

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 103**

[INS No. 2257-03]

RIN 1115-AG96

**Adjustment of Immigration Benefit Application Fees**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule adjusts the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers to comply with section 457 of the Homeland Security Act of 2002, Public Law 107-296. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account (IEFA) and used to recover the full cost of processing immigration benefit applications and associated administrative costs. Federal guidelines require the Immigration and Naturalization Service (Service or INS) to establish and collect fees to recover the full costs of processing immigration benefit applications.

**DATES:** *Effective date:* This rule is effective January 24, 2003.

*Comment date:* Written comments must be submitted on or before March 25, 2003.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS Number 2257-03 on your correspondence. You may also submit comments electronically at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, you must include INS No. 2257-03 in the subject box so that your comments can be properly routed to the appropriate office. Comments are available for

public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514-3410.

**SUPPLEMENTARY INFORMATION:****What Legal Authority Does the Service Have To Charge Fees?**

*A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991*

With reference to the fees for applications and petitions, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Public Law 100-459, sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization services. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101-515, sec. 210(d), 104 Stat. 2101, 2121 (November 5, 1990), Congress further provided that "fees for providing adjudication and naturalization services may be set 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. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." 8 U.S.C. 1356(m).

The House Conference Report to the bill, entitled "Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and

Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes," H.R. Conf. Rep. No. 104-378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states, "(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the \* \* \* Service and that the costs of these activities should be supported by the [IEFA]." *Id.*

In a final rule effective October 13, 1998, except the Form N-400, which took effect on January 15, 1999, the Service raised the majority of fees to recover the full costs of processing immigration benefit applications, and added a "surcharge" setting the fees at a level sufficient to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners.

**What Is the Impact of Section 457 of the Homeland Security Act on the Current Fee Structure?**

In section 457 of the Homeland Security Act of 2002, Congress provided that "Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services." The deletion of this language has the effect of repealing the statutory basis for surcharges. The Service is, therefore, required to reduce immigration benefit application fees by an average of \$50, or 25%, for the surcharges applied to the majority of immigration benefit applications as stated in 63 FR 1775 (proposed rule January 12, 1998). The surcharge amount (as well as the costs of processing immigration benefit applications) was subsequently increased by inflation factors as per 66 FR 65811 (final rule December 21, 2001).

The following table displays the surcharges per application for asylum and refugee services, and for fee exemptions and fee waivers (adjusted for inflation).

TABLE 1.—SURCHARGES PER IMMIGRATION BENEFIT APPLICATION

Form No.	Description	Asylum/ refugee	Fee exemptions/ waivers	Total
I-17 .....	Petition for Approval of School for Attendance by Nonimmigrant Student.	\$34.76	\$27.85	\$62.61
I-90 .....	Application to Replace Permanent Resident Card .....	19.29	15.46	34.75