

Senate Judiciary Committee Passes Proposal to Provide H-1B Visa and Employment-Based Immigration Relief

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On October 20, as part of the budget reconciliation process, the Senate Judiciary Committee held a markup of a proposal to provide temporary relief from the H-1B visa blackout and the employment-based immigrant visa backlogs, in exchange for increased fees on some petitions. Although it was vehemently opposed by some Members of the Committee, the proposal ultimately passed out of Committee by a strong 14-2 vote. A number of amendments were defeated, including one by Senator Sessions (R-AL) to adopt the House Judiciary Committee's approach of levying a \$1,500 tax on L visas, and one by Senator Hatch (R-UT) to impose a 5% increase on all immigration fees. An amendment offered by Senator Feinstein (D-CA) to reduce the number of recaptured H-1B visas available annually (from the original proposal of 60,000 to 30,000) did pass by a 10-5 vote. The final package would:

1. Impose a new \$500 fee on immigrant visa petitions for the EB-1, EB-2, and EB-3 categories.
2. Recapture unused employment-based visas from prior years for immediate allocation of up to 90,000/year. (Estimates indicate there are only 90,000-100,000 unused numbers to be tapped.)
3. Exempt spouses and minor children from counting against the annual cap on employment-based immigrant visas. (Estimates are that this would lead to an annual increase of 80,000-90,000 employment-based immigrant visas.)
4. Allow individuals to apply for adjustment of status before an immigrant visa is deemed currently available. (Of course, approval could not occur until the visa number is available.)
5. Recapture approximately 300,000 unused H-1B numbers dating back to FY 1991. As a result of Senator Feinstein's amendment, 30,000 rather than 60,000 would be available annually. (In other words, effectively raising the cap from 65,000 to 95,000 for at least 10 years.)
6. Impose a new fee on the recaptured H-1B visas so that the fees on the original 65,000 H-1B allotment remain unchanged but the additional 30,000 available annually carry an additional \$500 fee.

7. Impose a new \$750 fee on L-1 visas. (This was part of Senator Feinstein's amendment and was necessary to offset the reduction in revenue resulting from the limitation on recaptured H-1B numbers from 60,000 to 30,000.)