TARP DATA REQUIRED FOR H-1B PETITIONS

On March 20, 2009, USCIS announced that employers who receive funds through the Troubled Asset Relief Program (TARP) or under section 13 of the Federal Reserve Act (covered funding), must make additional attestations before they may hire a foreign national to work in the H-1B specialty occupation category. This change was mandated by the Employ American Workers Act, (EAWA), signed into law by President Obama as part of the American Recovery and Reinvestment Act on February 17, 2009. Under this legislation any company that has received covered funding and seeks to hire new H-1B workers is considered an “H-1B dependent employer.” All H-1B dependent employers must make additional attestations to the U.S. Department of Labor (DOL) when filing the Labor Condition Application.

According to USCIS, EAWA applies to any LCA and/or H-1B petition filed on or after February 17, 2009, involving any employment by a new employer, including concurrent employment and regardless of whether the beneficiary is already in H-1B status. The EAWA also applies to new hires based on a petition approved before February 17, 2009, if the H-1B employee had not actually commenced employment before that date.

USCIS has revised Form I-129 to ask whether an employer has received TARP funding. Forms submitted without this attestation will be accepted by USCIS for processing, but employers may be asked to provide information about whether they have received TARP funding prior to the USCIS approving an H-1B petition. J&H is reviewing all H-1B petitions in preparation to identify whether the client may have been a TARP recipient. Clients who have received TARP funding should notify their J&H attorney to ensure that H-1B petitions are filed in compliance with EAWA.

PASSPORT DATA IN E-VERIFY PROCESS FOR FOREIGN-BORN CITIZENS

In a press release dated March 4, 2009, USCIS announced that it has incorporated DOS data into the E-Verify employment authorization program. This was done in an effort to reduce the number of mismatches in the E-Verify system among foreign born citizens. The full press release can be read at http://www.jackson-hertogs.com/news/20090304a.pdf.

E-Verify is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify is designed to allow participating employers to electronically verify the employment eligibility of their newly hired employees after completing the required I-9 form for a new hire. E-Verify supplements, but does not replace, the I-9 responsibilities of an
USCIS NEWS  continued

employer. E-Verify is free and enrollment is currently voluntary. Information about E-Verify, including how to enroll, is available from USCIS at http://www.uscis.gov/E-Verify. Please note that we highly recommend that employers discuss enrollment in E-Verify with both immigration and corporate counsel prior to enrollment. Enrolled companies must decide how to enroll and if there are multiple work sites, which work sites to enroll. Further, enrolled employers are required to sign a Memo of Understanding with the DHS and SSA that will bind them to follow the strictures of E-Verify including investment in training and refresher courses to name but a few. Finally, employers will need to review current I-9 processing in order to comply with additional rules/procedures that E-Verify dictates. Once a company is enrolled in E-Verify, all employees hired at an enrolled location must be processed through E-Verify and the process must be applied across the board. Down the road, E-Verify may become mandatory for employers. For the time being, E-Verify remains an option for employers.

UPDATE: I-9 HANDBOOK FOR EMPLOYERS

USCIS recently released an updated I-9 Handbook for Employers, http://www.uscis.gov/files/nativedocuments/m-274_3apr09.pdf, in anticipation of the upcoming change to the I-9 employment eligibility verification form. The revised Form I-9 will become effective for use on April 3, 2009. This handbook includes instructions for completing the revised Form I-9 as well as an FAQ section. Please note that employers should continue to use the 06/2007 version of the form until the new form is actually implemented. While we anticipate that the DHS will implement the form change on April 3, 2009, until they actually do so, no employer should be using the new form.

REMINDER: NEW I-9 REQUIRED ON APRIL 3

As noted above, we anticipate that the new Form I-9 will be required for all new hires and reverification of existing employees beginning on April 3, 2009. Employers may download the latest version of Form I-9 from the USCIS website at http://www.uscis.gov/I-9. Please note that employers should continue to use the 06/2007 version of the I-9 Form until the new form is implemented. For questions regarding Form I-9, clients should contact their J&H attorney.

DOS NEWS

RETROGRESSION FOR EB3 WORLDWIDE, MEXICO, AND PHILIPPINES EFFECTIVE IMMEDIATELY

On March 9, 2009, the DOS Visa Bulletin for April 2009 announced significant retrogression for EB3 Worldwide, Mexico, and the Philippines. For Worldwide, the EB3 category will move backwards more than two years to March 1, 2003. Mexico and the Philippines will also move backwards to March 1, 2003. For EB3 India, the priority date will move forward 15 days to November 1, 2001. China will move forward about four months to March 1, 2003. The April visa bulletin specified that the retrogression was effective immediately, meaning that the change in dates for EB3 occurred on March 9, 2009.

