New I-9 form released and removed – previous version still accepted

The USCIS recently published a new Form I-9 dated 6/16/2008 and indicated that all previous versions of the form could no longer be used. Subsequently, that form update was removed and the USCIS updated its I-9 webpage to reflect that the previous 6/5/2007 version of Form I-9 remains valid and acceptable. The USCIS did not provide any explanation for this reversion to the prior form.

Please note that employers must always use the latest version of the Form I-9 when verifying the employment eligibility of their new hires and when re-verifying the employment eligibility of continuing employees unless the current form instructions allow for reverification use. Employers should not use the re-verification section on the original I-9 Form that was completed when the employee was initially hired, unless the original verification was done on the current version of the I-9 Form. Employers may download a free copy of the latest I-9 Form here: http://www.uscis.gov/i-9.

Biometric changes for re-entry permits

On July 8, 2008, USCIS released Questions & Answers about the new biometric requirements for re-entry permits and refugee travel documents (form I-131). As of March 5, 2008, applicants for either type of document must provide biometrics (fingerprints and photograph) at an ASC for background and security check purposes. Particularly for re-entry permit applicants, biometrics must be completed prior to departing the U.S. This change will likely impact travel plans for many individuals, and applicants are encouraged to discuss the new requirement and their travel needs with their J&H attorney well in advance of filing a re-entry permit application.

A link to the USCIS Questions & Answers regarding this new requirement is available on our website: http://www.jackson-hertogs.com/news/20080709.pdf.

On-line FOIA status check

On June 30, 2008, USCIS announced the launch of an on-line FOIA (Freedom of Information Act) status check system. To check status of a FOIA request, the assigned control number will be needed. The system will then provide either a “pending” or “processed” response. The system should be updated daily.

The online system can be accessed on the USCIS website at: http://tinyurl.com/42hu3a.
DOS News

August Visa Bulletin – EB2 India, China progress; EB3 remains unavailable


There were no changes in any other employment-based category on the August Visa Bulletin. EB-1 remains current for all countries, and EB-2 is current for all countries other than India and China, which have moved to June 1, 2006. EB-3 continues to be unavailable for all countries. According to DOS projections, it is anticipated that the “unavailability” for EB-3 will be a temporary situation—DOS anticipates that EB-3 will return to the cut-off dates established for June 2008 when the October 2008 bulletin is issued. October 1 is the start of the new fiscal year.

It is important to note that “nationality” is not the same as citizenship. Generally, DOS looks at the country of birth in determining whether a person is a national of a given country. As a result, persons who become citizens of other countries (i.e., Indians who become Canadian citizens) are still considered nationals of their birth country for immigrant visa purposes.

For general information on visa retrogression, please see our FAQs on this subject. For more information on the Visa Bulletin and country quota movements, including information about movement in the Family-Based Quotas, please see our DOS Visa Bulletin and Quota Movement page which includes detailed nationality-specific charts of quota movement for the past decade.

Since the vast majority of individuals with EB2 priority dates impacted by this quota movement have actually already filed their applications for adjustment of status, what this will mean generally speaking is that USCIS should continue to adjudicate pending applications for adjustment of status. This will also impact whether an employer is able to seek a three-year H-1B extension for employees in the final stage of the green card process or not and whether the USCIS will be issuing multi-year EADs. Both the three-year AC21 H-1B extension and the multi-year EAD are reserved for individuals for whom the priority date is not current.

Employers and their employees are all trying to understand how there could be such cut offs and advancements in the EB2 category. To gain insight, we turn to the analysis offered in the July visa bulletin by the DOS. In a nutshell, if the total demand for visas in an EB category “is insufficient to use all available visa numbers in that category in a calendar quarter, then the unused numbers may be made available without regard to the annual per-country limit.” Here is an example of the DOS math:

If the second preference annual limit were 40,000, number use by “All Other Countries” were estimated to be only 25,000, and the China/India combined number use based on their per-country limits were 6,000, then there would be 9,000 numbers unused. Those 9,000 numbers could then be made available to China and India applicants without regard to their per-country limits.

By applying this principle and based on the usage figures available to DOS, it was determined that the demand for EB2 numbers worldwide plus the number available under the China and India quotas, “would be insufficient to utilize all available numbers under the annual limit for this category.” Because all the available visas were not used up and were not projected to be used up, the numbers can and were made available to the China and India EB2 categories. Interestingly, because the Act mandates that unused numbers are used in priority date order, even though there is higher demand for visas for India born persons, the two categories will have the same cut-off date. Therefore, more visas will be issued to India born individuals because there are less in the pool who were born in China. Now if your head was not already spinning, the visa usage continued as such that for August, DOS was able to move both cut off dates forward by two years. It is unclear what will happen when the September bulletin is released but USCIS has the incentive to issue as many EB2 green cards as they can to prevent DOS from moving the dates forward again in a month.

DOS also stated in the July bulletin that should the EB2 worldwide usage increase so that it would utilize the available numbers, then DOS would have to make an adjustment to the India/China cut off dates. That obviously didn’t happen in August; it could happen in September, but it is doubtful.

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

DOL publishes draft of new LCA Form

On June 26, 2008, the DOL published a proposed LCA (ETA 9035) in the Federal Register for notice and comment. DOL plans to implement the new LCA form in January 2009.

