INSIDE SPOTLIGHT

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
H-1B cap-petitions: 124,000 received, to reject 39,000 .......... 132.1
USCIS implements CIV at field offices ................................. 132.2
Reminder: Revised Form I-9 effective May 7, 2013 .......... 132.2

CUSTOMS AND BORDER PROTECTION
CBP to eliminate paper Form I-94 ................................... 132.2

DEPARTMENT OF STATE
May Visa Bulletin ......................................................... 132.3

LEGISLATIVE CORNER
Bipartisan bill would radically reform U.S. immigration 132.3

OTHER NEWS
J&H announces two new partners .................................. 132.4
J&H webinars ........................................................................ 132.4
Immigration Trivia .......................................................... 132.4

USCIS NEWS

USCIS RECEIVES 124,000 H-1B CAP-SUBJECT PETITIONS; TO REJECT 39,000
On April 8, 2013, USCIS announced that it had received approximately 124,000 cap-subject H-1B visa petitions. On April 7, 2013, USCIS used a computer-generated random selection process (commonly known as a “lottery”) to select a sufficient number of petitions needed to meet the caps of 65,000 for the general category and 20,000 under the advanced degree exemption limit. Cap-subject petitions that “lose” the lottery will be rejected and returned to the petitioner with filing fee checks uncashed.

During its “opening week”, USCIS’ receipt of 39,000 H-1B visa petitions over the annual allotment demonstrates the increasingly untenable nature of the H-1B visa’s annual numerical limits. We urge you to reach out to your congressional representatives and ask them to address this issue in the pending immigration reform legislation. In order for the United States to maintain its leadership as an innovative and vibrant economic force, highly educated individuals should not be turned away based on an outdated and arbitrary quota limit.

USCIS has stated that cases which were not selected during the lottery will be returned either in late April or early May, once receipts are issued on all accepted cases. Regular receipts and rejected cases are mailed out from USCIS through the U.S. Postal Service with no tracking or advance notice issued as they are sent. This means that it will not be until mid-May before some foreign nationals and employers know whether cases were accepted for processing or not.

We understand that foreign nationals and employers are anxious to receive word regarding whether particular cases have been received for processing or not. J&H is notifying foreign nationals and employers immediately as we receive receipt notices for H-1B petitions selected for the FY 2014 cap. Likewise, as any rejected cases are received in our office we will reach out to the foreign national and employer and help to evaluate any possible options.

SPREAD THE WORD!

“Immigration Spotlight” is electronically distributed to HR professionals and also published to our website. To read a back issue on our website, click on “Employer Resources” on the menu bar. Please feel free to forward “Spotlight” to the rest of your management team and employees. You may download our firm brochure at http://www.jackson-hertogs.com/?page_id=4934.

©2013 Jackson & Hertogs LLP is one of the oldest and most respected immigration and nationality firms in the country dedicated solely to the practice of immigration law. Today, Jackson & Hertogs has eight attorneys and a staff of 25 legal assistants and office management personnel to assist you with immigration matters.
USCIS IMPLEMENTS CIV AT FIELD OFFICES

Beginning May 6, 2013, USCIS will implement Customer Identity Verification (CIV) at all field offices. CIV will require biometric data (fingerprints and photo) to be submitted in order to re-verify an individual’s identity when an applicant appears at a USCIS field office for an interview or to receive evidence of an immigration benefit (i.e., temporary extensions of Form I-90 or temporary I-551 stamps to evidence Permanent Resident status). Under CIV, USCIS will take two fingerprints and a photograph of the individual and input this information into the United States Visitor and Immigrant Status Indicator Technology’s (US-VISIT’s) Secondary Inspections Tool (SIT). After identity verification is satisfactorily completed, individuals will proceed to their interviews or be issued their immigration documents.

REMINDER: REVISED FORM I-9 EFFECTIVE MAY 7, 2013

As reported in last month’s Spotlight, USCIS published a new revised Employment Eligibility Verification Form I-9. Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States. Beginning May 7, 2013, employers must use the Form I-9 that is dated 03/08/13. The revision date is on the lower left corner of the form. The latest revision of the form can be found at http://www.uscis.gov/I-9 and more information about the I-9 requirements can be found at http://www.uscis.gov/I-9Central.

