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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 299

Establishing Premium Processing Service for Employment-Based
Petitions and Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by establishing a Premium Processing Service for certain employment-based petitions and applications. If an entity pays the required fee for Premium Processing Service, the Service will process the petition or application within 15 calendar days. Premium Processing Service will provide American businesses with the opportunity to obtain faster processing of petitions and applications to meet their needs for foreign workers.

DATES: Effective date: This interim rule is effective June 1, 2001.
Comment date: Written comments must be submitted on or before July 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536, or via fax to (202) 305-0143. To ensure proper handling, please reference INS No. 2108-01 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Tracy Renaud, Adjudications Officer, Immigration Services Division, Immigration and Naturalization Service, 800 K Street, NW., 10th Floor, Washington, DC 20536, telephone (202) 305-8010.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority To Charge a Premium Processing Fee?

On December 21, 2000, the President signed the District of Columbia Appropriations Act, 2001, Public Law 106-553, 114 Stat. 2762 (2000).

The legislation added a new section 286(u) to the Immigration and Nationality Act (Act) that authorizes the Attorney General to collect a \$1,000 "premium processing" fee in addition to the regular filing fee that must be paid for the filing with the Service of certain petitions and applications. Under this new legislation, the authority to collect the premium processing fee applies only to employment-based petitions and applications.

Why Have Premium Processing Service?

The Premium Processing Service will enable the Service to improve its services to its business customers. These businesses must sometimes recruit and hire foreign workers to fill jobs in short time frames. The Service's current processing times for employment-based petitions and applications may not accommodate the needs of these businesses. The Premium Processing Service will give American businesses an option to pay for faster processing of petitions and applications for foreign workers.

What Is Premium Processing Service?

The District of Columbia Appropriations Act of 2001, Public Law 106-553, established "premium processing service" and the associated filing fee. It also specified that the Service was required to process applications under the Premium Processing Service in 15 calendar days. However, the legislation did not explicitly define what "premium processing service" means. Therefore, the Service is using its authority under section 103(a) of the Act to establish the details of this new service.

For example, if the applicant or petitioner pays for Premium Processing Service of a petition or application, the Service will issue an approval notice, notice of intent to deny, request for evidence, or notice of an investigation for fraud or misrepresentation within 15 calendar days. Premium Processing Service begins on the day the Service physically receives a petition or application and ends on the day the Service issues a notice or request. If the Service does not issue a notice or request within 15 calendar days, the Service will refund the fee automatically. However, when the Service fails to issue a notice or request within 15 calendar days and refunds the fee, the Service will still expeditiously process the case. If the application or petition in question was not eligible for Premium Processing Service, the fee will be refunded and the Service will continue to process the case normally.

What Are the Benefits of the Premium Processing Service?

The Premium Processing Service provides a benefit to all entities that file applications and petitions with the Service, and not just to those employers

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who are granted Premium Processing Service. The fee revenue generated by Premium Processing Service will be deposited into the Immigration Examinations Fee Account and used by the Service to hire additional adjudicators, contact representatives, and support personnel to provide service to all its customers. The fee will also be used for

infrastructure improvements.

What Is the Fee for the Premium Processing Service?

The fee for Premium Processing Service is \$1,000 in addition to the filing fee for the petition or application. As an example, H-2B cases are eligible for Premium Processing Service. There are two fees involved: The Form I-129, Petition for Nonimmigrant Worker, filing fee of \$110 and the \$1,000 Premium Processing fee.

Can the Fee for Premium Processing Service Be Waived?

The fee for Premium Processing Service is set by law and cannot be waived for any reason. However, the Service will refund the fee if it cannot complete its adjudication within 15 calendar days or if Premium Processing for a particular application or petition has been suspended.

The Service will continue its existing policy and procedures for requesting expeditious processing, without any additional fee, of petitions that are filed by petitioners designated as non-profit by the Internal Revenue Service and for petitions and applications that are not designated for Premium Processing Service.

