

United States Senate  
WASHINGTON, DC 20510

March 14, 2023

The Honorable Alejandro Mayorkas  
Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20016

The Honorable Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529

Dear Secretary Mayorkas and Director Jaddou,

On January 4, 2023, the Department of Homeland Security (DHS) proposed increasing application fees charged by U.S. Citizenship and Immigration Services (USCIS) for employment-based and other visas as a result of the agency's staffing shortages, longer processing times, and increased asylum claims.<sup>1</sup> We strongly support making sure our law enforcement agencies have the necessary resources to protect our borders. We are alarmed, however, that the fee increases will be particularly burdensome for small businesses relying on H-2A and H-2B nonimmigrant visas to meet their workforce needs. As you know, we are at a time when many in our country are suffering from a severe labor shortage and persistent inflation. It is irresponsible to so drastically increase the price to access these essential guest worker programs while doing nothing to increase their availability. As you draft a final rule, we urge you to reconsider the dramatic proposed H-2A and H-2B visa fee hikes and make sure that we are doing everything possible to support small businesses.

Employers currently pay a \$460 petition fee when applying for an H-2A or H-2B visa for a prospective guest worker. The Proposed Rule increases this to \$1,080 and \$1,090 for named H-2A and H-2B visa petitions, respectively. Additionally, employers would pay a new \$600 Asylum Program Fee for all petitions to support USCIS' screening and asylum processing work. When combined, employers would now pay \$1,680 and \$1,690 for each named H-2A and H-2B visa petition, respectively, amounting to an average increase of 266 percent. Even without the inclusion of the new Asylum Program Fee, the changes to the H-2A and H-2B petition fee still average a 135 percent increase, exceeding historical norms. By comparison, the two most recent changes increased fees for these categories by far more modest rates. In 2010, USCIS raised the H-2A and H-2B visa petition fees from \$320 to \$325, a 2 percent increase.<sup>2</sup> In 2016, USCIS

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<sup>1</sup> Department of Homeland Security, 88 FR 402 "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," Jan. 4, 2023, *available at* <https://www.federalregister.gov/documents/2023/01/04/2022-27066/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

<sup>2</sup> Department of Homeland Security, 75 FR 58961 "U.S. Citizenship and Immigration Services Fee Schedule," Sept. 24, 2010, *available at* <https://www.federalregister.gov/documents/2010/09/24/2010-23725/us-citizenship-and-immigration-services-fee-schedule>.

raised the H-2A and H-2B visa petition fees from \$325 to \$460, a 42 percent increase.<sup>3</sup> Even if businesses choose to request visas for unnamed guest workers – a new distinction created by USCIS – they would pay fees totaling between \$1,130 and \$1,180 for each H-2A and H-2B visa request, amounting to an average 150 percent increase.

Given the country’s severe labor shortage, we are concerned these proposed increases go too far for small businesses relying on H-2A and H-2B workers to operate at full capacity. According to Federal Reserve Chairman Jay Powell, the labor shortage is a key factor driving inflation: “the labor market continues to be out of balance. Labor demand substantially exceeds the supply of available workers, and the labor force participation rate has changed little from a year ago.”<sup>4</sup> These nonimmigrant visa programs are essential for combatting the persistent labor shortages. In our states and around the country, H-2A and H-2B guest workers give small businesses – such as landscapers, ski resorts, construction, forestry, agriculture, and hospitality – the ability to temporarily meet their dire labor demands. These programs are incredibly limited, though: there is a finite number of H-2B visas available at any given time, and businesses frequently learn that they will not have enough labor to support their operations in peak business seasons. This Proposed Rule increases fees substantially, but provides no additional security that businesses will in fact be able to staff their workforces. During a time of economic uncertainty, this is fundamentally irresponsible, and could result in adverse effects for consumers in the form of higher prices, declines in product or service availability or quality, and exacerbating inflation.

These drastic visa petition fee increases are also surprising given that USCIS proposes longer processing times, which runs contrary to the Proposed Rule’s stated goals. Although premium processing fees will remain unchanged at \$1,500 for H-2B petitions, USCIS proposes increasing the premium processing time from 15 calendar days to 15 business days. This will lead to a further delay in processing times, exacerbating the impact of the Department of Labor’s slow processing times. Regulations preclude employers from filing with the Department of Labor (DOL) any earlier than 90 days prior to start date. The fact that the majority of H-2B applications filed with USCIS request premium processing demonstrate the critical need for timely processing. Any delays in the process, even as little as 4 additional processing days, will have significant economic consequence for an H-2B employer. Further guidance should clarify what services will be improved in return for paying the premium processing fee and increased visa petition fees.

