**Inside Spotlight**

**U.S. Citizenship and Immigration Services**
- FY2006 H-1B cap reached 8/10/05 ........................... 40.1
- Help end the H-1B visa blackout .................................. 40.2
- H-1B dependent employer issues .................................. 40.3
- Security check feedback and guidance  ....................... 40.3
- H-1B cap-gap relief doesn’t materialize ...................... 40.3
- Bi-specialization plan announced ................................. 40.3
- Changes in USCIS leadership ........................................ 40.4

**Customs and Border Patrol**
- I-94 radio tag pilot project ..............................................  40.4

**Department of State**
- EB-1, EB-2, EB-3 backlogs forecast in FY2006....... 40.4
- US-VISIT/visa policy video on Web ...............................  40.5

**Department of Labor**
- New policy restricts multiple labor certifications...... 40.5
- Prevailing wage delays at EDD .................................  40.6
- Changes in DOL leadership ............................................. 40.7
- Labor certification substitutions—to be eliminated?. 40.7

**Other News**
- J&H attorney attends Advocacy Institute..................... 40.7
- “Labyrinth of immigration law”.................................  40.8
- Timeline for VWP passport requirements .................... 40.8
- J&H News ........................................................................... 40.8

**Abbreviations used in this issue**

- **BEC** - Backlog Elimination Centers
- **CBP** - Customs and Border Patrol
- **CSC** - California Service Center
- **DHS** - Department of Homeland Security
- **DOL** - Department of Labor
- **DOS** - Department of State
- **EDD** - California Employment Development Department
- **INA** - Immigration and Nationality Act
- **LCA** - Labor Condition Application
- **OMB** - Office of Management of Budget
- **RFE** - Request for Evidence
- **RFID** - Radio Frequency Identification
- **SCS** - California Service Center
- **DHS** - Department of Homeland Security
- **DOL** - Department of Labor
- **EDD** - California Employment Development Department
- **USCIS** - U.S. Citizenship and Immigration Services
- **VWP** - Visa Waiver Program

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**FY2006 H-1B cap reached 8/10/05!**

On August 12, 2005, the USCIS issued a notice (http://uscis.gov/graphics/publicaffairs/newsrels/H-1Bcap_12Aug05.pdf) advising that there are now sufficient cap-subject H-1Bs petitions in processing to take all numbers available under the fiscal year 2006 quota. The fiscal year starts on October 1, 2005. Any petitions received by USCIS after August 10, 2005, will be rejected. Any petitions received on August 10 will be subject to a “random selection process.”

The regular cap impacts individuals who do **not** have a U.S. master’s degree and who are not already in H-1B status or were not previously in H-1B status. This cap does **not** impact individuals in H-1B status who are transferring to a new H-1B employer unless their previous H-1B was sponsored by a cap-exempt employer (such as a university or research institute).

J&H is reviewing all impacted cases and is contacting employers and foreign nationals as quickly as possible, to discuss the implications of the cap being reached.

The following information is from the USCIS notice.

**Cap and Set Asides**

Congress has established an annual H-1B cap of 65,000. Of that number, 6,800 are set aside for the H-1B1 program under terms of the U.S.-Chile and U.S.-Singapore Free Trade Agreements. The total H-1B cap number available for FY 2006 is therefore 58,200. The law provides that any of the unused Chile/Singapore numbers be reallocated back to the FY 2006 H-1B cap. These unused numbers will be made available on October 1, 2006, the start of FY 2007. The law authorizes USCIS to make such unused numbers available within the first 45 days of FY 2007 to aliens who had applied for such visas during FY 2006. At
that time, USCIS will announce how many Chile/Singapore numbers went unused and can be re-allocated. USCIS will announce the process for distributing any reallocated numbers in a future press release.

**Cap Procedures**

USCIS has implemented the following process for FY 2006 H-1B filings in accordance with the procedures announced in the Federal Register at 70 FR 23775 (Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004):

- USCIS has closely monitored FY2006 H-1B filings and used projections to determine the number of petitions necessary to reach the congressionally mandated cap.
- Having determined that the numerical limits have been exceeded, USCIS will identify those H-1B petitions seeking an FY 2006 number that were received on the date that USCIS received the number of petitions necessary to meet the cap (the “final receipt date”).
- For petitions received on the “final receipt date,” USCIS will apply a computer-generated random selection process. This process will randomly select the exact number of petitions from the day’s receipts needed to meet the congressionally mandated cap.
- After random selection, any remaining H-1B petitions that do not receive an FY 2006 number and are not otherwise exempt will be rejected and returned along with the filing fee(s).
- Petitioners may re-submit their petitions when H-1B visas become available for FY 2007.
- The earliest date for which a petitioner may file a petition requesting FY 2007 H-1B employment with an employment start date of October 1, 2006, is April 1, 2006.

