



UPDATE Immigration

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H-1B cap count

As of June 11, 2010, the U.S. Citizenship and Immigration Service (USCIS) has received approximately 22,200 H-1B cap-subject petitions and approximately 9,400 H-1B petitions for foreign nationals with advanced degrees from U.S. universities.

As a matter of background, U.S. businesses use the H-1B program to employ foreign workers, such as scientists, engineers, or computer programmers, in specialty occupations that require theoretical or technical expertise in specialized fields. There is a 65,000 H-1B numerical limitation (the "cap"), where up to 6,800 visas may be set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. There are additional 20,000 H-1B visa numbers available to petitions filed for those with a U.S. master's degree or higher. The USCIS began accepting H-1B petitions on April 1, 2010, which are subject to the FY 2011 cap. Petitions subject to the FY 2011 cap can request a start date no earlier than October 1, 2010 (the first day of the fiscal year), and H-1B petitions can be filed no more than six months in advance of the requested start date (April 1, 2010).

USCIS site visit initiative continues

The site visit and verification program started by the USCIS in July 2009 is now in full swing. U.S. immigration officials have taken H-1B enforcement to the field and are in the midst of conducting the planned 25,000 on-site inspections of companies hiring foreign workers over this fiscal year, which ends September 30, 2010. Per USCIS officials, H-1B cases are being randomly chosen for review. The increased activity this year is the result of a study conducted by the USCIS that

found fraud and other violations in one in five H-1B petitions. If a representative of the USCIS arrives on-site asking questions about an H-1B worker, it is appropriate to ask if you can contact the company's immigration lawyer for assistance with the visit (either in person or on the telephone). The USCIS representative may ask to speak directly with the H-1B employee about his/her title, job description, salary, and worksite location(s) to confirm that this information is consistent with the petition filed with the USCIS. As employers are being selected at random, all H-1B petitioners should make sure they are maintaining completed Labor Condition Application public access files and that all documentation is up-to-date with regard to worksite and salary information.

Processing times and appeals backlog for PERM labor certification applications

At this time, the U.S. Department of Labor's (DOL) Employment and Training Administration is adjudicating regular PERM applications for Alien Employment Certification in approximately seven to ten months. A PERM application is the first step in the green card application process for most employer-sponsored foreign nationals. This processing time has improved in the last year for regular, nonaudited cases. Cases stuck in the audit process are still taking over two years for the DOL to adjudicate. The appeals queue also continues to be extremely backlogged, with cases filed in November 2007 still awaiting review.

Documentation that TPS beneficiaries may present as evidence of employment eligibility

The USCIS has issued guidance to employees and employers on the treatment of auto-extended Employment Authorization Documents (EADs) issued to Temporary Protected Status (TPS) beneficiaries when completing the Form I-9 process.

During the completion of Form I-9, employers must accept a TPS-related EAD that is expired on its face if it nevertheless remains unexpired based on an auto-extension of the EAD by the Department of Homeland Security, as announced in a notice published in the Federal Register. Also, for the card to be acceptable, it must reasonably appear on its face to be genuine and to relate to the employee presenting it. The following information appears on the face of the card: (1) the notation "A-12" or "C-19" under "Category" and (2) the expiration date of the most recent TPS extension period. This date appears in the Federal Register notice announcing the auto-extension of EADs and may also be found at www.uscis.gov/tps.

Employers should enter the document name, number, and expiration date in Section 2 under List A, noting the end of the auto-extension period. Importantly, employers may not request that an employee provide proof that he or she is a national of a country that has been designated for TPS. When the automatic extension of the EAD expires, employers must reverify the employee's employment authorization. The employee may choose to present an unexpired EAD with an updated expiration date or any other document from List A or C of Form I-9 evidencing that he or she continues to be authorized to work in the United States.

In addition, employers that participate in E-Verify should follow the regular process with regard to confirming employment authorization of the TPS beneficiary.