CBP TO ELIMINATE PAPER FORM I-94

US Customs and Border Protection (CBP) is automating the Form I-94 Arrival/Departure Record to streamline the admissions process for international visitors. Over the next few months, CBP will phase in a new I-94 record system and stop issuing the paper Form I-94 which currently provides the evidence that international visitors, students and temporary workers have been lawfully admitted to the United States.

The initial change will take effect on April 26, 2013 and will be phased in at air and sea ports of entry beginning April 30, 2013. Visitors arriving to the US by air or sea will no longer be required to fill out a paper form once automation takes effect.

Future travelers who desire a hard copy of their I-94 will be directed to a special US CBP website, allowing them to print a copy of their Form I-94 based on electronically submitted data. Please note that the CBP’s new “I-94 website” will not go live until the end of April 2013. Please note that we are urging all clients to login and print out their I-94 records. These records will continue to be needed when filing for an immigration benefit in the US including applications for extension stay or change of status. Other agencies such as state DMV offices and/or Social Security Administration offices may also still require the information particularly during the transition period. Furthermore, many nonimmigrants will need to be able to present the I-94 record along with an original passport when completing Form I-9 verification and reverification processes with their employers.

Please keep in mind that the I-94 record will only be available while the individual is in the United States. Since the information will be updated upon departure, it is important to print out the record while the individual is in the US and the information is in the system.

MAY VISA BULLETIN

The Department of State (DOS) Visa Bulletin for May 2013 indicates some significant forward movement for the employment-based third preference categories (EB3), particularly for EB3 China which has moved forward eight months to December 1, 2007. EB3 Mexico and EB3 for all other countries except India and the Philippines moved forward five months to December 1, 2007. EB3 India moved slightly forward to December 22, 2002, and Philippines inched forward to September 15, 2006.

The employment-based first preference category (EB1) continues to remain current for all countries. The priority date for EB2 China has moved to May 15, 2008 while EB2 India once again remains at September 1, 2004. The EB2 category for all other countries, including Mexico and the Philippines, remain current.

DOS explained that the forward movement in the EB3 category is an attempt to generate demand so that the annual numerical limit may be fully utilized. They expect forward movement to continue for the next few months but note that the rapid movement of cut-off dates is often followed by a large increase in demand for visa numbers. Any such increase would once again slow-down or stop any forward movement in this category.

While DOS attempts to avoid retrogression in visa availability, this is also a possibility when there is rapid movement during the fiscal year. Keep in mind that the government’s fiscal year runs October 1 to September 30.

DOS looks at your country of birth in determining whether you are a national of a given country, not your country of citizenship. It is country of birth (yours or your spouse) that determines which country to which you are “charged” or “counted” for purposes of permanent residency. For example, if you were born in India but have since become a citizen of Canada, you are still charged against India and not Canada. As another example, if you (principal applicant on an employment based process) were born in India but you are married to a person who was born in Canada, both of you can be charged against Canada. This latter example is called “cross-chargeability”.

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 since 1996.

Please also note that while Congress is contemplating new immigration legislation it is far too early to look at the potential changes and their impact on the immigration system. Until new legislation is actually passed and becomes law, we can only look to the current laws for how cases will be processed.

LEGISLATIVE CORNER

BIPARTISAN IMMIGRATION BILL WOULD RADICALLY REFORM U.S. IMMIGRATION

On April 17, 2013, Senator Charles Schumer introduced the Border Security, Economic Opportunity and Immigration Modernization Act of 2013. This comprehensive new immigration legislation results from work done by a bipartisan group of senators known as the “Gang of 8.”

The legislation would overhaul the U.S. immigration system. It addresses many long-standing complaints with the existing system, including backlogs and quota limits for both immigrant and nonimmigrant visas. However, the bill also contains significant new enforcement measures, such as the potential expansion of the current E-Verify regime into a mandatory nationwide requirement, as well as new border security and interior enforcement measures. Significantly, it would also add a path to citizenship for undocumented foreign nationals as well as provide relief for “DREAM Act kids” (individuals who were brought to the U.S. as children and do not have legal status in the U.S. despite having grown up here).