**Current H-1B Workers**

Petitions for current H-1B workers do not count towards the congressionally mandated H-1B cap. Accordingly, USCIS will continue to process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers.
- Allow current H-1B workers to work concurrently in a second H-1B position.

**Cap-Exempt Petitions**

As directed by the H-1B Visa Reform Act of 2004, USCIS treats as exempt from the cap for any fiscal year the first 20,000 H-1B petitions reflecting an alien beneficiary with a U.S.-earned master’s or higher degree. For FY 2005 and 2006 USCIS has now received approximately 10,000 and 8,000 of such petitions, respectively. USCIS also notes that petitions for new H-1B employment are not subject to the annual cap at all if the alien will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. Thus, petitions for these exempt H-1B categories may still be filed for work start dates in FY 2005 or 2006.

**H-1B in General**

The H-1B visa program is utilized by some U.S. businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in a specialized field, such as scientists, engineers, or computer programmers. As part of the H-1B program, the Department of Homeland Security requires U.S. employers to meet specific labor conditions to ensure that American workers are not adversely impacted, while the Department of Labor’s Wage and Hour Division safeguards the treatment and compensation of H-1B workers.

**Take action! Help end the H-1B visa blackout!**

Jackson & Hertogs encourages employers and all interested individuals to contact their U.S. Senators and Representatives and urge them to support the H-1B Visa program. Without Congressional action, U.S. employers will face a blackout on new H-1B visas until October 1, 2006. Send a letter to Congress now urging them to improve access to this vital visa program. It only takes a few minutes to send a letter to all of your Representatives: http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5183421. See our website for a sample letter in MS Word format: www.jackson-hertogs.com/issues/H1B_Cap.doc.

**H-1B dependent employer issues**

The California Service Center (CSC) and the American Immigration Lawyers Association (AILA) recently met to discuss several issues including the fact that the new Form I-129 and the reintroduction of the “dependent employer” designation seems to be causing some confusion for petitioning employers. The CSC is sending requests for evidence (RFEs) when the employer indicates on the underlying Labor Condition Application (LCA) that it is not H-1B dependent, but
CSC determines that the employer may be H-1B dependent. CSC may make this determination based on information listed on the Form I-129 or by a check of the USCIS records of previous filings.

According to the CSC, they will send an RFE requesting clarification regarding the determined inconsistency (for example, petitioner may have terminated some of the H's or have part time workers, etc). If an employer is found to be H-1B-dependent and the submitted LCA is incorrect, the CSC will ask the Petitioner to submit a new certified LCA with correct information and attestations relating to dependency. CSC will accept the second LCA in this instance even though it was certified after the filing of the H-1B petition and there may be gaps in the validity dates (since LCAs cannot be back-dated). None of the other Service Centers have reported that they are verifying H-1B dependency in this manner; however, it is possible that Vermont, Texas, or Nebraska could begin applying extra scrutiny on cases where there is a possibility of H-1B dependency.

**Security check feedback and guidance**

The California Service Center of the USCIS recently stated that there is little they can do for cases that have been pending beyond the normal processing times due to security checks. Security checks often impact the processing of Adjustment of Status applications, but can also impact processing of nonimmigrant visa petitions. The CSC states that it does not have control over when the results of a security check will come in, but they do regular sweeps of files pending security checks to see what has come in. CSC also asked that employers and applicants note the following:

a. It is more than just an FBI check - there are several agencies involved. Therefore, even if we know that the FBI has finished their part, other checks may still be pending.

b. CSC cannot accept a letter that attorneys (or our clients) receive from FBI as proof that there is no hit/record. They must receive the official clearance directly from FBI.

c. If the attorney (or client) files a FOIA request, the FOIA will not show any evidence that the requests were sent to the FBI or other agencies. The requests are sent electronically so there is nothing in the file. Do not send an inquiry to the CSC stating that the FOIA does not show a request.

d. The CSC does have the ability to request an expedite in rare instances (e.g., age outs, mandamus, etc.).

e. There are no official processing times for these types of checks. It can take several months or even years depending on the specifics of the case (e.g., common last name).