New design of permanent resident card - it's now green!

USCIS announced that as of 05/11/10 it is issuing all permanent resident cards, commonly known as "green cards," in a redesigned format to incorporate new security features.

The USCIS notes that the enhanced features better serve law enforcement, employers, and immigrants, all of whom look to the permanent resident card as definitive proof of authorization to live and work in the United States. The new features include secure optical media that store biometrics for rapid and reliable identification of the card holder, holographic images, laser

engraved fingerprints, and high resolution microimages that make the card nearly impossible to reproduce. The card features tighter integration of design with personalized elements that make it difficult to alter the card if stolen; Radio Frequency Identification (RFID) capability that allows Customs and Border Protection officers at ports of entry to read the card from a distance and compare it immediately to file data; and a preprinted return address for the easy return of a lost card to the USCIS.

The USCIS also notes that in keeping with the permanent resident card's nickname, "green card," the document is now green. The USCIS will replace permanent resident cards already in circulation at the time individuals apply for renewal or replacement.

Increase in consular fees

The collection of increased consular fees has begun as of June 4, 2010. The new fee schedule includes the following increased visa application fees:

- Most nonimmigrant visas and border crossing cards: \$140
- Petition-based nonimmigrant visas (H, L, O, P, Q, R): \$150
- K visas: \$350
- E visas: \$390

Many U.S. embassies/consulates will be publishing their own respective procedures regarding the implementation and payment of the new fee structures.

Summer travel - prepare early

Foreign national employees working in the U.S. on temporary nonimmigrant visas who intend to leave the U.S. and then return should make sure they bring with them certain important documents, including their original Form I-797, Notice of Action, which is the USCIS's notice approving their nonimmigrant status (unless they have status under a Blanket L petition); a copy of the approved I-129 petition, including all of its supporting documents; a letter from their current employer confirming employment, salary, and job title (job title should match the I-129 petition); their most recent pay statements from their employer; and a passport, valid for at least six months beyond the anticipated time of entry to the U.S. Employees should also verify they have a valid visa in their passport (Canadian nationals are not required to have visas).

Employees who need to apply for a U.S. visa at a U.S. Embassy/Consulate while outside of the U.S. should check with the U.S. Embassy/Consulate as soon as possible for available appointments and the necessary forms, fees, and photo requirements. They should expect possible delays due to a high volume of applications and required security checks. Employees in the green card process may be able to travel using their Advance Parole documents in lieu of a visa. Employees in H or L status who do not have Advance Parole and who are in the green card process with a pending Form I-485, Application to Adjust Status to Permanent Resident, may be able to travel using a valid H or L visa. Although new guidance no longer requires the presentation of the Form I-485 receipt to U.S. immigration authorities, we suggest that, as a precaution, employees still carry this receipt with them when traveling.

Immigration and consular officers have the discretion to ask for further documents, so travel plans should be flexible.

Visa Bulletin for July 2010

The Immigration and Nationality Act sets an annual minimum for both family-based and employment-based immigrant visas ("green cards") prescribed by categories and per-country limits. Prospective immigrants can apply to become permanent residents only when a visa

number is available in their respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers, listing the cut-off priority. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

The complete Visa Bulletin is available at the Department of State's Web site at http://travel.state.gov/visa/bulletin/bulletin_5019.html. Below is an excerpt from the July 2010 Visa Bulletin pertaining to the employment-based categories.

	All Chargeability Areas Except Those Listed	CHINA-mainland born	DOMNICIAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
Employment-Based						
1 st	C	C	C	C	C	C
2 nd	C	22NOV05	C	01OCT05	C	C
3 rd	15AUG03	15AUG03	15AUG03	22NOV01	U	15AUG03
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	U	01JUN01
4 th	C	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C	C
5 th	C	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C	C
5 th Pilot Programs	C	C	C	C	C	C
"C" - current "U" - unavailable						

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