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U.S. Citizenship and Immigration Services

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Abbreviations used in this issue

BEC - Backorder Elimination Center
CBP - Customs and Border Protection
CSC - California Service Center
DHS - Department of Homeland Security
DOL - Department of Labor
DOS - Department of State
HSMP - Highly Skilled Migrant Program (U.K.)
PASS - People Access Security Service (DOS)
RFD - Records Digitization Facility (USCIS)
RFID - radio frequency identification
RIR - Reduction in Recruitment
USCIS - U.S. Citizenship and Immigration Services

No webinar in December

There is no webinar scheduled for the month of December. We will return with our new schedule of exciting webinars and seminars in January 2007. Please keep watch for the new list on our website at http://www.jackson-hertogs.com/?page_id=519.

USCIS News

USCIS website makeover

The USCIS website at www.uscis.gov has recently been updated and is sporting a new layout. You may need to update bookmarks as the addresses to some of the site’s pages have changed. J&H will update broken links to USCIS pages on our website as quickly as possible.

CSC no longer faxing approvals

Effective December 1, 2006, the California Service Center will no longer fax approval notices for premium processing cases. CSC is eliminating this step of the process to increase efficiency and to allow for notices to be sent in a timelier manner. The CSC will continue to fax all requests for evidence relating to premium processing cases.

Records digitization facility opens

On October 16, 2006, USCIS celebrated the opening of the Records Digitization Facility (RDF) in Williamsburg, Kentucky. During the ceremony, USCIS Director Emilio Gonzalez announced a multi-year plan to digitize paper immigration files as an enhancement to national security.

“By moving from a paper-based system to an electronic platform, we will enhance security, improve efficiency and be able to better handle any future immigration reform,” Director Gonzalez remarked. “This important first step to digitize one-million paper records during the next five years will make it easier for our officers to detect and deter fraud and protect the integrity of our national immigration system.”

The facility will be digitizing millions of paper records and applications for immigration benefits, including the “A-files” (permanent alien immigration files).
**Holiday travel advisory**

With holiday season rapidly approaching, many employees in non-immigrant status will be traveling outside the United States to see friends and family, in addition to perhaps making important business visits.

Before employees firm up flight plans, they should take the time to review the expiration of all travel documents, to make sure that they will be entitled to return to the United States after their trip. The following information has been prepared to be shared with your employees as a checklist of issues to remember before holiday travel starts.

Should you have any questions about these matters, do not hesitate to contact your attorney at J&H.

**Check documents for continued validity / expiration.**

First, check the expiration date of your passport, nonimmigrant visa (e.g., H-1B or L-1 visa), and I-94 card. Please check not only your own documents, but those of your spouse and children.

When you travel abroad, you will be required in most cases (Canadians citizens holding TN status are exempt) to surrender your I-94 card to the authorities. You will however want to hold on to your I-797 petition approval notice. When you return, be sure to present your I-797 (“Notice of Action”) petition approval notice and nonimmigrant visa, demonstrating the period of employment authorized status to which you are allowed. You should always carry the original I-797 approval notice on all trips, assuming you were issued one in the first place. (Please note that nonimmigrants in certain categories, such as E-2, E-3, or TN, will not necessarily have an I-797 approval notice, unless they had extensions of their nonimmigrant status previously filed while in the United States.)

With respect to your nonimmigrant visa itself, please make sure it remains unexpired not only at the time you leave, but also for a meaningful period of time after you return from your international trip.

Any trips to Canada or Mexico lasting less than 30 days will not require a visa for return to the United States. However, if you apply for a visa in Canada or Mexico, and your visa application is subsequently denied or delayed, you may not necessarily be able to return to the United States with just your I-797 approval notice.

Finally, with respect to passports: please ensure your passport is valid for at least six months beyond your approved period of stay in the United States. If you do not have a passport valid for the full period of authorized nonimmigrant stay, please consider getting a new passport prior to your trip. Otherwise, there is a chance the U.S. Customs & Border Protection officer may “short change” your period of authorized stay upon return to the United States, and fail to give you the full period of stay for which you were previously authorized. You will want to contact your country’s nearest embassy to determine how to obtain a new passport as soon as possible.