**H-1B cap-gap relief doesn’t materialize**

In other relevant H-1B news, it does not appear that USCIS will be providing any interim relief to F-1 and J-1 visa holders whose periods of authorized stay expires between April 1, 2005 and the commencement of their new H-1B status on October 1, 2005. In past years, USCIS (or its predecessor, the U.S. Immigration and Nationality Service) has issued regulations that redefined the duration of approved stay to include any period between the F-1 and J-1 grace periods and October 1, the beginning of the fiscal year. This essentially extended the grace period for individuals in F-1 and J-1 status who were expiring during the “gap period” for that year, thereby allowing them to remain in the United States until their change of status to H-1B became effective on October 1st.

This year, however, USCIS has not issued any cap-gap relief instructions. This means that individuals in F-1 and J-1 status who are unable to either extend that status or change to another valid non-immigrant status prior to October 1, will need to leave the United States prior to the end of their grace periods, apply for the H-1B visa abroad, and reenter the United States no sooner than 10 days before the beginning of the H-1B validity date.

**Bi-specialization plan announced**

The latest AILA-CSC Liaison "Working Group" Report confirms that the USCIS Service Centers are embarking upon a plan called "bi-specialization", which USCIS believes will help streamline adjudications and allow for greater consistency in adjudications. The California Service Center and the Vermont Service Center will be “sister centers” and will handle certain workloads that are yet to be specified. The Nebraska Service Center and the Texas Service Center will handle the remaining cases. USCIS believes that having two Service Centers handling a given type of case (instead of just one Service Center) will ensure continued processing. The plan is to have this system fully in place in FY 2007, but there are no further details at this time and many parts of this plan will still need to be worked out. J&H will provide updates on the planned workload changes, and their possible impact on cases filed with the USCIS, as more information becomes available.

**Change in USCIS leadership**

The U.S. Citizenship and Immigration Service has announced that Robert Divine, former General Coun-
The previous USCIS Director, Mr. Eduardo Aguirre, resigned from USCIS in order to assume the post of U.S. Ambassador to Spain. The announcement states that Mr. Divine will head the USCIS until the position of the USCIS Director is appointed by the President and confirmed by the U.S. Senate.

**CBP News**

**I-94 radio tag pilot project**

On August 8, 2005, the Department of Homeland Security announced that the next stage of US-VISIT, DHS’s security measures for collecting biometric and biographic information upon entry and exit of visitors to the U.S., will be tested at 5 land ports of entry. This second stage of US-VISIT involves using Radio Frequency Identification (RFID) technology to monitor entries and exits to the U.S.

The RFID tag will be imbedded in the form I-94 Arrival/Departure Record card that all visitors entering the U.S. with a nonimmigrant visa, under the Visa Waiver Program, or with a Mexican Border Crossing Card, will receive upon arriving in the U.S. Each RFID tag will carry a unique serial number that will enable immigration officials to link the I-94 to the biographical and biometric record of the individual. Entries and exits to the U.S. will be read by the RFID tag and transmitted to a US-VISIT database.

The test will run August 4, 2005 to Summer 2006 at the land ports Nogales East (Deconciini) and Nogales West (Mariposa) in Arizona; Alexandria Bay (Thousand Islands) in New York; and Pacific Highway and Peace Arch in Washington state.

**DOS News**

**EB-1, EB-2, EB-3 backlogs forecast in FY2006**

The Department of State Visa Bulletin for September 2005 indicates that visa numbers will continue to be available for all persons in the first and second employment-based (EB) categories through September 2005. EB-3 continues to be unavailable in September 2005. The Visa Bulletin also includes predictions for employment-based immigrant visa usage and backlogs in the upcoming fiscal year for all EB categories, with backlogs anticipated for citizens of India, China, Philippines and Mexico.

From the Visa Bulletin:

> The backlog reduction efforts of both Citizenship and Immigration Services, and the Department of Labor continue to result in very heavy demand for Employment-based numbers. It is anticipated that the amount of such cases will be sufficient to use all available numbers in many categories. As a result cut-off dates in the Employment Third preference category will apply to the China, India, and Philippines chargeabilities beginning in October, and it is possible that Mexico may be added to this list. In addition, it is anticipated that heavy demand will require the establishment of a Third preference cut-off date on a Worldwide basis by December.