Although the bill has generated a great deal of optimism, it is in the very early stage of the legislative process. The bill is expected to be referred to the full Judiciary Committee in May 2013 for amendments. It is then expected to be on the Senate floor in early June 2013. There will likely be months of public debate, as significant opposition has already arisen. In fact, after the Boston Marathon bombing, there was an almost immediate anti-immigrant backlash as the news broke out. Despite the groundswell of support for immigration reform, opponents of the bill are already discussing the possibility of “poison pill” amendments that could stymie or derail the bill. It is more likely that challenges or significant modifications will occur in the House of Representatives, which has a similar bipartisan group working on its own comprehensive immigration bill. In short, until a bill is actually passed by both houses and signed into law, it is nearly impossible to predict what the end result will be.

Jackson & Hertogs will keep you updated on all developments with respect to immigration reform.
J&H ANNOUNCES TWO NEW PARTNERS

Jackson & Hertogs is proud to announce that Atessa Chehrazi and Daniel Horne have been admitted as partners to the firm.

Atessa has been with the firm since July 2000. She has held several roles with AILA’s Northern California Chapter, including Chair. On a national level, she served on AILA’s Administrative Appeals Office (AAO) liaison committee, the USCIS HQ liaison committee, and currently serves as a member of the USCIS Department of Labor Liaison Committee. In addition, Atessa has served on the AILA Business Immigration Advocacy, Issues, and Due Process & Civil Liberties Committees. She is a board member of the Iranian American Bar Association, Northern California Chapter, a member of the Bar Association of San Francisco, and the National Lawyers Guild. Atessa takes pro bono cases from local nonprofits such as the International Institute of the Bay Area and Bay Area Legal Aid. She has authored several articles published in AILA Handbooks. Atessa has presented at national and regional immigration conferences. Atessa has been highly reviewed in all major legal directories, including a listing in the Best Lawyers in America, and selection as a Northern California “Super Lawyer”.

Daniel has been with the firm since November 2004. He has written and presented on a variety of corporate immigration matters in various media. Daniel currently serves on the Editorial Board of Bender’s Immigration Bulletin, a LexisNexis® periodical providing news and analysis to immigration lawyers nationwide. He has also edited and authored immigration articles for Nolo Press and the Stanford Law and Policy Review. With the Martindale-Hubbell® directory’s highest rating (“AV”), he is listed within its Bar Register of Pre-Eminent Lawyers, as well as the Chambers USA guide to corporate immigration counsel. With the Martin-dale-Hubbell® directory’s highest rating (“AV”), he is listed within its Bar Register of Pre-Eminent Lawyers, as well as the Chambers USA guide to corporate immigration counsel. A long-standing and active member of AILA, Daniel is currently on AILA’s National Customs & Border Protection Liaison Committee. Daniel is an active participant in AILA’s Military Assistance Program, which provides free legal representation to military members and their families, and provides pro bono assistance to asylum seekers through the Lawyers Committee for Civil Rights.

WEBINAR SERIES

To register for any of our webinars please send an e-mail to webinar@jackson-hertogs.com with the date of the seminar you would like to attend.

May 29, 2013: Developing and enforcing a “best practices” corporate immigration policy

Earlier this year, Jackson & Hertogs conducted an on-line survey of HR professionals in order to benchmark certain immigration policies across companies and industries. This webinar will discuss the survey results. We hope to provide you benchmark data that may assist you in reviewing or creating immigration benefits programs within your company. Please join Jackson & Hertogs for a review of the best practices and common pitfalls HR departments encounter in developing and implementing an immigration policy.

July 31, 2013: Midyear “Hot Topics” in Immigration Law

This webinar will focus on current hot topics and provide an update on the current state of immigration law and policy. We will review any changes in law, regulations, or policy over the last year. We will also 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.

IMMIGRATION TRIVIA

True or False? There is no means to extend Optional Practical Training for an employee who missed the H-1B cap and is currently working for an employer with an F-1 EAD card.