

final fee rule.”^v We support the agency’s humanitarian mission and understand that the shifting of cost burdens has always been a part of the agency’s funding model. We encourage USCIS to provide additional details regarding how it will determine the final fee amount and any future adjustments.

We also note that the NPRM does not appear to factor in the premium processing revenue stream into the proposed fee levels, even though USCIS is now authorized by statute to use premium processing funds for a broader range of purposes. We urge USCIS to ensure it is factoring in this revenue in its calculations in the final regulation.

USCIS should establish measurable milestones to show how it is using the higher fees to reduce barriers to legal immigration.

Business Roundtable also encourages USCIS to provide transparency into specific improvements the agency makes as a result of higher fees. We recognize that USCIS has made helpful improvements over the last two years and has set goals to reduce processing times and modernize its processes,^{vi} but our members’ companies need to see how the agency is holding itself accountable for meeting those goals.

To that end, we request that USCIS put in place specific, measurable milestones to show progress toward reducing barriers to legal immigration. For example, the agency could set benchmarks for when it will reach certain processing timelines or publish data showing how much a certain percentage fee increase reduces wait times in that classification.

RECOMMENDATIONS FOR BROADER, AGENCY-WIDE IMPROVEMENTS

Our concerns about the proposed fee increases are more acute when we consider the current challenges and delays our members’ companies continue to experience in case adjudications. We therefore ask that the agenda make broader, agency-wide improvements to improve immigration processes as detailed below.

USCIS should improve case processing and restore reasonable adjudication timelines.

Though USCIS has devoted considerable resources to working through its case backlogs and has been able to resume hiring officers, the agency itself acknowledges it has a long way to go. The processing backlogs and resulting delays continue to create unforeseen expenses for many of our members’ companies and arduous circumstances for employees and their families. Additionally, the inability of employers or foreign nationals to track the status of various immigration filings decreases visibility into the process and limits their capacity to strategize.

Today, the only way our members’ companies can have certainty about when a case will be decided is to request premium processing. They incur steep costs to avail themselves of this service, at \$2,500 per petition, a fee amount that USCIS increased in 2020 by over 70 percent. Employers’ willingness to pay this fee underscores just how important this tool is to provide predictability for business planning. We have welcomed the agency’s expansion of premium processing to additional categories and look forward to the continued rollout to more classifications, including the Form I-765, Application for Employment Authorization. The service is critical to ensuring consistency in timelines for case decisions and helping to minimize or eliminate work authorization gaps for employees.

Business Roundtable urges USCIS to preserve its existing policy of calculating premium processing timeframes in calendar days and not adopt the proposal to calculate the timeframes using business days. Lengthening the premium processing adjudication timeline could cause significant disruptions for many of our members' companies, particularly those that face tight project timelines. The effect of this change, again, would be to make it more difficult for American employers to access and retain key talent.

USCIS should transition to electronic filing and eliminate unnecessary administrative burdens.

We have long supported the agency's efforts to modernize immigration filing processes and are encouraged that USCIS has set a goal to transition to a fully electronic environment by fiscal year (FY) 2025.^{vii} Business Roundtable also continues to urge USCIS to implement a fully electronic Form I-9, employment eligibility verification process.^{viii}

Allowing employers to file petitions online in all employment-based classifications would significantly reduce costs for our members' companies and improve the efficiency of their human resources teams and legal providers. The current system that requires submission of paper applications through the mail is costly and burdensome for everyone involved in the process, including the government. Business Roundtable has welcomed the agency's introduction of new online filing options, including for H-1B electronic registrations, which has demonstrated that the agency can accept signatures and attestations digitally.^{ix} It is critical that USCIS meet its goal to transition to an electronic filing environment, and that immigration law firms be able to use that electronic system to submit filings on behalf of clients.

We understand these efforts take time and that USCIS has set a goal of transitioning by FY 2025. However, USCIS has authority to take actions today to reduce administrative burdens on employers. First, as we have recommended in the past, USCIS should update its policy guidance to allow the use of electronic signature technology to sign petitions that currently must be submitted by mail.^x We stand ready to work with the government on modernization efforts that protect the integrity of the process and ensure all employers comply with their legal obligations to make necessary attestations, and to verify the identity and work authorization of U.S. employees.