The amount of Employment demand for applicants from China and India is also likely to result in the oversubscription of the Employment First and Second preference categories for those chargeability areas. The establishment of such cut-off dates is expected to occur no later than December.

The level of demand in the Employment categories is expected to be far in excess of the annual limits, and once established, cut-off date movements are likely to be slow.

As a result of legislation passed in 2001, until January 2005, (when backlogs returned to the EB-3 category) there were no backlogs in any EB visa categories since 2001. Prior to 2001, persons from countries that send large numbers of citizens to immigrate to the U.S., such as India and China, were often forced to wait months or years to immigrate, due to per-country limits on immigrants. Applicants could not apply for either adjustment of status or an interview at a consulate until their priority date had become “current” on the Visa Bulletin.

The priority date is established either by the date a labor certification is filed for a beneficiary, or by the date an I-140 is filed for a particular beneficiary, if no labor certification was required for the I-140. EB-1 refers to certain visa categories that do not require a labor certification, including Extraordinary Ability workers, Outstanding Researchers, and Multinational Managers. Historically, there have been no backlogs in the EB-1 categories, as relatively few petitions are approved in these classifications. EB-2 refers to either National Interest Waiver applicants, or to Immigrant Visa petitions based on a labor certification that has minimum requirements of either a Master’s degree or a Bachelor’s degree and at least five years of progressively responsible experience. EB-3 refers to Immigrant Visa petitions that require at least two years of professional experience or a Bachelor’s degree as the minimum requirement for qualification.

If priority dates on the Visa Bulletin retrogress (i.e., move back) as predicted, this could effect one’s eligibil-
ity to proceed with the I-485 Application for Adjustment of Status for individuals applying for a green card through certain employment-based categories. Persons with approved I-140s, but subject to the cutoff dates in the Visa Bulletin, would not be able to file for Adjustment of Status until their priority date becomes current. Similarly, persons with approved I-140s who wish to consular process for their green card will not be scheduled for a consular interview until their priority date is current. Finally, concurrent filing of I-140 petitions and I-485 applications would not be available in situations where the priority date is not current at the time of filing. These individuals would have to wait until the priority date is current before being able to file the I-485 applications for adjustment of status while the I-140 would be filed immediately.

Also, persons with pending I-485 applications based on an approved I-140 will not have their permanent resident applications approved unless their priority date is current. This could lead to long delays on pending I-485 applications, as these will be frozen until the priority date for each I-140 is current. While the I-485 applications are pending, individuals will be eligible to apply for advance parole and employment authorization. The California Service Center recently has indicated that they will continue to work up pending I-485 cases that are subject to EB backlogs, in the hope that the case will be complete and approvable at such a time that the visa number is available.

When determining if a person will be subject to country-based limits for immigration, it is important to remember that the applicant’s country of birth, not his/her country of citizenship is relevant. For example, many persons originally from China and India immigrate to Canada before coming to the U.S. These Canadian citizens will be subject to the immigrant visa limits of their country of birth not of Canada. One other factor that may be evaluated in determining whether a person can immigrate despite visa backlogs is the spouse’s nationality. Persons may “cross-charge” against a spouse’s country limits, and if a spouse is from a country that has no backlogs, the applicant and his spouse may proceed with either consular processing or adjustment of status if the visa numbers are current for the spouse’s country. Jackson & Hertogs reviews all client files for these issues, and we will make use of cross-charging as appropriate.

For persons with pending or approved I-140s who have not yet filed for adjustment of status, it may be prudent to file while the priority dates are current. It is unclear at this time how far back the priority dates may retrogress, and once the priority dates move back, applicants will not be able to file for adjustment until they have a current priority date. Clients should contact their attorney at Jackson & Hertogs if they have any questions.

US-VISIT/visa policy video on Web

The U.S. State Department has created a video, approximately 10 minutes in length, which thoroughly describes the visa application process. The video is informative, albeit basic, and includes what a foreign national can expect when entering the United States under the new US-VISIT program. A link to the video can be found on the Jackson & Hertogs website in the travel section and can also be found at http://www.state.gov/r/pa/obs/vid/36172.htm.

DOL & EDD News

New policy restricts multiple labor certifications

On August 11, 2005, the U.S. Department of Labor issued its fifth set of PERM Frequently Asked Questions (FAQ). This latest FAQ memo addresses an issue of particular concern for many employers and employees, relating to multiple filings of labor certifications by the same employer for the same employee.

