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USCIS NEWS

NEW FORM G-28

USCIS revised the Form G-28 Notice of Entry of Appearance as Attorney. This form is used to notify the government that an attorney is serving as the representative. The Form G-28 is submitted with each filing and allows the lawyer to receive information from the government on that case. The new version of the form became effective on May 26, 2013; as of that date no prior versions of the form will be accepted.

The most noticeable changes to the G-28 are the 2D barcode that takes up the bottom of each page of the form and that the form itself has expanded to 2 pages. The barcode captures the information completed on the form for presumably quicker processing by USCIS. Jackson & Hertogs has prepared for the change over the last several weeks and all cases transitioned smoothly to the new version of the form.

USCIS OPENS NEW EB-5 ADJUDICATIONS OFFICE IN WASHINGTON, DC

On May 6, 2013, USCIS opened a new EB-5 Program Office in Washington, DC. The EB-5 Program Office is unique because all EB-5 petitions, including Form I-526 Immigrant Investor petitions and Form I-924 petitions to register Regional Centers, will be adjudicated by trained economists instead of traditional CIS adjudicators. The current Director of the Vermont Service Center, Mr. Daniel Renaud, will serve as Acting EB-5 Program Chief and his Deputy, Mr. Robert Cox, will serve as Acting EB-5 Deputy Chief.

For the time being, USCIS plans to continue concurrent EB-5 adjudications at the California Service Center (CSC) until the EB-5 Program Office in Washington, DC is fully operational. However, we do not anticipate significant short-term improvement in current processing time of EB-5 petitions (approximately 12 months for I-526 petitions and 18 months for I-924 petitions) as USCIS has indicated it will take several months to fully train new EB-5 adjudicators at the EB-5 Program Office. The long-term forecast looks brighter as concurrent adjudications at the CSC and EB-5 Program Office in Washington, DC may help alleviate the backlog in EB-5 adjudications.
NEW FORM I-9 IN EFFECT
As of Tuesday May 7th, all employers were required to start using the revised Form I-9, Employment Eligibility Verification form (Revision 03/08/13) for all new hires and reverifications. The revision date of the new Form I-9 is printed on the lower left corner of the form.

All employers are required to complete and retain a Form I-9 for each employee hired to work in the United States. Employers should not complete a new Form I-9 for existing employees, however, if a properly completed Form I-9 is already on file.

The revised form, instructions and revised employer handbook are available online at www.uscis.gov/I-9. For more information, please call USCIS at 888-464-4218 or visit I-9 Central, a website maintained by USCIS to support Form I-9 users. USCIS has also scheduled free webinars to help employers learn about the new form. Employers may also order forms by calling USCIS toll-free at 1-800-870-3676.

H-1B FY2014 CAP UPDATE AND REFLECTIONS
As covered in last month’s Spotlight, on April 8, 2013, USCIS announced that it had received approximately 124,000 cap-subject H-1B visa petitions. The received petitions were subjected to a lottery to determine which cases would be adjudicated and which rejected. As of today, all of J&H’s filed petitions have been accounted for and clients were notified if the petitions were selected for processing or rejected. 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.

As you know, Congress is in the midst of debating comprehensive immigration reform. Included in this discussion is how to address the needs of corporate America to be able to hire and retain skilled workers—this dovetails into the H-1B temporary worker area. 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. We urge employers to be part of the conversation—please contact your congressional representatives and explain how your company uses the H-1B category.

CBP ELIMINATES PAPER FORM I-94 AT AIRPORTS AND SEAPORTS
CBP has completed the automation of the Form I-94 Arrival/Departure Record for international visitors. The Form I-94 serves as evidence that a nonimmigrant has been lawfully admitted to the United States. Travelers are no longer routinely issued a paper Form I-94 at air and seaports. Rather than being issued Forms I-94, passports are being stamped with admission information and such individuals are being advised to print a copy of their Form I-94 record from the US Customs and Border Protection (CBP) website (https://i94.cbp.dhs.gov/I94). Travelers will continue to receive a paper Form I-94 at all land ports of entry.

We have already observed that the new I-94 procedures are being applied inconsistently and that some of the information in the CBP system is not consistent with the individual’s entry status. Where inconsistencies are evident in the print out, it is imperative that the information be corrected. I-94 information is still mandated to be included in most petition and application filings.
JUNE VISA BULLETIN

The Department of State (DOS) Visa Bulletin for June 2013 indicates significant forward movement for the employment-based third preference categories (EB3). All countries, excluding India and the Philippines, have moved forward nine months from December 1, 2007 to September 1, 2008. EB3 India and EB3 Philippines moved only slightly forward to January 8, 2003 (India) and September 22, 2006 (Philippines).

In the notes contained in the May bulletin, DOS stated that “[t]he Employment-based Third preference category cut-off date for most countries has advanced significantly. This has been done in an attempt to generate demand so that the annual numerical limits may be fully utilized, and such movements may continue for the next few months. The rapid movement of cut-off dates is often followed months later by a dramatic increase in demand for numbers. Once such demand begins to materialize the cut-off date movements will begin to slow or stop.”

In prior communications, DOS has indicated a concern that the USCIS has not been able to track the number of individuals who moved from EB3 to EB2 classification. Therefore, it is unclear to DOS whether there still remains the same demand for EB3 numbers as the previous “count” indicated. The rapid advance in EB3 numbers is designed to flush out cases that are either already pending adjustment of status or have not yet been filed in order to ensure that all available visa numbers are used in the current fiscal year. Under U.S. immigration law, visas not used in a given fiscal year are “lost” and are not rolled over into future years. Employers and employees need to be prepared for a possible retrogression later this summer as the fiscal year winds down. However, if DOS is correct in its assumption that there are less EB3 cases still waiting, then we may continue to see advancement in EB3 at least for the worldwide dates if not for India and the Philippines.

The employment-based first preference category (EB1) continues to remain current for all countries. The priority date for EB2 China has moved forward two months to July 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.

Note that 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 you have to look at advancements for India rather than worldwide numbers. 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.
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.

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.

August 28, 2013: Midyear ESTA, B1 and Denials of Admission
This webinar will focus ESTA, B1 and Denials of Admission. Please join us for the latest developments in these areas immigration law.

SPOTLIGHTING: AIDS LIFECYCLE RIDE TO END AIDS
J&H is sponsoring one of our employees, Thomas Kocon, to bicycle in the AIDS/LifeCycle from June 2 – 8, 2013. It’s a 7-day, 545 mile bike ride from San Francisco to Los Angeles. Every 9.5 minutes, someone in the U.S. becomes infected with HIV. At least 20% of them don’t even know that they are infected. Lifesaving drugs can cost $70 a day without insurance. The San Francisco AIDS Foundation helps provide for mental and physical needs of persons living with HIV.
You can join Jackson & Hertogs in supporting Tom and the AIDS/LifeCycle at http://www.tofighiv.org/goto/tko

IMMIGRATION TRIVIA
True or False? Foreign nationals no longer need to check I-94 entry data as the form is now electronic.