USCIS to increase application fees

Effective April 30, 2004, the U.S. Citizenship and Immigration Services (USCIS) will increase the fees charged for filing petitions and applications. The average fee increase is $55 per application. Biometric fees (fingerprints) will also be increasing by $20 per application. Under the new fee schedule, filing fees for the most common employer petitions will increase as follows:

- H-1B petitions from $130 to $185,
- EADs from $120 to $175,
- I-140 Immigrant Petition for Alien Worker from $135 to $190 and
- I-485s will increase from $255 to $315.

This means that all applications filed on or after April 29, 2004 are subject to the new fee schedule. Note that Jackson & Hertogs will be filing petitions with the new fees starting April 29 to avoid any petitions being returned. We will attempt to file as many cases as possible by April 28 in order to take advantage of the old fee schedule. You can view the new fee structure at http://uscis.gov/graphics/publicaffairs/newsrels/USCISFeeStructure.pdf.

DHS drafts regulation to allow EADs for longer than 1 year

The Department of Homeland Security (DHS) has drafted a regulation that would allow the U.S. Citizenship and Immigration Services (CIS) to issue Employment Authorization Documents (EADs) for longer than one year, as appropriate for the amount of time needed to complete an adjustment of status (AOS) application.

Currently, EAD cards are limited to a maximum of one year, and AOS applications are taking between 1-3 years depending on the CIS office processing the application. This regulation may be published as soon as June 2004. We will provide updates as soon as they are available.

DHS to extend US-VISIT to VWP travelers by September 30, 2004

The DHS recently announced that it will begin processing all Visa Waiver Program (VWP) travelers via US-VISIT beginning on September 30, 2004. This expansion of US-VISIT is related to the joint DHS and DOS request to Congress to extend for two years, the October 26, 2004 deadline for VWP machine readable passports that include biometrics, and for DHS biometric passport readers to be at all ports of entry.

US-VISIT requires that foreign visitors to the U.S. have their two index fingers scanned and a digital photograph taken to verify their identity upon entry to the U.S. US-VISIT is now in place at most ports of entry (land and sea) and it is expected to be in place at all 165 land ports of entry by the end of 2005.
The Visa Waiver Program includes Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Nationals of these countries do not need a visa to enter the U.S. as long as they only intend to visit the U.S. for 90 days or less. Please keep in mind that individuals entering on the visa waiver do not have employment authorization and cannot change or extend their status in the U.S. For additional information regarding the VWP and B visitor status, please see our website.

**DOS News**

**Bar code no longer required on DS-156**

The Department of State’s (DOS) Visa Office has announced that it is not mandatory for visa applicants to use the version of the DS-156 Nonimmigrant Visa Application containing a bar code. Previously, the DOS had announced that it was mandatory for applicants to use the form containing the bar code at consular posts or at the DOS Visa Revalidation Unit. Note, however, that although the bar coded form is not mandatory, the DOS has stated that it is preferred, as the bar code facilitates the tracking of cases. Therefore, it is our recommendation that visa applicants contact the U.S. embassy where they will be applying for a visa and continue to follow their instructions and preferences carefully. To access the bar-coded form online, please go to [http://evisaforms.state.gov](http://evisaforms.state.gov).

**Revoked, lost or stolen U.S. passports considered invalid**

Effective March 30, 2004, a passport which is revoked, reported lost, or stolen is considered invalid. As of that date, the Department of State will also require a personal appearance by many applicants not previously required to appear, such as by applicants under the age of 14. For more information regarding these and other changes, please read the federal register notice at [http://www.regulations.gov/fredpdfs/04-06738.pdf](http://www.regulations.gov/fredpdfs/04-06738.pdf).

**DOL News**

**PERM update**

The Department of Labor’s (DOL) long-anticipated PERM regulation is still at the Office of Management and Budget (OMB) for review. DOL sent the proposed final PERM rule to OMB in February, and OMB has up to 90 days to review the regulation. At the end of the review period, OMB may recommend that the rule be published as originally submitted by DOL, or OMB can return the rule to DOL for additional revision. Until PERM becomes effective, employers can continue to file labor certifications either as RIR or non-RIR cases. For more information on PERM, please visit our website under PERM and our June 2002 and March 2004 issues of Spotlight. Please keep in mind that once PERM is implemented, employers will no longer have the option of filing labor certifications under the current procedures. RIR type advertising will not be sufficient under PERM and there will be no mechanism for filing an application and requesting recruitment be done later under EDD guidance. Therefore, if employers are contemplating labor certification filings, we suggest that you consider filing applications now, before PERM is implemented.

**Special Focus**

**H and L legislation introduced in Congress**

(Published by AILA on April 8, 2004, reprinted with permission)

On April 2, just hours before the House of Representatives broke for a two-week recess, Representatives Lamar Smith (R-TX); John Carter (R-TX); Jeff Flake (R-AZ); Steve Chabot (R-OH); Bob Goodlatte (R-VA); and Howard McKeon (R-CA) introduced the “American Workforce Improvement and Jobs Protection Act” (H.R. 4166).