Second, the agency should issue guidance clarifying that a change in the geographic worksite or end-client of an H-1B worker does not constitute a "material change." A change in work location has no bearing on an employee's eligibility for H-1B status, and requiring an employer to file an amended petition in that situation imposes unnecessary costs and burdens on the U.S. government and on the petitioning employer.

Finally, USCIS should restart the Known Employer program, which would be a substantial step toward reducing unnecessary burdens and providing companies and their employees with the predictability they need to be able to plan in advance. The agency should have sufficient information and data to move forward with a permanent program, having already completed a pilot. This program would lower costs and increase efficiency for our members' companies' immigration programs, particularly for those that frequently file a large volume of petitions with USCIS. It is a waste of both company and government resources to require the submission and review of duplicative company information with each petition.

USCIS should address the harms caused by the green card backlog.

Business Roundtable applauds the agency's actions in recent years to maximize the issuance of available employment-based green cards and recognizes the monumental efforts by USCIS given the unprecedented number of available immigrant visas. We also welcomed the recent announcement from USCIS that will provide certainty to many dependent children of high-skilled visa holders that they will not "age out" of their status and be unable to obtain a green card along with their family members.^{xi}

Despite this progress, we would be remiss if we did not call attention to the fact that employees of our members' companies continue to face staggering wait times to obtain permanent residence in the United States. Business Roundtable will continue to work with Congress on structural reforms to reduce the backlog, including increasing annual limits on employment-based green cards. In the meantime, the agency should do more within its own authority to ease the harms caused by the green card backlog, including recapturing and issuing green card numbers that went unused in prior years due to agency delay. Rectifying agency error surrounding mismanagement of immigrant visa numbers is good government and legally permissible.

Employees stuck in the green card backlog must regularly apply to extend their nonimmigrant status in the U.S., which places unnecessary burdens on those individuals and their families, their employers, and the government. We encourage USCIS to continue to work toward reducing the backlog and pursue all options that would ease stress and increase flexibility for employees in the long green card process.

USCIS should ensure consistency in adjudications and customer service.

Business Roundtable welcomed the agency's restoration of its longstanding policy to issue consistent decisions in the absence of a material change in circumstances.^{xii} However, our members' companies continue to receive a high volume of Requests for Additional Evidence (RFEs), particularly in the L-1 classification. Some have even reported receiving so-called "boilerplate" RFEs, despite USCIS policy guidance intended to provide clarity to adjudicators. Denial rates remain low, indicating the agency may be issuing unnecessary RFEs, or at minimum, RFEs that are needlessly expansive when the petitioner has already established the beneficiary's eligibility. This suggests a need for additional training on the agency's policies to avoid this overly burdensome back-and-forth. We encourage USCIS to look into this issue and streamline its review processes wherever possible, while maintaining the integrity of adjudications.

With regard to customer service, Business Roundtable believes employers and their representatives should have the ability to connect with USCIS representatives via e-mail or phone and receive faster responses to inquiries, and that USCIS should be able to clarify or seek information via email from the petitioner or attorney of record. The current paper-based process by which the government obtains additional information or clarifies facts during adjudications is slow and burdensome. We continue to urge USCIS to enable adjudicators to gather information through a phone call, video teleconference or e-mail to improve communications and reduce processing times. We understand USCIS has successfully conducted certain naturalization interviews remotely using video conferencing technology, suggesting this methodology could be expanded to other settings.

CONCLUSION

Business Roundtable encourages USCIS to consider these and other comments it receives in formulating a final fee rule, and to take the recommended actions to improve services for petitioners and applicants.

We appreciate the opportunity to respond to this NPRM and look forward to continued communication with the agency on these and other issues surrounding the U.S. immigration system.

Please contact Dane Linn, Senior Vice President, Business Roundtable, at dlinn@brt.org if you have any questions.

