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Immigration eNews

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Reminder: H-1B petition filing date of April 1, 2008 is fast approaching

Gather H-1B paperwork from your affected employees now, as it is time to start working on those H-1B petitions for Fiscal Year 2009. On April 1, 2008, the United States Citizenship and Immigration Service (USCIS) will begin accepting H-1B petitions on behalf of foreign nationals who need H-1B status with a start date of October 1, 2008, which would include individuals who have never had H-1B status before and, most commonly, students in J-1 or F-1 status.

In 2007, the annual cap of 58,200 available H-1B numbers was reached in record time, on the very first day the USCIS began accepting H-1B petitions. As the USCIS received over 120,000 H-1B petitions within the first day, the USCIS resorted to a "lottery" system to determine which of the petitions would be accepted under the cap. Therefore, even if a petition was received on the very first day of filing, there was no guarantee that the petition would be accepted for processing. Further, the additional 20,000 available H-1B numbers for those who possess a master's degree or higher from a U.S. educational institution were also used in record time—within several weeks of the first day of accepting petitions.

Accordingly, employers should evaluate the need to file H-1B petitions on behalf of their employees early on. If an employer waits too long to file an H-1B petition on behalf of, for example, a student who has an employment authorization valid until May 31, 2009, the student may be caught outside of the 2008 H-1B cap if the employer does not file an H-1B petition until April 1, 2009 (seeking an October 1, 2009 start date). The student in this situation would not be eligible to work from June 1, 2009 through September 30, 2009 (assuming the H-1B petition was selected and approved) and might even have to leave the U.S. for some period of time.

Reminder: New Border Crossing Document Requirements as of January 31, 2008

In its recent press release, the U.S. Department of Homeland Security (DHS) reminds the traveling public

that as of January 31, 2008, U.S. and Canadian citizens ages 19 and older should no longer expect that they will be able to prove identity and citizenship by relying on an oral declaration alone. Instead, travelers will be asked to present certain document(s) specified by the DHS, when entering the United States at land or sea ports of entry. Travelers who do not present one of such documents may be delayed as U.S. Customs and Border Protection officers attempt to verify their identity and citizenship. Please refer to the DHS press release available on the department's website at http://www.dhs.gov/xnews/releases/pr_1201786444210.shtm for the specific list of document options.

DHS begins collecting 10 fingerprints from international visitors

Since November 2007 the DHS has been collecting 10 fingerprints from international visitors at several major airports in furtherance of its goal of implementing new enhanced security procedures. According to DHS announcements, at this time, Washington Dulles Airport, Hartsfield-Jackson Atlanta International Airport, Boston Logan International Airport, Chicago O'Hare International Airport and George Bush Houston Intercontinental Airport have transitioned to the new system, with San Francisco International Airport, Miami International Airport, Detroit Metropolitan Wayne County Airport, Orlando International Airport, and New York's John F. Kennedy International Airport to follow shortly. The remaining air, sea and land ports will transition to collecting 10 fingerprints by the end of 2008.

For more than four years, the U.S. Department of State consular officers and U.S. Customs and Border Protection officers have been collecting biometrics - digital fingerprints and a photograph - from all non-U.S. citizens between the ages of 14 and 79, with some exceptions, when they apply for visas or arrive at U.S. ports of entry. The department's US-VISIT program checks visitors' fingerprints against DHS records of immigration violators and Federal Bureau of Investigations (FBI) records of criminals and known or suspected terrorists. Checking biometrics against the watch list helps officers make visa determinations and admissibility decisions. Since US VISIT began in 2004, DHS has used biometric identifiers to prevent the use of fraudulent documents, protect visitors from identity theft, and stop thousands of criminals and immigration violators from entering the country. Now US VISIT is transitioning to a 10-fingerprint collection standard in order to improve fingerprint matching accuracy and the department's ability to compare a visitor's fingerprints against latent fingerprints collected by Department of Defense and the FBI from known and unknown terrorists all over the world. Additionally, visitors' fingerprints are checked against the FBI's Criminal Master File.

Changes in FBI Name Check Clearance Process

The USCIS and the FBI have changed the name check process as it pertains to pending Form I-485 Applications To Adjust Status To Permanent Resident. New guidance from the USCIS states that the agency will adjudicate a pending Form I-485 Application regardless of whether or not an FBI name check is completed if the FBI name check request has been pending for more than 180 days. This change should result in many long delayed I-485 adjustment of status cases being processed.

Visa Bulletin for February 2008

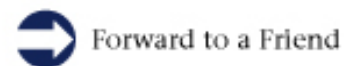
The Immigration and Nationality Act (INA) sets an annual minimum for both family-based and employment-based immigrant visas, (green cards), prescribed by categories and per-country limits. A prospective immigrant can apply to become a permanent resident only when a visa number is available in his/her 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 website at http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.htm Below is an excerpt from the February 2008 Visa Bulletin pertaining to the employment-based categories.

	All Chargeability Areas Except Those	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
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	Listed				
Employment-Based					
1st	C	C	C	C	C
2nd	C	01JAN03	U	C	C
3rd	01 NOV02	15NOV01	08MAY01	22APR01	01NOV02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
"C" – current "U" - unavailable					

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