How Do I Request Premium Processing Service?

You may request Premium Processing Service by filing a completed Form I-907, Request for Premium Processing Service, with the petition or application and paying the Premium Fee. You must pay the Premium Fee with a separate check or money order in the amount of \$1,000. This check is in addition to the check for the regular filing fee for the application or petition.

Can I Request Premium Processing Service for a Pending Petition or Application?

Yes, if you want to request Premium Processing Service, you can file Form I-907, Request for Premium Processing Service, with the Premium Fee, either at the same time as or after a petition or application. If you file Form I-907, after you file the related petition or application, the 15 calendar day processing period will begin when the Service receives the Form I-907.

Where Should I Mail My Request for Premium Processing?

If the Form I-907 is filed at the same time as the related petition, submit both forms to the designated Premium Processing address for the INS Service Center indicated on the petition. If the Form I-907 is filed after the related petition, submit it to the designated Premium Processing Address for the INS Service Center where the related petition was previously filed. When submitting a Form I-907 after a related petition, if possible, include a copy of the Form I-797, Notice of Action, showing receipt of the related petition.

A designated Premium Processing address for each of the four centers will be published on the instruction sheet to Form I-907. The designated address must be used to be sure the Premium Processing petition immediately enters the Premium Processing unit. If an alternate address is used, the 15 calendar day processing time will

begin when the Service initially identifies the case as a request for Premium Processing.

In addition, the employer must file the Premium Processing request at the INS Service Center designated for the specific application or petition. The Service has established special filing procedures for certain applications and petitions. For example, petitions involving the E-1 and E-2 nonimmigrant classifications must be filed at either the Texas or California Service Center. Therefore, the Premium Processing request must also be filed at these locations. A Form I-907 filed in connection with a petition involving the E-1 or E-2 nonimmigrant classification must be submitted to the designated Premium Processing address for the Texas or California Service Center, as appropriate.

What if I Have a Question About My Premium Processing petition?

Designated customer service e-mail addresses will be provided on the instruction sheet to Form I-907. The Service will also provide customers with designated phone numbers on receipt notices for the Form I-907. The phone numbers and e-mail addresses will be for use by Premium Processing customers only.

Can I Request Premium Processing Service for any Employment-Based Petition or Application?

The Service will designate certain employment-based petitions or applications for Premium Processing Service. Absent the Premium fee, the Service will process the petition or application under normal procedures. If you request Premium Processing Service for a petition or application that has not been designated by the Service, the Service will return the Premium Processing Fee and Form I-907 and continue normal processing of the petition or application.

How Will the Service Designate Petitions and Applications for Premium Processing Service?

The Service will designate petitions and applications for Premium Processing Service by publishing notices in the Federal Register. These notices will specify the form types and the visa classifications for which Premium Processing Service is available. The notices will also specify the dates on which the availability of Premium Processing Service begins and ends.

The Service is designating Form I-129, Petition for Nonimmigrant Worker, for Premium Processing Service beginning on June 1, 2001. Classifications within the Form I-129 eligible for the Premium Processing program as of June 1, 2001 are:

- (1) E-1 Treaty Trader;
- (2) E-2 Treaty Investor;
- (3) H-2A Agricultural Worker;
- (4) H-2B Temporary Worker;
- (5) H-3 Trainee;
- (6) L-1 Intracompany Transferree;
- (7) O-1 and O-2 Aliens of Extraordinary Ability or Achievement;
- (8) P-1, P-2, and P-3 Athletes and Entertainers; and
- (9) Q-1 International Cultural Exchange Aliens.

Classifications within the Form I-129 eligible for the Premium Processing program as of July 30, 2001 are:

- (1) H-1B Temporary Worker with Specialty Occupation;
- (2) R-1 Temporary Worker in Religious Occupations; and
- (3) TN NAFTA Professional.

These designations will continue until the Service publishes a notice amending or terminating them.