ⁱ Business Roundtable has conducted extensive research and released in-depth reports that examine immigrants' contributions to the American economy; compare U.S. immigration policies to those of other countries; and propose practical solutions for fixing the country's immigration system. See Business Roundtable. (2017, September). *Economic effects of immigration policies: a 50-state analysis*. Retrieved from <https://s3.amazonaws.com/brt.org/archive/reports/BRT%20Economic%20Effects%20Immigration.pdf>. See also Business Roundtable. (2014, June). *Contributing to American growth: the economic case for immigration reform*. Retrieved from

https://s3.amazonaws.com/brt.org/archive/0_immigration_report/2014.06.06%20BRT%20Immigration%20Report.Contributing%20to%20American%20Growth.pdf. See also Business Roundtable. (2015, March). *State of immigration: how the United States stacks up in the global talent competition*. Retrieved from <https://s3.amazonaws.com/brt.org/BRT-immigrationreport-2.pdf>. See also Business Roundtable. (2013, April). *Taking action on immigration: realistic solutions for fixing a broken system*. Retrieved from https://s3.amazonaws.com/brt.org/archive/reports/20130405_Taking_Action_on_Immigration.pdf.

ⁱⁱ In our response to the agency's May 19 Request for Input, "Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services," we recommended multiple actions the agency should take to modernize immigration filing and employment eligibility verification processes. See Business Roundtable. (2021, May). *Comment Submitted by Business Roundtable*, Comment ID USCIS-2021-0004-6491. Retrieved from <https://www.regulations.gov/comment/USCIS-2021-0004-6491>.

ⁱⁱⁱ See U.S. Citizenship and Immigration Services. (2020, June). *Deputy Director for Policy Statement on USCIS' Fiscal Outlook*. Retrieved from <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook>; Sarah Pierce and Doris Meissner, Migration Policy Institute. (2020, June). *USCIS Budget Implosion Owes to Far More than the Pandemic*. Retrieved from <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>.

^{iv} U.S. Citizenship and Immigration Services. (2022, December). *Fiscal Year 2022 Progress Report*. Retrieved from https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf.

^v 88 FR 454.

^{vi} U.S. Citizenship and Immigration Services. (2022, March). *USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders*. Retrieved from <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work>.

^{vii} U.S. Citizenship and Immigration Services. (2021, September). *Section 4103 Plan Pursuant to the Emergency Stopgap USCIS Stabilization Act, Fiscal Year 2021 Report to Congress*. Retrieved from <https://www.uscis.gov/sites/default/files/document/reports/SIGNED-Section-4103-FY2021-Report-9-7-21.pdf>.

^{viii} Business Roundtable. *Comment Submitted by Business Roundtable*, Comment ID USCIS-2021-0022-0299. (2021, December). Retrieved from <https://www.regulations.gov/comment/USCIS-2021-0022-0299>; Business Roundtable. *Comment Submitted by Business Roundtable*, Comment ID ICEB-2021-0010-0500. (2022, October). Retrieved from <https://www.regulations.gov/comment/ICEB-2021-0010-0500>.

^{ix} Business Roundtable. (2021, May). *Comment Submitted by Business Roundtable*, Comment ID USCIS-2021-0004-6491. Retrieved from <https://www.regulations.gov/comment/USCIS-2021-0004-6491>.

^x Business Roundtable. (2021, May). *Comment Submitted by Business Roundtable*, Comment ID USCIS-2021-0004-6491. Retrieved from <https://www.regulations.gov/comment/USCIS-2021-0004-6491>.

^{xi} U.S. Citizenship and Immigration Services. *USCIS Updates Child Status Protection Act (CSPA) Age Calculation for Certain Adjustment of Status Applicants*. (2023, February). Retrieved from <https://www.uscis.gov/newsroom/alerts/uscis-updates-child-status-protection-act-cspa-age-calculation-for-certain-adjustment-of-status>.

^{xii} Business Roundtable. (2021, May). Comment Submitted by Business Roundtable, Comment ID USCIS-2021-0004-6491. Retrieved from <https://www.regulations.gov/comment/USCIS-2021-0004-6491>.