**Book visa appointments to get a new visa.**

You may need to apply for a new nonimmigrant visa at a U.S. Consulate abroad, if you have either never before obtained a nonimmigrant visa for your current employment category, or if your previously-issued nonimmigrant visa has now expired. This must be done before you return from your international trip. Please make sure to book your appointment as early as possible, even if you do not plan to leave the United States for several weeks from now. Consular appointments currently all require personal interviews, and these appointments can be hard to obtain during the holiday season months of November and December.

Please note that consular appointments do not necessarily have to be made in your home country. They may alternatively be made in Canada or Mexico, or even in other countries, depending upon the circumstances. However, before making a visa appointment with a U.S. consulate in any other country besides your own, please ensure to the extent possible that the post will accept your application. Visa application processes at different U.S. consulates can differ from country to country. Therefore, please check with that consulate on necessary documents and procedures at the time of making your visa appointment. You can locate different U.S. consulates around the world by checking the following URL: http://usembassy.state.gov.

**Beware of security clearance checks.**

Security clearance checks can delay your visa application at any U.S. consulate. Sometimes these delays can last days, weeks, or even months. Though security clearance checks are rare, there is always a chance your visa application can be delayed as a result of security clearance checks. Sadly, the only way to be sure you do not get delayed by security clearance checks is to never apply for a nonimmigrant visa at a U.S. consulate. This is not a viable option for most nonimmigrants, as it would involve forgoing international travel. Therefore, please plan accordingly. Do not think there is any U.S. consulate (e.g., in Canada...
or Mexico) where you are more or less likely to receive a security clearance check. Security clearance checks can be and have been issued at all U.S. consulates, depending upon the circumstances. Please make sure that you plan your travel accordingly, so that a delay in your return due to security clearance checks does not come as a total surprise to those expecting your timely return to the United States.

**Applicants for adjustment of status (I-485) should renew advance parole early.**

Those applying for adjustment of status (Form I-485) can travel internationally only with an advance parole document, issued prior to departure, that will remain unexpired until after they return to the United States from their trip abroad. (The only exception is for those adjustment of status applicants who hold valid, unexpired H-1B or L-1 visas, and a receipt notice for their I-485 application.) The USCIS can often take as long as three to four months to process an advance parole renewal application. For that reason, it is wise to apply for renewal of any advance parole document within four months of its expiration date, to ensure that a new advance parole document will arrive before the existing advance parole document can expire. Otherwise, you may not receive your new advance parole document in time to make your international trip.

**Provide a copy of your I-94 card (front and back) immediately upon your return.**

As you know, as a nonimmigrant visa holder working for a U.S. employer, the white I-94 card issued to you from U.S. Customs & Border Protection controls your ability to lawfully work and remain in this country. Our firm works with your employer to help ensure that this critical document is never allowed to expire without extension. While we are here to help, it is ultimately your legal responsibility to ensure that your I-94 card (and that of any family members accompanying you) never expires while you are still in the United States. However, this is not always as easy a task as it may sound! I-94 cards are typically issued by CBP each and every time you take an international flight. Sometimes, the new I-94 card lists an expiration date later than your prior I-94 card (CBP officers are not consistent in providing for a 10 day “grace period.”). Sometimes, you are “short changed,” and your new I-94 card expiration date is shorter than that of your prior I-94 card. Sometimes, the I-94 expiration dates of your family members are not in alignment with your own I-94 card.

For that reason, it is very important that you provideJackson & Hertogs the most current I-94 card issued by U.S. CBP to you and your family. Please be sure to scan and e-mail (or fax) a copy of the new I-94 card you and/or your family receive after each entry into the United States.

**Passport card proposal**

On October 17, 2006, DOS announced and submitted for public comment a federal rule proposing the development of a card-format passport for international travel by U.S. citizens through land and sea ports of entry between the United States, Canada, Mexico, the Caribbean, and Bermuda.

The proposed limited-use passport card will be a wallet-sized card that would cost $10 for children and $20 for adults, plus a $25 execution fee. In addition, the card would use long-range, or vicinity, radio frequency identification (RFID) technology to link the card to a secure U.S. government database containing biographical data and a photograph. The card itself will not contain any personal information, and DHS will implement protections to keep the database secure.