The FAQ announces a new DOL policy of issuing only one approved labor certification for each named beneficiary. If implemented, this would be a drastic change from decades of DOL policy that permitted employers to file more than one application for the same worker, provided that the applications were for different jobs at the same employer. Also, it has been common for more than one employer to sponsor the same alien, as a labor certification is considered to be for a future offer of permanent employment. It is unclear from the FAQ whether applications by different employers for the same alien would be similarly limited.

The FAQ states that “[DOL does] not intend to issue more than one permanent labor certification for the same alien regardless of the number of filed applications, and whether for the same or different job opportunities.” Specifically, the FAQ specify that “[u]nder PERM, an employer may not have more than one labor certification application actively in process for the same alien at any given time.” Once DOL certifies a PERM labor certification, the agency will issue a Notice of Finding “for any application(s) by the employer for the same alien filed under the prior regulation (in effect through March 27, 2005) found pending in either of the Backlog Elimination Centers (BECs).” Similarly, once a labor certification has been certified in a BEC, any pending labor certification application in either of the PERM processing centers filed by the employer for the same alien will be denied. If DOL determines that multiple labor certification applications for the same alien are approved both under

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PERM and at the BEC, DOL will revoke the PERM approval.

With the commencement of the PERM labor certification process in March 2005, it appeared advantageous in certain situations to file a second labor certification under PERM while leaving in place an earlier labor certification filed under the previous process. While employers have the option to “convert” pending labor certifications to the new PERM process, many employers were unable to file “identical” cases and/or unwilling to risk losing an older priority date. They instead filed PERM applications to be processed in parallel with an earlier case filed under the previous labor certification process. The new policy limiting multiple labor certification applications appears to be addressed directly to these types of cases. The DOL had anticipated most employers choosing to convert backlogged cases to PERM, rather than filing a second case while leaving the original application in the backlog queue. Jackson & Hertogs believes that DOL’s new policy appears to be based in part on resource concerns, as the FAQ claims that “the filing of multiple applications for the same alien runs counter to the concept of a streamlined process.”

While efficient use of government resources is laudable, it is not a legal basis to alter years of policy and effectively amend regulations without going through the requisite public notice and opportunity to comment on regulatory change. Jackson & Hertogs has already communicated our concerns about this new DOL policy expressed in the FAQ to the American Immigration Lawyers Association. AILA has indicated that it will challenge this DOL policy. Jackson & Hertogs will continue to monitor developments and will update our clients as more information becomes available. At this time, we would urge caution in filing PERM applications to be processed in parallel to a labor certification filed under the previous regulations unless the PERM filing is being done as an “identical filing”.

The PERM regulations allow an employer to file a PERM application that is “identical” to an application previously filed under either RIR or non-RIR and capture the priority date. However, in requiring that the applications must be identical, the DOL stated that not only can there be no changes in the job description or requirements, but also there can be no changes in the name of the company, corporate address, work site address or any other area of the forms. Since the strategies for non-RIR, RIR and PERM are drastically different, many employers were unable to take advantage of filing “identical” applications. Furthermore, the DOL indicated that any case that was filed as an “identical” case would require side-by-side comparison with the originally filed application to determine that the two applications are in fact identical. The DOL was not forthcoming in what its processing time would be for such an analysis.

The latest FAQ can be found at: http://www.workforcesecurity.doleta.gov/foreign/pdf/perm_faqs_8-8-05.pdf. All of the DOL’s FAQs on PERM, Backlog Elimination, and Prevailing Wages may be found online at: http://www.workforcesecurity.doleta.gov/foreign/faqs.asp.

Prevailing wage delays at EDD

The California Employment Development Department’s (EDD) Labor Market Information Division, which issues the required prevailing wage determinations for employers filing PERM applications has reported processing times of 5 to 7 weeks. Jackson & Hertogs has observed processing times as long as 8 to 9 weeks on some wage requests. The prevailing wage determination is a required pre-filing step for a PERM filing and determines the prevailing wage rate that may be offered on the application. Employers should keep in mind these processing times when planning how long it may take to prepare and file a PERM application.

Changes in DOL leadership

On July 28, 2004, the U.S. Department of Labor announced a series of senior management changes within the department which will take effect on October 1, 2005. The change that will be the most striking for immigration cases is the promotion of the current Foreign Labor Certification Division Chief, William Carlson, to the new position of ETA Region 1 (Boston) Administrator. Mr. Carlson is credited with re-engineering the Foreign Labor Certification program including the implementation of PERM, the shifting of old cases to Backlog Elimination Centers and the streamlining of the old Reduction in Recruitment labor certifications.