We understand that as a fee-funded agency, USCIS relies on fees to fund most of its important visa and asylum processing efforts. Under your proposed rule, H-1B petitions are not expected to see fee increases in the same manner as H-2A and H-2B petitions and we believe that one category of visas should not be isolated when USCIS is considering fee increases. Fundamentally, we are concerned that the proposed H-2A and H-2B fee increases are too large

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<sup>3</sup> Department of Homeland Security, 81 FR 73292 “U.S. Citizenship and Immigration Services Fee Schedule,” Oct. 24, 2016, available at <https://www.federalregister.gov/documents/2016/10/24/2016-25328/us-citizenship-and-immigration-services-fee-schedule>.

<sup>4</sup> Federal Reserve, “Transcript of Chair Powell’s Press Conference,” Feb. 1, 2023, available at <https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20230201.pdf>.

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for small businesses to bear during challenging economic times. We should be supporting them with every available policy lever, not pursuing policies that will hinder their growth.

As DHS and USCIS finalize this rule, we urge you to reconsider the implementation of these massive fee increases for programs that are so vital to our respective states and American small businesses. We look forward to continuing to work with you to develop bipartisan, commonsense solutions to better our immigration system and grow our economy.

Thank you for your prompt attention to this issue. We look forward to receiving your response.

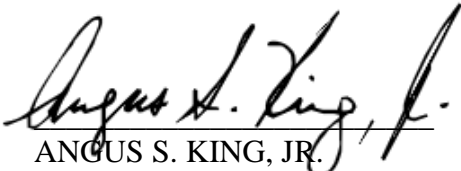
Sincerely,



JOE MANCHIN III  
United States Senator



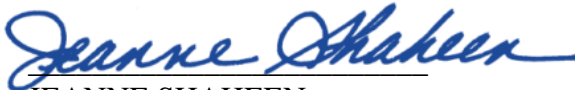
M. MICHAEL ROUNDS  
United States Senator



ANGUS S. KING, JR.  
United States Senator



MIKE CRAPO  
United States Senator




JEANNE SHAHEEN  
United States Senator



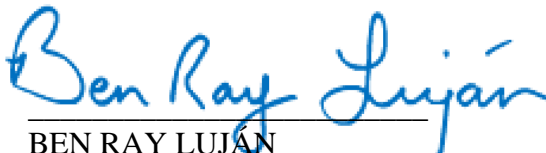
JAMES E. RISCH  
United States Senator



KYRSTEN SINEMA  
United States Senator



MARK KELLY  
United States Senator



BEN RAY LUJAN  
United States Senator



JOHN HICKENLOOPER  
United States Senator



**U.S. Citizenship  
and Immigration  
Services**

April 18, 2023

The Honorable Joe Manchin III  
United States Senate  
Washington, DC 20510

Dear Senator Manchin:

Thank you for your March 14, 2023 letter to the Department of Homeland Security (DHS). I am responding on behalf of the Department.

We appreciate your interest in our January 4, 2023 proposed fee rule. As you noted, fees were last successfully updated in 2016. The proposed fee rule would provide the revenue needed for the U.S. Citizenship and Immigration Service (USCIS) to fully recover the cost of all expenses and meet projected demand for services. Section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m), allows DHS to set “fees for providing adjudication and naturalization services . . . at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” The INA further provides that “[s]uch fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” DHS proposes this rule to address the projected deficits and unsustainable fiscal situation of USCIS that are explained in the proposed rule and in the supporting documentation in the docket.

Stated simply, the total fees received by USCIS need to cover the agency’s total operational costs. This means the fees for a particular form may include the cost of adjudicating that form plus an additional fixed percentage to cover the agency’s non-adjudication overhead expenses. As part of that overhead, filers who pay the full fee may cover the agency’s costs to adjudicate fee-exempt, fee-reduced, and fee-waived cases.

With respect to the difference in the proposed fee increase between H-1B and H-2A/H-2B petitions, the aforementioned fees take into account the complexity of the work, how many applications the agency receives, and how many USCIS employees are needed to carry out adjudications based on current filing trends. USCIS did not isolate H-2A or H-2B petitions for special increases; the proposed fees for these forms, as for H-1B petitions and other forms in the proposed rule, were calculated using activity-based costing and their respective adjudication costs.

USCIS’ fiscal year 2024 budget requests appropriated funding to support the processing of refugee and asylum applications. Without those appropriations, the costs of those programs

**The Honorable Joe Manchin III**

Page 2

will have to be funded by the fees that USCIS charges for other immigration benefit requests. USCIS greatly appreciates Congress' support of the International and Refugee Affairs Division in the fiscal year 2023 budget, which has enabled USCIS to better respond to events around the world. Likewise, USCIS is very appreciative of the \$275 million provided in Fiscal Year 2022 to assist with backlog reduction, including asylum backlogs, and to support USCIS' operations for the U.S. Refugee Admissions Program. USCIS also appreciates the \$193 million provided to support processing of benefits related to Afghan evacuees. As USCIS' humanitarian mission continues to grow, such Congressional support is crucial to ensuring we can carry out that mission without negatively impacting our other work or our fiscal sustainability.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a horizontal line extending to the right.

Ur M. Jaddou  
Director