What if the Beneficiary of a Premium Processing Petition Has Dependent Family Members Who Are Seeking Derivative Benefits?

If the family members application(s) is filed concurrently with the Premium Processing petition, the Service will process the application(s) for the family members with the Premium Processing petition in 15 calendar days without requiring an additional \$1,000 fee for the family member's application(s). This

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applies only to dependents of the beneficiary of the Premium Processing petition.

How Will the Service Process Requests for Premium Processing Service of Petitions for Nonimmigrant Classifications Subject to Annual Numerical Limitations?

The Service is designating Premium Processing Service for certain nonimmigrant classifications that are subject to annual numerical limitations. Like petitions filed under regular procedures, petitions for which Premium Processing Service is requested will be processed in the order of receipt. Once the annual limitation for a nonimmigrant classification is met (e.g., when the Service has received a volume of H-1B petitions sufficient to reach the annual numerical limitation), INS will temporarily terminate Premium Processing Service for all pending petitions filed for entry in that fiscal year. The Service will then process all pending petitions (regular and premium together) in the order of receipt.

The Service believes that temporary termination of Premium Processing Service is the fairest method to balance the interest of expedited processing while reasonably preserving the ability of all individuals to access numerically limited immigration programs.

The Service will announce the temporary termination by publication of a notice in the Federal Register. When the Service announces temporary termination of Premium Processing Service for a particular nonimmigrant classification, it will return the Form I-907 and Premium Fee for all requests subject to the termination.

Explanation of Changes

What Changes Is the Service Making to the Regulations?

1. Changes in Sec. 103.2

In Sec. 103.2 the Service is adding a new paragraph (f) to describe

the process that the Service will use to process requests for Premium Processing Service.

2. Changes in Sec. 103.7

In Sec. 103.7, the Service is amending the regulations to add the fee for Premium Processing Service for certain employment-based petitions and applications. The fee is established at \$1,000 per petition or application requesting Premium Processing Service. Payment of the fee guarantees 15 calendar day processing of the petition or application. The fee for Premium Processing Service cannot be waived.

3. Changes in Sec. 299.1 and Sec. 299.5

In Sec. 299.1 and Sec. 299.5, the Service is amending the regulations to add the Form I-907, Request for Premium Processing Service, to the listing of forms. This form must be filed in conjunction with a petition or application to request Premium Processing Service.

Good Cause Exception

This interim rule is effective on June 1, 2001, although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period or the delay in the effective date ordinarily required by 5 U.S.C. 553(b)(3)(B) and (d)(3). Section 112 of Public Law 106-553 specifically authorizes the Attorney General to collect a fee for employment-based petitions and applications to be used to provide certain Premium Processing Services to business customers. By delaying implementation of this rule, these business customers will not be able to immediately benefit from the Premium Processing Services. Premium Processing Services allows for United States employers to fill key vacancies expeditiously allowing these employers to enhance their profitability and productivity. The benefit will result in certain businesses saving valuable time in hiring foreign-workers that can result in benefits to the entire country. A delay in the implementation of this statutory process would, therefore, be contrary to the public interest. Accordingly, the Service finds that it is impracticable and contrary to the public interest to publish this rule with prior notice and comment period or a delay in the effective date normally required under 5 U.S.C. 553.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although there is an additional cost for entities (both large and small) to obtain Premium Processing Service, the \$1,000 Premium Processing Fee is established by statute. The Premium Processing Service is voluntary and is intended to expedite requests by American businesses to hire foreign workers.

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 effect 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 Fairness 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, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review. It is estimated that petitioners and applicants will pay \$25 million in fiscal year 2001 for Premium Processing Services, and \$80 million in fiscal year 2002.

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

Paperwork Reduction Act

Since this interim rule takes effect on June 1, 2001, and the Form I-907, is

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required by the business community to request Premium Processing Services, the Service is using emergency review procedures for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995. The Service has requested that OMB waive the comment period for the emergency paperwork review. If granted, the emergency approval is only valid for 180 days.

