August webinar:
LCA Recordkeeping and Compliance

Do you know where your LCAs are? Do you know what an LCA is? This webinar will present an overview on employer requirements for labor condition application (LCA) recordkeeping, including public and DOL access file guidance, location of records, how to update LCAs, and when LCAs may be destroyed. We will also discuss some of the immigration consequences for employers related to corporate mergers, acquisitions, and restructuring. PHR/SPHR certification pending.

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Update regarding employment-based I-485s: July visa bulletin restored!

First the background: on the morning of July 2, 2007, the US Department of State (DOS) issued an anticipated update to its July Visa Bulletin. The DOS update asserted that US Citizenship and Immigration Services (USCIS) had adjudicated approximately 60,000 backlogged employment based I-485 Adjustment of Status (AOS) cases in the previous month. As a result, the DOS announced a “revision” to the employment-based immigrant visa “cut-off dates”. The DOS instructed USCIS that all visa numbers for all employment-based categories were utilized, and would be unavailable until the new fiscal year begins on October 1, 2007.

Immediately thereafter, USCIS announced that it would accept no I-485 AOS applications based on employment-based immigrant petitions; the agency would therefore reject and return all I-485 AOS applications received on or after July 2nd. The actions of the USCIS were unprecedented. For the next 15 days, there was an uproar of complaints from the immigration bar and other stakeholders in the immigration community. There was one class action law suit...
against the USCIS filed in the Chicago area and the American Immigration Law Foundation readied to file an even larger one in Washington State. Congresswoman Zoe Lofgren sent a very telling “demand” letter to Michael Chertoff, head of the Department of Homeland Security with a copy to Condoleezza Rice, Secretary of State. Some groups, in protest, sent white flowers to the head of USCIS. Impacted employers and employees contacted congressional representatives and the media. As a result, there were a large number of news articles, radio broadcasts and editorials all focusing on the fact USCIS had made an unprecedented and unlawful change in procedures in deciding to no longer accept filings of AOS applications despite a July Visa Bulletin that indicated that all categories but for the Other Worker category were current for July.

Then, on July 17, 2007, the DOS issued the August Visa Bulletin. Although the August Visa Bulletin indicates that visa numbers for employment-based cases are “unavailable” for August, it states the following:

After consulting with Citizenship and Immigration Services, the Visa Office advises readers that Visa Bulletin #107 (dated June 12) should be relied upon as the current July Visa Bulletin for purposes of determining Employment visa number availability, and that Visa Bulletin #108 (dated July 2) is hereby withdrawn.

What this means is that the first July Visa Bulletin which indicated that visa numbers were available for employment-based cases for all categories (except Other Workers) and for all individuals irrespective of birth trumps the second July Visa Bulletin update. For all practical purposes, the USCIS will now accept AOS cases from individuals in these categories.

In a press release dated July 17, 2007, USCIS announced that it had reversed its July 2 announcement that the fiscal year 2007 employment based visa numbers had been exhausted and that it would refuse to accept adjustment of status filings during July. Instead, Secretary Chertoff advises that USCIS will keep the applications received on or after July 2nd and issue receipts for those cases. Furthermore, USCIS re-opened the AOS filing period for a new 31-day period from July 18 through August 17, 2007, in order to provide the same filing window length people would have had if the July 2 actions had not taken place. As a final concession to the errors of the agency, USCIS also will accept AOS applications using the current filing fees for the entire filing period rather than the new fees that were scheduled to go into effect on July 30.

Any applicant, who is eligible to file an application for AOS, must do so by August 17, 2007. After that date, no employment-based AOS applications will be accepted again until there is advancement in visa availability. DOS has indicated that while the October 2007 visa bulletin will likely have some availability, it is anticipated that there will continue to be backlogs in various categories (particularly for persons born in India and China in both EB2 and EB3) and that forward movement will be very slow.

Once an applicant files an AOS application, the USCIS will likely work on processing the case but will not be able to adjudicate it to approval until the priority date is current and an immigrant visa number is available. Therefore, individuals who do submit their AOS application will likely have a long wait before they are granted permanent resident status. However, once the application is submitted, they will be in queue for adjudication and will more quickly be eligible to “port” their green card process to a new position or new employer so long as they fit within the parameters set forth in the American Competitiveness in the 21st Century Act. Furthermore, applicants for AOS are eligible to receive ancillary authorizations for travel and employment—a big added benefit is that H-4 spouses who have been unable to work will be able to apply for and be granted employment authorization.

Given the large number of cases which are being filed during this 31 day period, it is anticipated that USCIS will be backlogged in receipt issuance. In fact the Texas Service Center is anticipating that it will take them until October to issue I-485 receipts and complete the initial data entry on cases. The other “backlog” that we are experiencing right now is the fact that interested foreign nationals are having a hard time securing the needed medical appointments from USCIS approved physicians. Some individuals have had to make appointments with doctors in other regions. The basic documents required to be submitted with each application are:

1. Completed Medical Examinations
2. Photos
3. Birth evidence
4. Marriage evidence (including evidence of divorce)
5. Passport copies (including expired passports)
6. Copies of all immigration documents to show maintenance of status in the U.S.

