

Global Immigration alert

June 2026

United States

Federal court vacates \$100,000 H-1B payment

Executive summary

On 8 June 2026, a US District Court vacated the requirement that employers submit a \$100,000 payment when filing a new H-1B petition. The court ruled that the policy, introduced through a presidential proclamation by President Donald Trump in September 2025, effectively imposed an unlawful tax without proper congressional authority.

Although the decision takes effect nationwide immediately, uncertainty remains as the administration is expected to file an appeal.

Background and analysis

In September 2025, President Trump issued a presidential proclamation requiring a \$100,000 payment for employers filing new H-1B petitions. Since it went into effect, less than 100 petitions have been filed with the payment. Three separate groups filed lawsuits against the proclamation, including a coalition of states that argued the proclamation exceeded the executive branch's authority and did not follow proper administrative processes.

Specifically, the states challenged the policy, arguing that:

- It exceeded executive authority under the Immigration and Nationality Act (INA)
- It violated the Administrative Procedure Act (APA)
- It effectively imposed an unauthorized tax, a power reserved for Congress

The court determined that the \$100,000 payment functions as a tax rather than a regulatory fee, and because Congress

did not delegate taxation authority to the president in this context, the policy was ruled unconstitutional. While the president has broad powers to restrict entry of foreign nationals under the INA, those powers do not extend to imposing taxes. The court emphasized that such authority must be clearly granted by Congress and cannot be inferred from general language about "restrictions" or "regulations."

Additionally, the court concluded that the agencies implementing the policy failed to follow the required notice-and-comment procedures making the proclamation procedurally invalid. The court also found that the government did not adequately assess the policy's broader impact, particularly on sectors such as education and healthcare, or consider alternative approaches.

What this means

While the decision means that US Citizenship and Immigration Services (USCIS) can no longer lawfully require payment of the \$100,000 as a prerequisite to H-1B petition approval, the agency has yet to provide official guidance following this latest ruling. The administration is also expected to appeal. If a higher court grants a stay in this case, then employers may again be required to pay the \$100,000 until the stay is lifted or the subsequently-filed appeal is dismissed.

Developments related to this proclamation remain fluid, particularly with respect to other ongoing legal challenges which are at various stages in different jurisdictions. Further, the original proclamation expires 21 September 2026,

unless extended by the president. It will be critical to monitor developments and consult with your EY Law LLP professional or Mehlman Jacobs LLP professional.

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