A regular review of this information collection will also be undertaken. Written comments are encouraged and will be accepted until

July 31, 2001. Submit comments to: Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536, or via fax to (202) 305-0143. Your comments should address one or more of the following points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service in calculating the overall burden this requirement will place upon the public, estimates 80,000 applications for Premium Processing Services will be requested annually. The Service estimated that it will take approximately .25 hours to comply with the requirements of Form I-907. This amounts to 20,000 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Immigration and Naturalization Service, Policy Directives and Instructions Branch, 425 I Street, NW., Suite 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514-3048.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, 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, 552a; 8 U.S.C. 1101, 1103, 1201, 1252, 1252 note, 1252b, 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 103.2 is amended by adding a new paragraph (f) to read as follows:

Sec. 103.2 Applications, petitions, and other documents.

* * * * *

(f) Requests for Premium Processing Service.--(1) Filing information. A petitioner or applicant requesting Premium Processing Service shall submit Form I-907, with the appropriate fee to the Director of the service center having jurisdiction over the application or petition. Premium Processing Service guarantees 15 calendar day processing of certain employment-based petitions and applications. The 15 calendar day processing period begins when the Service receives Form I-907, with fee, at the designated address contained in the instructions to the form. The Service will refund the fee for Premium Processing Service, but continue to process the case, unless within 15 calendar days of receiving the application or petition and Form I-907, issues and serves on the petitioner or applicant an approval notice, a notice of intent to deny, a request for evidence, or opens an investigation relating to the application or petition for fraud or misrepresentation.

(2) Applications and petitions eligible for Premium Processing Service. The Service will designate and terminate petitions and applications as eligible for Premium Processing Service by publication of notices in the Federal Register.

(3) Fees for Premium Processing Services. The fee for Premium Processing Service may not be waived. The fee for Premium Processing Service is in addition to all other filing fees for the application or petition as provided for in Sec. 103.7. A separate remittance must be submitted for the filing fee for Form I-907. If the Service fails to process a petition or application with the 15 calendar day period, the fee for Premium Processing Services will be automatically refunded to the petitioner or applicant, and the Service will continue to process the application/petition on the premium processing track.

(4) Temporary termination of Premium Processing Service. The Service may designate as eligible for Premium Processing Service certain petitions or applications filed on behalf of nonimmigrant aliens that are subject to annual numerical limitations. In order to ensure equitable access to these limited visa programs, the Service may temporarily terminate the availability of Premium Processing Service for certain petitions or applications. The Service will announce a temporary termination by publication of a notice in the Federal Register. Upon temporary termination of a classification the petition or application will not be rejected. Instead, the petition or application will be moved into the pool of normal processing cases and only the Form I-907 will be rejected and the Fee for Form I-907 will be returned to the applicant or petitioner.

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3. Section 103.7 is amended by:

- a. Amending paragraph (b)(1) by adding the entry ``Form I-907" in proper alpha-numerical sequence to the listing of fees; and
- b. Revising paragraph (c)(1).

The addition and revision read as follows:

Sec. 103.7 Fees.

* * * * *

(b) * * * (1) * * *
* * * * *

Form I-907. For filing a request for Premium Processing Service for certain employment based applications and petitions-\$1,000. The fee for Premium Processing Service may not be waived.
* * * * *

(c)(1) Except as otherwise provided in this paragraph (c) and in Sec. 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to

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pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his discretion, grant the waiver of fee. Fees for "Passenger Travel Reports via Sea and Air" and for special statistical tabulations may not be waived. The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived. The payment of the additional \$500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived. The fee for Form I-907, Request for Premium Processing Services, may not be waived.

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Dated: May 24, 2001.
Kevin D. Rooney,
Acting Commissioner, Immigration and Naturalization Service.
[FR Doc. 01-13566 Filed 5-31-01; 8:45 am]
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