J&H is working with our clients to process and file all applications that can be filed for clients who want to proceed. If any of your employees are eligible and want to file, they must do so immediately. Please encourage your employees to treat this matter as of utmost urgency.

For up-to-date information, visit us on the web: www.jackson-hertogs.com
Termination of premium processing for I-140 immigrant petitions

The USCIS announced on June 29, 2007 that it will disallow premium processing for any immigrant petitions accepted during the month of July 2007. Neither new nor pending I-140 petitions may be “upgraded” to premium processing, effective July 2, 2007. The ban on I-140 premium processing may or may not be lifted in August. J&H will continue to provide updates on the premium processing service as we receive new information.

CSC issuing delayed approval notices

USCIS announced on July 11, 2007 that they had resolved the issue that prevented approval notices from being printed on a number of cases. CSC has advised that all delayed approval notices should be delivered by July 20, 2007.

Visa applicants with drunk driving record

DOS News

A June 2007 Department of State cable clarifies that visa applicants with drunk driving convictions must be referred to a panel physician in two circumstances: (1) an applicant has a single drunk driving arrest or conviction within the last three calendar years or two or more drunk driving arrests or (2) convictions in any time period. Consular officers must also refer applicants to panel physicians if there is any other evidence to suggest an alcohol problem.

Conviction for drunk driving does not make an applicant ineligible for a visa unless there is physical or mental disorder and demonstrated behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others. Applicants for visas who fall within one of the two classifications above may expect delays in visa issuance. The full cable can be read on the DOS website: http://travel.state.gov/visa/laws/telegrams/telegrams_3267.html

Global Visas

Australia: Long stay visas must have English language proficiency

Effective as of July 1, 2007, primary applicants for Australian Subclass 457 (long stay) visas in occupations which require licensing (e.g., plumbers, electricians, etc.) must prove that they have a specified level of English language proficiency.

The Minister may test the applicant’s level of proficiency. Applicants who will earn a base salary of AUD 75,000 or are citizens of Canada, Ireland, New Zealand, the United Kingdom or the United States are exempt from the requirement. Please contact us for specific information or questions.

China: Background checks for Shanghai

Effective immediately, companies applying for alien employment licenses and work permits in Shanghai, China, will be subject to a background check which may delay processing times. Application processing time may take up to 15 business days because of the new background checks. Please contact us for specific information or questions.

France: Evidence of work authorization required

Effective July 1, 2007, employers in France who wish to hire non-French nationals already in France must provide evidence that the employee is authorized to work in France (this rule does not apply to non-French nationals who are not subject to the work permit requirement nor to foreign employees working in France pursuant to a temporary work permit).

This evidence must be provided at least 2 days prior to the employee’s proposed employment by sending the documents to the appropriate prefecture by registered mail or electronic mail.
J&H Welcome Beth, Sue and Schreill!

Jackson & Hertogs is pleased to welcome Beth Cohn-Mintz, Sue Wang, and Schreill Lefort!

Beth Cohn-Mintz joins J&H as our newest attorney. Beth received her J.D. from Stanford Law School in 1995 and has been working in the field of immigration for more than a decade, both in the private sector and with USCIS in San Francisco. Upon graduating from law school, Beth joined the boutique immigration law firm of Finnan, Fleischut & Associates in Palo Alto, where she worked with major research institutions, start-up and high technology companies, as well as families and individuals. In 2000 Beth joined Berry, Appleman & Leiden, where her work focused on obtaining immigrant visas and citizenship for her clients. During this time Beth volunteered with the Lawyers Committee for Civil Rights, mentoring pro bono attorneys who were representing asylum seekers. Most recently Beth worked with USCIS, interviewing and adjudicating the claims of asylum applicants, and with the immigration law firm of Lawler & Lawler, where she provided comprehensive legal services to the firm’s corporate clients. Beth is a member of AILA and of the California Bar.

Sue Wang is a recent graduate from the University of Chicago where she majored in Biological Sciences and Political Science. At school, Sue developed a passion for international relations and was an active participant in her school’s Model United Nations team as well as a the Chicago branch of the United Nations Association of the United States of America. Originally from upstate New York, Sue is happy to be living in a place where it rarely reaches the negative degrees (fingers crossed). Sue joins J&H as a Legal Assistant and will be working primarily with Grace Hoppin.

Schreill Lefort joins J&H as Accounts Receivable Administrator. She is currently attending San Francisco State University with a degree emphasis in Cell & Molecular Biology. She was born and raised in Oakland, California. Schreill loves doing anything that involves spending time with her family, which includes traveling, horseback riding, swimming, and camping.

J&H complimentary webinars for HR professionals

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See page 1 for a description of this webinar.

September 2007 – Travel Considerations: Issues Raised by 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, 2007, 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. PHR/SPHR certification pending.

Immigration Trivia

An already filed I-140 immigrant visa petition can be upgraded to Premium Processing by the payment of a $1000 fee to USCIS.

True or False?

Answer: Currently False. On June 29, 2007, USCIS announced it would not accept upgrade requests to Premium Processing or new Premium Processing filings for I-140s. Up until July 2, 2007 most 1-140 immigrant visa petitions could be upgraded or filed under Premium Processing prior to June 29, 2007. However, after June 29, 2007, USCIS announced it would not accept upgrade requests to Premium Processing or new Premium Processing filings for I-140s.