September Visa Bulletin –

EB2 India, China creep ahead

The DOS Visa Bulletin for September 2008 indicates that employment-based second preference (EB-2) for India-born and China-born individuals will advance to August 1, 2006, moving forward two months from the August 2008 Visa Bulletin cut-off dates.

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 August 1, 2006. EB-3 continues to be unavailable for all countries.

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

New U.S. passport card

Department of State announced on July 22, 2008 that the new U.S. passport card is now in production (http://www.dhs.gov/xnews/releases/pr_1216743005370.shtm). The card is a wallet-sized document that is valid for travel to and from Mexico, Canada, the Caribbean, and Bermuda, however it is not valid for international travel by air.

As part of the Western Hemisphere Travel Initiative (WHTI), beginning June 2009 travelers will be required to present a document denoting both citizenship and U.S. citizenship, the U.S. passport card may be accepted as proof of employment eligibility.

Vaccination requirement changed

On July 24, 2008, USCIS announced a revised list of vaccinations required to adjust status to Legal Permanent Resident. The revision went into effect on July 1, 2008, but a 30-day grace period was granted. Any medical exam completed on or after August 1, 2008 must use the new Form I-693 (revision date 6/5/08). Download the new Form I-693 from the USCIS website www.uscis.gov/i-693. For the full press release, see http://www.jackson-hertogs.com/news/20080725.pdf.

“List A” document added to I-9 list

For a discussion of DOS implementation of a new passport card that can be used for land travel to and from Mexico, Canada, the Caribbean, and Bermuda, refer to the article following in the “DOS News” section.

On August 8, 2008, USCIS announced that the passport card is an acceptable document for employment eligibility verification (Form I-9) purposes. Just as a U.S. passport is an acceptable “List A” document for proof of identity and U.S. citizenship, the U.S. passport card may be accepted as proof of employment eligibility.
and identity when entering the U.S. through a land or sea border.

On August 8, 2008, USCIS announced that the passport card is an acceptable document for employment eligibility verification (Form I-9) purposes. Just as a U.S. passport is an acceptable “List A” document for proof of identity and U.S. citizenship, the U.S. passport card may be accepted by employers as proof of employment eligibility.

DOL News

PERM processing times update

At a July 15, 2008 meeting with stakeholders, DOL provided limited information on PERM processing times. DOL advised that they were completing initial processing on cases filed with DOL in April and May 2008. When the case is processed, DOL will certify the case, issue an audit, or deny the case. If a PERM case has been audited by DOL, and a response submitted to DOL, the audit response is placed in queue to wait for analyst review. DOL advised that they were reviewing audited cases that were filed March 2007. Please note that DOL processes all cases based on the date of original filing, not on the date an audit response or appeal was submitted. DOL also advised that they will not accept any inquiries on audited cases that were filed after March 2007 – employers must wait for a decision.

DOL also advised that it had set up a special review process for PERM cases that are denied due to government error (i.e., timely response to audit filed with DOL but DOL did not match with file; case denied for missing information that is not required to appear on the PERM form). DOL requested that employers who believe that their case was denied due to government error flag this when they submit an appeal of the denial. DOL is currently reviewing “government error” appeals on cases that were filed November 2007. In the regular appeal queue, DOL is reviewing cases filed in June 2006. Employers should note that DOL will determine whether the denial was due to government error – if DOL does not agree, the case will remain in the regular appeal queue to wait for review.

ESTA goes live

U.S. Customs and Border Patrol unveiled its new web-based Electronic System for Travel Authorization (ESTA) on August 1, 2008 at https://esta.cbp.dhs.gov. Under the proposed regulations, this electronic travel authorization will be required before nationals of countries that are allowed to travel to the U.S. without a visa for business or pleasure may board a plane for the United States. Although the website currently states that ESTA registration is required, mandatory registration will not be in effect until January 12, 2009. Until then, ESTA registration is purely voluntary.

Once ESTA becomes mandatory in 2009, nationals of visa waiver countries must enter biographical and eligibility information on the ESTA website, preferably at least 72 hours before travel, and can apply even without having specific travel plans. If approved, the traveler will receive an authorization valid for multiple entries for two years from the date of the authorization or until the traveler’s current passport expires, whichever comes first. The ESTA authorization does not guarantee admissibility to the United States. If the ESTA authorization is denied, the traveler must apply for a visa at the appropriate U.S. Embassy/Consulate.

J&H News

Plotkin quoted in BioWorld Today

J&H attorney Norman Plotkin is quoted in the online journal BioWorld Today regarding the future of the H-1B visa program, and alternative visa categories.

J&H complimentary webinars

To sign up for a webinar, send an e-mail to: webinar@jackson-hertogs.com

Sept. 17, 2008 — Immigration 101: Nonimmigrant Visas

This webinar will present a broad overview of immigration issues, including a review of nonimmigrant visa categories. This is an excellent overview for HR staff who are new to immigration issues, or for experienced HRs who want to brush up on the basics.


This webinar will provide a general overview of the immigrant visa process. We will touch on PERM labor certifications and immigrant visa petitions, retrogression of visas, adjustment of status, consular processing, employment authorization and travel issues and portability under the American Competitiveness of the 21st Century Act.

Immigration Trivia

Nationals of which of the following countries can enter the U.S. for business/pleasure purposes without a visa?

a. Spain b. New Zealand c. Japan d. Switzerland

See our VWP FAQ: http://www.jackson-hertogs.com/immigration/

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