The LCA is required for several non-immigrant visas, including the H-1B, H-1B1 Free Trade Act visas for citizens of Chile and Singapore, and for the E-3 visa. Employers must obtain a certified LCA from DOL prior to filing any of these petitions. Generally, the LCA is an attestation to DOL that the working conditions for the alien will be identical to those of other U.S. workers, that the salary will equal either the prevailing wage in the area of employment or match the actual wage being paid to others similarly employed by the employer — whichever is higher; that there is no strike or lockout at the employer’s facility; and that the employer has met all other requirements of the program as specified in the DOL regulations.

Among the proposed changes DOL has made to the LCA, DOL will now require greater specificity in the type of application the LCA will support, up to three worksites may be listed on the application, and the attorney or representative, as well as the employer, must sign the new LCA. Many of these changes appear designed to mirror the data collected by DOL in the permanent labor certification program (PERM).

In addition, while not mentioned in the publication of the draft form, DOL representatives recently stated to the American Immigration Lawyers Association (AILA) that when the new LCA form is implemented in 2009, DOL processing times for LCAs should be expected to increase to as long as seven days. The regulations require DOL to issue a decision within seven days of receiving an LCA; however, under the current online filing system, most cases are adjudicated within a day, if not seconds, after submittal. This longer processing time may impact the preparation and filing of H-1B, H-1B1 and E-3 petitions, as none of these may be filed until DOL certifies the underlying LCA. If the anticipated delays are realized, it could significantly impact the preparation and filing of time critical cases such as change of employer H-1Bs, H-1B cap filings and H-1B1/E-3 applications at a consulate.

Jackson & Hertogs will continue to monitor the status of the new LCA form and will update our clients as more information becomes available.

Selected FY 2008 PERM statistics

In June 2008, ETA released selected statistics for the FY 2008 PERM program. For the period October 2007 to May 2008, DOL completed 38,246 cases. Of these, DOL certified 28,773 cases, denied 7,779 cases, and 1,694 cases were withdrawn. For the same period, DOL received 58,800 online submissions and 3,000 mail in submissions. Other highlights included:

- Alien beneficiaries representing more than 150 different countries were certified for permanent employment in the U.S. The top 10 countries of citizenship of alien beneficiaries included India (8,127), China (1,809), South Korea (1,654), Philippines (1,631), Mexico (1,461), Canada (1,340), United Kingdom (482), Pakistan (442), Taiwan (441), and Brazil (382).

- Top job titles certified for permanent employment included Computer Software Engineers (4,607), Computer Systems Analysts (1,486), Computer and Information System Managers (825), Electronics Engineers (616), Computer Programmers (499), Market Research Analysts (458), Mechanical Engineers (350), Accountants (325), Operations Research Analysts (323), and Restaurant Cooks (322).

Singapore: Long Term Pass card

Singapore will introduce a new Long Term Pass (LTP) card to all foreigners residing in Singapore on an Employment Pass, Dependant’s Pass, Student’s Pass, or long term visit pass, as part of the Government’s initiative to enhance the national security of Singapore. The card will be introduced in phases from the second half of 2008. The LTP card will replace the current stamp endorsement on the travel documents and the paper-laminated Disembarkation/Emarkation (or D/E) card issued to long term pass holders. Current D/E Card holders need not take any action for now, as the authorities will either inform them or their employer when these cards are to be replaced or simply issue the new LTP card to them when their passes are renewed. The LTP card will have better security features compared to the present paper-laminated card, including biometric features, such as a photograph and fingerprint of all cardholders aged 15 and above. If you have questions about a specific matter, please contact Jackson & Hertogs.

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

J&H complimentary webinars

July 23, 2008 (Webinar) — Mid Year “Hot Topics” in Immigration Law

This webinar will provide updates from this year’s annual AILA conference in Vancouver, Canada and recent developments with DOS, DOL, CBP, and USCIS, as well as other areas that may be relevant to our corporate clients. Please join us for this useful overview of the latest developments in immigration.

Welcome Karyn Andrade!

J&H is pleased to welcome Karyn Andrade as a Legal Assistant. A recent graduate of the University of California, Berkeley, she studied International Political Economy with an emphasis on European integration. She specifically focused on understanding France’s role in the EU and how French public policy and the populace dealt with changing flows of immigration. She spent six months attending school in Paris, mastering the language and learning the French views on migrants, nationality and citizenship. A Bay Area native, she hopes to use knowledge gained from J&H to pursue her goal of working on U.S. immigration policy.

Welcome Chris Pommier!

J&H is also pleased to welcome Chris Pommier, who joins as a Legal Assistant. Chris was born in Santa Clara and grew up in small towns all over the West, from California to Alaska. He graduated from UC Santa Cruz with a degree in Anthropology. Chris and his partner have just moved back to the Bay Area from Minneapolis where they were living for the past 5 years while his partner finished graduate studies. While he was in Minneapolis, Chris worked for Leonard, Street & Deinard in Records, and the immigration firm, Myers Thompson. In his free time, Chris was awarded a Jerome Foundation mentorship for poetry, and wrote news, features, and A&E pieces for local magazines. He still enjoys freelance writing, and is happy to have left behind those infamous Minnesota winters.

Immigration Trivia

Which non-immigrant visa petition types require the filing of an LCA?

   a. H-1B Specialty occupation worker
   b. L-1 Intracompany transferee
   c. E-3 Specialty occupation visa for Australian nationals
   d. O-1 Extraordinary ability alien

Answer: (a) and (c). In addition to the LCA requirement for H-1B and E-3 non-immigrant visa sections, an LCA is required for any H-1B1 Free Trade Act visa, and for any E-3 non-immigrant visa section. An LCA is not required for an L-1 non-immigrant visa.

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