H.R. 4166 would increase modestly U.S. employers’ access to H-1B foreign professional workers by creating a permanent exemption from the H-1B cap for graduates of U.S. universities who have earned a Master’s or higher degree. However, this exemption would be capped at 20,000 per year.

In addition to expanding access to H-1B workers, H.R. 4166 would also attempt to end the debate over the L visa program by incorporating provisions contained in pending L visa legislation sponsored by Senator Saxby Chambliss (R-GA) (S.1635). This language would provide for narrowly tailored modifications to the L visa category while recognizing the importance of the L-1 visa to the U.S. economy. Specifically, the language would target L-1B visa holders and prevent them from being stationed primarily at the worksite of a third party in cases where they would not be controlled and supervised by the petitioning employer, or where their placement at the third party site was part of an ar-
arrangement to provide labor for the third party rather than in connection with their duties involving specialized knowledge specific to the petitioning employer. Additional provisions would reinstate the one-year work requirement for L-1 blanket petitions and require the Department of Homeland Security to maintain statistics on the L program.

In exchange for these benefits, H.R. 4166 would subject U.S. employers to additional fees and attestations. Specifically, the legislation would make permanent the $1,000 H-1B training fee and the non-displacement and recruitment attestations for H-1B-dependent employers, both of which expired at the end of fiscal year (FY) 2003. In the past, these additional requirements were placed on the H-1B program in exchange for an increase in the cap. H.R. 4166 also would impose a new $500 “fraud detection and prevention fee” on H-1B and L applications. In addition to the fees and employer attestations, H.R. 4166 would also make permanent the Department of Labor Investigative authority that sunset at the end of FY 2003.

While AILA recognizes that H.R. 4166 moves in the right direction by providing increased access to H-1B professionals and includes L visa provisions that we support, the bill’s H-1B provisions should include an uncapped exemption from the cap for graduates of U.S. Master’s and PhD programs. Such an uncapped exemption is appropriate given the benefits these graduates produce for the U.S. economy, and the need to retain in this country U.S. educated talent, rather than sending them abroad to our competitors.

AILA also strongly supports an exemption for federal, state and local government workers, including teachers. If a government agency (any federal, state or local government entity, including school districts), working on behalf of the citizens under its jurisdiction, requires a foreign worker, it is not beneficial to the interests of the governmental entity to restrict its ability to hire that person. Government agencies will almost always be governed by policies or statute or some hiring restrictions that makes hiring a U.S. citizen preferable. Therefore, if the agency has chosen a foreign national hire, there will be an overriding benefit to the government and thus to the citizens that it serves. In addition, if a government agency feels it is necessary to hire a foreign national, it should not be competing with the private sector for H-1B numbers. Nor should the government deplete the pool of H-1Bs, depriving U.S. businesses of economic opportunity.

Please note that J&H has an “advocacy” link on our home page that provides draft letters and e-mail addresses for congressional representatives.

**J&H News**

**New employees at J&H**

Please join us in welcoming three new employees to the J&H team: Fumie Kurai, Todd Theringer and Lori Santos. Fumie is working as a Legal Assistant to Norman Plotkin. Todd has joined our team of paralegals, and Lori Santos is working as a Legal Assistant to Maria Marty and Atessa Chehrazi. Both Fumie and Todd have extensive prior experience working in immigration law.

**J&H First Wednesday Seminar**

May 5, 2004 - Reaching the H-1B Cap and Employer Strategies

Due to interest, we are repeating this seminar, which will cover the impact of reaching the H-1B cap and employer strategies for dealing with affected employees. We will also discuss alternate nonimmigrant visa categories.

If you would like to attend, please e-mail us at seminar@jackson-hertogs.com. Make sure to include the name and date of the Seminar. We look forward to seeing you there!

**Immigration Trivia**

According to USCIS, nationals of which 5 countries topped the list of H-1B workers in FY2002? (countries listed in order starting with the largest number of H-1B workers)

a. India, Mexico, Philippines, UK and Germany
b. China, India, Philippines, Germany and Mexico
c. India, China, Canada, Philippines, and UK
d. China, India, UK, Japan and Philippines
e. India, China, Philippines, Japan and Canada

Answer: India (64,980); China (18,841); Canada (11,780); Philippines (9,295); UK (7,171). These countries are followed by Korea, Japan, Taiwan, Pakistan, Colombia, Germany, France, Mexico.

© 2004 Jackson & Hertogs LLP is one of the oldest and most respected immigration and nationality law firms in the United States. Established in 1950, we were one of the first legal firms in the country dedicated solely to the practice of immigration law. Today, Jackson & Hertogs has seven attorneys and a staff of more than 45 legal assistants and office management personnel to assist you with immigration matters.

For up-to-date information, visit us on the web: www.jackson-hertogs.com