The passport card is a core element of the PASS (People Access Security Service) System announced by Secretaries Rice and Chertoff in January 2006, with a view to secure and expedite travel to and from the United States. The proposed rule is available for public viewing and comment through December 18, 2006 at [http://www.regulations.gov](http://www.regulations.gov) document id DOS-2006-0329-0001.

**Visa issuance fee eliminated for Indian applicants**

On November 9, 2006, it was announced that the US$ 50 reciprocal issuance fee for all non-immigrant visas for Indian citizens, had been eliminated effective immediately. The result will be a 33% reduction in the cost of obtaining a visa.

Visa applicants will still be required to pay an application fee of US$ 100 at a designated HDFC bank branch prior to scheduling a visa interview.

Last month, the Embassy and Consulates General implemented procedures eliminating the visa appointments backlog for Indians who plan travel to the United States. Appointments are currently available for non-immigrant visa applications at all U.S. consular offices in India.
Erroneous withdrawals of labor certs

On November 10, 2006, DOL informed AILA that an IT glitch resulted in the withdrawal of pending Traditional and RIR cases at the BECs where a PERM was filed or approved for the same employer/employee. This occurred even when the PERM did not request the priority date of the labor certification pending at the BEC. DOL has stated that they are working on a correction of the problem. Updated information should be posted on the DOL’s website soon.

Global Visas

United Kingdom: Highly Skilled Migrant Program

The U.K. Highly Skilled Migrant Program (HSMP) allows individuals with exceptional skills to work in the United Kingdom where a successful applicant can undertake self-employment or employment without a prior offer. On November 7, 2006, the U.K. Home Office announced new criteria for HSMP work authorization that became effective on November 8, 2006. The Home Office also suspended HSMP applications until December 5, 2006. Applications submitted after November 8, 2006 must meet the new HSMP criteria (please contact us if you have an application that was submitted prior to November 8, 2006 and is still pending as transitional rules may be applicable).

Under the new criteria, an HSMP applicant must have at least 75 points to be considered for the HSMP work authorization. Applicants no longer receive points for work experience, achievement in a chosen field or for the applicant’s partner’s achievements. GP’s are no longer given priority. Applicants will receive points only for qualifications, previous earnings, work or study in the U.K., age, and for having an MBA from the list of eligible MBA programs. The applicant also must speak English. The new HSMP rules also specify the type of evidence necessary to support the application.

Extensions of initial HSMP work authorization granted prior to November 8, 2006, will require the applicant for extension to also meets the new HSMP requirements set forth above.

The foregoing is a general discussion of the new rules and does not cover all aspects of the new rules. Please contact us for specific information regarding individual matters.

J&H News

J&H welcomes Randi, Justin and Chris!

Please join us in welcoming three new members of the J&H team!

Randi Nagahori is a legal assistant and will primarily be working with Partner Norman C. Plotkin. Randi is a graduate of UC Berkeley where she majored in Anthropology and History. She has previous experience working in the field of family immigration law. In addition she is an active volunteer at various social justice groups throughout the Bay Area.

Chris Salvano joins J&H as a paralegal. Chris grew up in Gainesville, Florida and lived for many years in New Orleans, Louisiana. He received a B.A. in Global Studies and a B.A. in Spanish from Sonoma State University. While studying in Mexico in 2004-2005, he volunteered with a non-governmental organization working with children in low-income public schools on community health and development issues. His interests include human rights, immigration, and trade relations in the Americas and he has volunteered with La Fundación Comunitaria de Querétaro in Querétaro, Mexico, La Luz Foundation in Sonoma, California, and Project Censored in Rohnert Park, California. He is fluent in Spanish and working on learning French.

J&H welcomes Justin Overstreet as a paralegal to the team. Justin graduated from UC Davis where he majored in Political Science and Economics. He also has an American Bar Association-approved Paralegal Certificate from CSU Hayward (East Bay). Most recently, Justin worked for a family-based immigration law firm in El Cerrito, California.

Mark your calendars! J&H will be closed on the following dates:

November 23-24;
December 25-26; and
January 1-2, 2007

Immigration Trivia

All foreign nationals must have a visa stamp in their passport if they hold H-1B, TN, or L-1 status. True or False. False. Canadian nationals are visa exempt and do not need to obtain a visa stamp.

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