His replacement will be John R. Beverly who currently holds the position of Office of National Programs Administrator. In his current role, Mr. Beverly provides direction to the program offices for Foreign Labor Certification, Seasonal Farm Workers, Older Workers, Native Americans, and Disability and Workforce Programs. Previously, he was the Director and Deputy Director of the U.S. Employment Service. He has also held senior analyst positions within the Office of the Assistant Secretary for Policy, Evaluation and Research, the Secretary’s Commission on Workforce Quality and Labor Efficiency, the ILO Washington
Branch Office, and the President’s Health Care Task Force. He is a graduate of Howard University in Washington, D.C., and the Woodrow Wilson School of Domestic and International Affairs at Princeton University.

**Labor certification substitutions — to be eliminated?**

Previously, J&H reported that the U.S. Department of Labor had submitted a proposal to change rules regarding the substitution of employees into approved labor certifications. Employers have been able to substitute employees into approved labor certifications in those situations where the original beneficiary no longer required sponsorship for various reasons such as employment termination, change in plans or family sponsorship became available. The labor certification was seen as certifying the position rather than the specified beneficiary and the process was to submit the approved labor certification and evidence regarding the substituted beneficiary’s qualifications to the USCIS for adjudication with the I-140 immigrant visa petition.

On August 10, 2005, DOL’s proposed rule eliminating labor certification substitutions cleared initial review at the Office of Management and Budget (OMB). DOL believes that by eliminating labor substitutions, they will “reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States.” The proposal would eliminate the current practice of allowing the substitution of alien beneficiaries on applications and approved labor certifications.

DOL is proposing to further reduce the likelihood of the submission of fraudulent applications labor certifications by proposing a 45-day deadline for employers to file their immigrant visa petitions based on approved permanent labor certifications with the USCIS. Furthermore, the proposed rule “expressly prohibits the sale, barter, or purchase of permanent labor certifications or applications, as well as related payments”. DOL will also propose enforcement mechanisms to protect program integrity, including debarment with appeal rights. These proposed amendments would apply to employers using both the Application for Alien Employment Certification (Form ETA 750) or the Application for Permanent Employment Certification (Form ETA 9089).”

Employers should note that this is only a proposed rule, not a final rule. As such, it is not in effect at this time, and employers may continue to proceed with labor certification substitutions. Jackson & Hertogs will continue to track the status of this proposal, and will update clients as more information becomes available.

**Washington Corner**

**J&H attorney attends D.C. Advocacy Institute**

Senior Associate Atessa Chehrazi traveled to Washington, D.C. on July 29th to participate in a two-day Advocacy Institute sponsored by the American Immigration Lawyers Association. This seminar focused on the current political climate for immigration, and pending bills which may change the immigration landscape. Speakers were diverse and included representatives of the International Franchise Association, the Service Employees International Union, and the U.S. Conference of Catholic Bishops.

The Advocacy Institute focused on comprehensive immigration reform. Overwhelmingly, Americans believe that the U.S. immigration system is broken and needs to be fixed. Legal immigration is hampered by numeric restrictions which were set years ago. Our immigration system provides no visa category for guest workers essential to our economy, and no legal solution for families who have been working and paying taxes in the U.S. for years. President Bush has voiced support for comprehensive immigration reform, and two major reform bills have been introduced in the current session of Congress.

The most comprehensive reform bill was introduced on May 12, 2005, by Senators John McCain (R-AZ) and Edward Kennedy (D-MA) and is called the Secure American and Orderly Immigration Act of 2005. This bill dramatically increases the number of both employment-based and family-based immigrant visas, and increases the limits on maximum visas per-country. It provides for a new, improved I-9 (employment eligibility confirmation system). The bill provides for a new temporary H-5A visa for positions requiring minimal skills (less than a bachelor’s degree), an initial cap of 400,000 H-5A visas, and a means for H-5A visa holders to apply for permanent residency. The bill allows eligible undocumented people already in the U.S. to apply for a H-5B nonimmigrant visa and apply for permanent residency.

