LAW360™ Canada

Law360 Canada | 111 Gordon Baker Road, Suite 900 | Toronto, ON, M2H 3R1 Canada | www.law360.ca
Phone: (800) 668-6481 | customerservice@lexisnexis.ca

Managing increased U.S. immigration filing fees for cross-border companies

By **David J. Wilks**

David J. Wilks

Law360 Canada (September 3, 2024, 2:23 PM EDT) -- In April 2024, U.S. Citizenship and Immigration Services (USCIS) enacted dramatic increases to U.S. immigration filing fees, with many employment-based categories exceeding $1,000 in government fees per employee. For Canadian companies with cross-border workforces, such fees create a new burden to doing business in the United States.

However, these fees do not apply to every filing. In particular, these higher fees do not attach to border or consular temporary visa status filings where a Form I-129 is not required.

This means with careful planning, Canadian companies can potentially avail themselves of cost-effective options.

Ivan-balvan: ISTOCKPHOTO.COM

Border-filed TN

TN status, which allows the transfer of particular types of Canadian professionals (e.g. engineers, lawyers, nurses, dentists, etc.) to the United States under the United States-Mexico-Canada Agreement (USMCA), does not require an I-129 when filed directly at the U.S.-Canada border. As such, employers can avoid hefty filing fees by prioritizing TN status over other options. However, these savings only apply to border-filed cases. Cases filed within the U.S. require an I-129, therefore incurring the higher fees.

For non-Canadian employees, only Mexicans can avail themselves of the TN. In such cases, Mexican employees can apply at the consulate without needing to file an I-129.

Blanket L petitions

Canadians benefit from the ability to request L-1 intracompany transfer status directly at the U.S.-Canada border. The L-1 allows the transfer of managers, executives and specialized knowledge

employees with at least one year of service with the organization to a U.S. affiliate, parent, subsidiary or branch. When filing at the U.S.-Canada border, Canadians have the benefit of immediate adjudications. However, such filings must be made via Form I-129, thus incurring the new, substantially higher fees.

However, if a company qualifies for a "Blanket L," the company can instead file for L-1 status using Form I-129S, which does not require the new fees. Blanket L petitions are designed for multinational organizations that have been in business for at least a year, have three or more affiliates, branches, or subsidiaries and meet one of the following criteria:

- have obtained 10 L-1 petitions in the last year,
- have U.S. earnings of at least $25 million, or
- have a U.S. workforce of at least 1,000 employees.

Employers must qualify for the Blanket L program via a filing with USCIS. However, once approval is obtained, Canadians no longer need to present an I-129 at the border. Likewise, non-Canadian employees can benefit from direct filings at U.S. consulates, saving both time and expense.

Where possible, Canadians on the Blanket L should aim to be in the United States fewer than 180 days per year to retain intermittent status. This allows Canadians to make future Blanket L filings at the border. Spending more than 180 days per year in the United States requires U.S.-based extensions. Extensions in the United States filed via USCIS would require the I-129 and the additional filing fees. Non-Canadians are able to file at a U.S. consulate outside the United States, irrespective of the number of days in the United States.

Consular E-1 and E-2 registrations

Canadian-owned companies can obtain a five-year registration to send Canadian managers, executives and special skills employees to the United States in either E-1 or E-2 status. E-1 is available to Canadian companies that have the majority of their non-Canadian sales or trade with the United States. E-2 is available for Canadian companies that have invested in the United States (usually with an investment over US$100,000). When an E-1 or E-2 is successfully obtained at the U.S. Consulate in Toronto, the Consulate issues a five-year registration allowing an expedited process for future employee applications.

When filed at a consulate, E-1 and E-2 filings do not require a Form I-129 and, therefore, do not incur additional fees.

Thus, while the increased filing fees are substantially higher, with careful planning, cross-border companies can continue to avail themselves of cost-effective immigration options for their employees.

David J. Wilks co-leads the Immigration Practice Group at Hodgson Russ LLP. He represents a wide variety of business immigration and cross-border clients. He currently serves as an elected director of the American Immigration Lawyers Association's (AILA) National Board of Governors. His articles have appeared in Bender's Immigration Bulletin*, ILW.com,* National Law Review *and in various AILA publications, including* Immigration Options for Investors and Entrepreneurs, 4th Ed*. He is also the recipient of AILA's President's Commendation, AILA's Joseph Minsky National Young Lawyer Award and the AILA Upstate New York Chapter's Mark T. Kenmore Mentor of the Year Award.*

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.