DOS explains the need for retrogression in EB3 Worldwide, Mexico, and the Philippines:

Despite the established cut-off date having been held for the past five months in an effort to keep demand within the average monthly usage targets, the amount of demand being received from Citizenship and Immigration Services (CIS) Offices for adjustment of status cases remains extremely high. Therefore, it has been necessary to retrogress the April cut-off dates in an attempt to hold demand within the FY-2009 annual limit. Since over 60 percent of the Worldwide and Philippines Employment Third preference CIS demand received this year has been for applicants with priority dates prior to January 1, 2004, the cut-off date has been retrogressed to 01MAR03 to help ensure that the amount of future demand is significantly reduced.

In the employment-based second preference category (EB2), all countries other than India and China remain current. EB2 India and China will not move this month. EB2 India will remain at February 15, 2004 and EB2 China at February 15, 2006. Employment-based first preference (EB1) remains current for all countries.

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. Where spouses were born in different countries, the principal beneficiary maybe “cross-chargeable” to his/her spouse’s country of birth and therefore move into a different quota pool. For example, if an employee was born in India, but her husband was born in Italy, the couple could “cross-charge” to Italy and be counted in the “worldwide” quota. For someone born in an oversubscribed quota, this can be a tremendous jump forward.

For general information on visa retrogression, please 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, please see our DOS Visa Bulletin and Quota Movement page which includes detailed nationality-specific charts of quota movement for the past decade.
U.S. EMBASSIES IN INDIA ADJUST CONSULAR EXCHANGE RATE

Effective March 6, 2009, all U.S. Consular Sections in India will adjust the consular exchange rate from Rs. 52 to the U.S. dollar to Rs. 55 to the U.S. dollar. This rate change is effective for all rupee-denominated costs of applying for visas and passports, including the nonimmigrant visa application fee. For a full listing of specific fee changes, please visit the Embassy’s website at http://newdelhi.usembassy.gov.

WHTI LAND AND SEA REQUIREMENTS ON JUNE 1, 2009

J&H wishes to remind all U.S. Citizens that effective on June 1, 2009, citizenship and identity travel documents will be required at all land or sea border entry points under the Western Hemisphere Travel Initiative (WHTI). WHTI requires that U.S. Citizens present a government-approved document, such as a passport or U.S. Passport Card for entry. A list of other approved documents under WHTI can be found at http://www.getyouhome.gov/

Processing times for passports and passport cards are approximately three weeks and travelers should obtain the appropriate documents prior to June 1, 2009. For more information, please see the DOS website at http://travel.state.gov/travel/cbpmc/cbpmc_2223.html.

SPRING BREAK TIPS FROM CBP

In preparation for spring break travel, CBP released a memo offering tips to travelers. The complete memo may be found at http://www.cbp.gov/xp/cgov/newsroom/news_releases/03102009_2.xml.

- Make sure that you have the proper travel documentation, both for the country you are visiting, as well as for your return.
- A passport is now required for returning U.S. citizens when flying internationally
- U.S. and Canadian citizens 19 years and older who enter the U.S. at sea ports of entry from within the Western Hemisphere will need to present government-issued photo ID, along with proof of citizenship or a passport; (travelers under the age of 16 will need to present only birth certificate or alternative proof of citizenship).
- If you are a visitor, the CBP officer may require you to provide your biometrics, digital finger scans and photograph, to verify your identity against your travel documents. This process is similar as the one experienced to obtain a visa.

J&H also reminds foreign nationals to send updated I-94 cards and visa stamps (if applicable) to their J&H attorney upon their return to the U.S.

LEGISLATIVE UPDATE

J&H ATTORNEY ATTENDS CONGRESSIONAL LOBBY DAY

While the number one focus of Congress is the economy, a comprehensive reform of our immigration laws is an essential component to our economic recovery. One of our attorneys, Atessa Chehrazi, travelled to Washington D.C. to meet with our elected representatives on March 19th as part of a “Lobby Day” contingent of the American Immigration Lawyers Association (AILA), to make this point in person.

Atessa met with the offices of Senators Feinstein, Boxer, and Leahy, and Representatives Pelosi, Lee, Tauscher, and McNerney. She communicated the importance of a CIR bill that addresses both H-1B visa shortages and immigrant visa backlogs. She also hand delivered original, signed letters from several of our corporate clients to illustrate how artificial visa shortages are hurting U.S. employers. Other immigration attorneys (and their clients) who were participating in Lobby Day met personally with Representatives Lofgren, Thompson, Nunes, and Speier, as well as with the offices of Representative Farr, Honda, and Eshoo. Other attorneys who could not travel to D.C. met with the local district offices of Representatives Pelosi, Speier, Lee, Miller, Matsui, Woolsey, and Lungren.