The alternative bill, the Comprehensive Enforcement and Immigration Reform Act, was introduced on July 20, 2005, by Senators Cornyn (R-TX) and Jon Kyl (R-AZ). This alternative bill focuses on enforcement, such as a mandatory “report to deport” program. The bill does create a new two year W visa category for temporary workers, but requires workers to return to their home countries for a year and does not provide for permanent residency for workers. Furthermore, the benefits of mandatory departure and the W visa are not available until an individual’s country of nationality enters into an agreement with the U.S.
Speakers at the Advocacy Institute spoke in favor of the McCain-Kennedy bill, and their organizations have expressed support for this bill over the alternative bill. In light of the problem of retrogression of immigrant visa numbers and limitations on certain non-immigrant visas such as the H-1B, the McCain-Kennedy bill does better to further the interests of U.S. employers as well. We would encourage clients to contact their Senators and Representatives to support comprehensive immigration reform.

**Congressional memo: “Labyrinth of immigration law”**

In light of the debates in Congress over comprehensive immigration reform, the Congressional Research Service (CRS), the public policy research arm of the United States Congress, issued a memorandum on July 28, 2005 to the House Committee on the Judiciary discussing the complexity of U.S. immigration laws. Citing quotes and observations from case law, testimony, literature, and other sources, the memorandum highlights the difficulty of immigration officials to understand, apply, interpret and enforce all the nuances of the Immigration and Nationality Act (INA), the body of law upon which the regulations and benefits which affect foreign nationals is based. In the memorandum, the INA was compared to “King Mino’s labyrinth in ancient Crete” and “second only to the Internal Revenue Code in complexity”.

**Timeline for VWP passport requirements**

The Department of Homeland Security has released a useful timeline illustrating the important deadlines for passports required by the U.S. for countries participating in the Visa Waiver Program. Persons planning to travel to the U.S. under the Visa Waiver program should review the timeline to confirm that their passport will be valid for entry during their planned travel dates. The timeline can be viewed at the following link: [http://www.dhs.gov/interweb/assetlibrary/VWP_PassportRequirementTimeline_07-2005.pdf](http://www.dhs.gov/interweb/assetlibrary/VWP_PassportRequirementTimeline_07-2005.pdf)

**J&H News**

**Ilan Drummond named “Super Lawyer”**

San Francisco magazine has selected Jackson & Hertogs partner, Ilana Drummond, as a "Northern California Super Lawyers 2005" within the category of immigration practice. The final selection was based on a point-based system which included (1) a general survey of attorneys in Northern California via distribution of ballots; (2) review by a blue-ribbon panel, broken into nearly 60 areas of practice, consisting of the top vote-getters; and (3) independent research and interviews with lawyers throughout the region. Congratulations, Ilana!

**Team J&H Walks for a good cause**

On Sunday, July 17th, Team J&H –composed of Jackson & Hertogs employees, friends, relatives, and a dog named “Jones”– met in Golden Gate Park to participate in the 2005 AIDS Walk San Francisco. This is Team J&H’s fifth year of participation and more than $2,300 was raised by the team to help those living with HIV and AIDS.

**Welcome, Gretchen Jones**

Please join us in welcoming a new employee to the J&H team: Gretchen Jones. Gretchen has joined our team of legal assistants and will be primarily working with Atessa Chehrazi. Gretchen has over seven years of experience working in the world of fine arts, antiques, and industrial auctions. J&H is excited to have her join our team.

**Congratulations!**

We are pleased to announce the birth of Seamas Kai-Shuo Coghlan to J&H paralegal Pei-Ti Chang Coghlan and her husband. Seamas was born on July 21, 2005 and weighed in at 9lbs., 5 oz., and 21 ½ inches long.

**J&H seminars and webinars**

**September 21, 2005 - International Travel**

This seminar will address immigration issues raised by international travel, and address the following questions: Who needs a visa stamp? What are the visa requirements for travel to a contiguous territory? What issues arise from travel while an extension/change of status is pending? As many people will be applying for initial H-1B visas on or about October 1, 2005, what will be the potential impact for people applying for visas during this period? Finally, what current issues must be considered for visa processing at consulates, including interviews, appointment wait times, and potential delays due to security reviews.

**October 19, 2005 - PERM Nuts and Bolts**

This webinar will provide an overview of the PERM process and cover issues in drafting job descriptions, wage determinations, SWA Job Orders, and recruitment. We will discuss how to place SWA Job Orders and options for managing and monitoring the number of applicants received.

© 2005 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 30 legal assistants and office management personnel to assist you with immigration matters.

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