The message from Capitol Hill is that there is a possibility that a comprehensive immigration reform (CIR) bill may be introduced in Fall 2009. While both President Obama, Senate Majority Leader Harry Reid, and Speaker of the House Nancy Pelosi have spoken in favor of addressing CIR, the timing of the introduction of a CIR bill will depend on several factors. A central question is whether Congress completes its work on the budget, healthcare reform, and climate change, with sufficient time to address CIR, before the 2010 election cycle.

Congress will be recessing April 6-17th for its spring home work period. If you would like our assistance in coordinating a meeting with your elected representatives at their district office, please let us know. Comprehensive immigration reform is a national priority, and we are happy to continue work with you, at no charge, in advocating immigration legislation that supports U.S. businesses. If you cannot commit the time for a meeting, you can still contact Congress on comprehensive immigration reform issues at: http://capwiz.com/aila2/home/.

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GLOBAL VISAS

U.K. WORK AUTHORIZATION CHANGES EFFECTIVE APRIL 1, 2009

The United Kingdom announced that effective April 1, 2009, first-time non-European Economic Area applicants under Tier 1 General category (which replaced the Highly Skilled Migrant Programme), must have earned a Master’s degree or higher to qualify for Tier 1 approval. In addition, Tier 1 applicants must show that they have earned at least GBP 20,000 per year. Tier 1 applicants who do not possess at least a Master’s degree should consider filing their application before April 1, 2009. Please contact Jackson & Hertogs for specific information.

J&H NEWS

J&H WEBINARS

To sign up for a J&H complimentary webinar, send an email to webinar@jackson-hertogs.com

April 15, 2009
Special employer considerations when hiring F-1 students

This webinar will address special considerations employers must make when hiring F-1 students. Among the issues discussed will be the availability of a 17-month extension of the current 12-month F-1 optional practical training (OPT) period for graduates in so-called “STEM” (Science, Technology, Engineering, and Mathematics) fields and the requirement of enrollment in the DHS E-Verify program for electronic I-9 verification. Jackson & Hertogs will explain which types of U.S. university degrees fall within the “STEM” definition, the potential trade-offs for employers and foreign national employees wishing to take advantage of the 17-month F-1 OPT extension program, and the pros and cons of E-Verify registration. We will also discuss potential issues for F-1 students selected for the H-1B cap with OPT expiring before October 1st, and other options for employment for F-1 students not selected in the H-1B lottery.

May 27, 2009
Alternatives to the H-1B category

Many employers will find themselves facing tough decisions once the H-1B cap is reached. This webinar will address alternatives to the H-1B category. While there may not be options for all foreign national employees who were “shut out” of the H-1B cap, there are some alternatives that should be considered. Citizens of certain countries (e.g., Canada, Mexico, Chile, Singapore, & Australia) can often find work visas independent of the H-1B category. Further, certain international transferees, citizens of countries sharing nationality with foreign-owned corporations, and foreign nationals of “extraordinary ability” can also be eligible for visas independent of the H-1B.

July 15, 2009
Midyear “hot topics” in immigration law

This webinar will provide updates from the annual American Immigration Lawyers Association (AILA) conference, where many U.S. government representatives present on panels, and announce or clarify changes in law, regulations, or policy. We will review 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 overview of the latest developments in immigration.

August 19, 2009
Developing and enforcing a “best practices” corporate immigration policy

HR departments must not only ensure their companies comply with U.S. immigration laws, they must also ensure that immigration benefit programs are administered equitably within the workforce, and comply with applicable immigration laws. Companies that do not yet have a written immigration policy should consider creating one. Please join Jackson & Hertogs for a review of the best practices and common pitfalls HR departments encounter in developing and implementing an immigration policy.

J&H WELCOMES BRIANNA!

Jackson & Hertogs is excited to welcome the newest addition to the J&H family: Brianna Siobhan Fiona O’Connell-Sunnen was born on March 6, 2009 to Legal Assistant Karl Sunnen and his wife, Joël O’Connell. Brianna weighed 8 lbs., 9 oz., and measured 21 1/2 inches.

Immigration Trivia

For a U.S. citizen traveling by air outside the U.S. to Canada, Mexico, Bermuda, or the Caribbean region, what document does WHTI require?

Answer: WHTI compliance for air travel is already in effect and requires presenting a passport, passport card, or other valid travel document to enter or reenter the U.S. On June 1, 2009, this requirement will expand to land and sea travel. U.S. citizen children under the age of 16 will be able to present the original or copy of their birth certificate, or other proof of U.S. citizenship such as a naturalization certificate or citizenship card.