

Immigration Spotlight

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USCIS News

USCIS releases E-3 visa guidance

In a press release (http://uscis.gov/graphics/publicaffairs/newsrels/E3_010606PR.pdf) dated January 6, 2006, USCIS published long-awaited guidance on E-3 extension of status (EOS) and change of status (COS) petitions for Australian citizens. The guidance states, among other things, that processing of all E-3 petitions will be centralized at the Vermont Service Center (VSC). No matter where the Australian national will reside or work, the E-3 COS or EOS petition must be filed at the VSC.

Established by the REAL ID Act of 2005, the E-3 visa is similar to the H-1B1 Free Trade Agreement visa established in 2004 for citizens of Chile and Singapore. The E-3 category makes available 10,500 new employment visas for Australian nationals working in a professional occupation, and who possess at least a U.S. Bachelor's degree or its foreign equivalent. However, unlike the H-1B1 Free Trade visa for citizens of Singapore and Chile, the 10,500 E-3 visas are not deducted from the annual H-1B visa cap of 65,000. Further, spouses of E-3 workers are eligible for independent employment authorization. Such authorization must be issued before the E-3 spouse can commence employment.

New USCIS director

On January 4, 2006, DHS Deputy Secretary Michael Jackson swore in Dr. Emilio Gonzalez as the new Director of USCIS. Nominated for the position in September 2005, Dr. Gonzalez appeared before the Senate Judiciary Committee on October 18, 2005, and was confirmed by the U.S. Senate on December 23, 2005.

Less than 1,000 H-1B visas available

On January 12, 2006, U.S. Citizenship and Immigration Services released an updated count on the FY 2006 usage for the special 20,000 H-1Bs reserved for individuals who hold Master's degrees (or other advanced degrees) from a U.S. university or college. These numbers represent the USCIS count as of Janu-

Abbreviations used in this issue

- COS** - change of status
- EOS** - extension of status
- DHS** - Department of Homeland Security
- DOL** - Department of Labor
- DOS** - Department of State
- USCIS** - U.S. Citizenship and Immigration Services
- VSC** - Vermont Service Center

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ary 10, 2006, and are on the USCIS website at <http://uscis.gov/graphics/services/tempbenefits/cap.htm>.

As shown on the chart, only 378 of these H-1Bs are available for the rest of the fiscal year. The cap may be reached as Spotlight goes to publication, and it is likely that USCIS will not announce the cap until after it has been reached. Jackson & Hertogs urges employers who may need one of these H-1B visas to contact our office immediately. Once the cap is reached, no new H-1B petitions will be accepted by USCIS until April 1, 2006, and the earliest validity date that will be available on those petitions will be October 1, 2006.

Current Cap Count for Non-Immigrant Worker Visas

	H-1B (FY 06)	H-1B Ad- vance De- gree Exemption (FY 06)	H-2B 1st Half (FY 06)	H-2B 2nd Half (FY 06)	H-2B (FY 06)
Cap	58,200**	20,000	33,000	33,000	66,000**
Beneficiaries Ap-	---	17,306	---	2,304	50,309
Beneficiaries Pending	---	2,316	---	6,310	9,199
Total	cap reached	19,622	cap reached	8,614	59,508
Date of Last Count	8/10/2005	1/10/2006	12/15/2005	1/11/2006	1/11/2006

DOS News

February Visa Bulletin shows forward movement

The February Visa Bulletin (http://travel.state.gov/visa/frvi/bulletin/bulletin_2771.html), which was released by the DOS, shows significant forward movement for several employment-based categories.

For individuals born in China, the EB-1 category moved forward a full year to January 1, 2003, while EB-2 moved forward ten months to April 1, 2002. Similarly, for individuals born in India, both the EB-1 and EB-2 categories moved forward seven months to February 1, 2004 and August 1, 2001 respectively. World wide cut offs (for individuals born in all countries other than India and Mexico) for EB-3 inched forward to April 22, 2001. EB-1 and EB-2 remain current for all individuals born in countries other than India and China.



While the forward progress in the immigrant visa numbers is encouraging, applicants should not expect this rate of progress to continue for the rest of the fiscal year. DOS notes in the February Visa Bulletin that movement over the past several months has been greater than originally anticipated as a result of low visa number demand by Citizenship and Immigration Services. DOS further advises that while it is unknown when USCIS visa number use will increase, "once increased demand does materialize, however, cut-off date movements will necessarily slow or stop."

CBP News

DHS completes biometric entry system

The DHS US-VISIT program has completed installation of biometric entry capabilities at 104 land border ports, as mandated by Congress. Biometric entry capabilities are now deployed at all fixed ports of entry open to US-VISIT travelers.

US-VISIT currently applies to all visitors entering the United States, regardless of country of origin or whether they are traveling on a visa, with certain exemptions. Canadian citizens are exempt, as are most Mexican visitors who apply for admission using a Border Crossing Card, also known as a laser visa and travel within the border zone during the 30 day time limit.

DOL News

Backlog Elimination Centers: progress and problems

As we previously reported, DOL recently advised AILA that all pending labor certification applications at the two BECs should receive the Center Receipt Notification Letter (also known as a 45 day letter) by the end of June 2006. The CRNL requires that the employer or the employer's attorney respond to DOL within 45 days, or the case will be cancelled. Jackson & Hertogs has received 45 day letters on many cases, but we still have a large number of cases that are still

waiting for this important notice from DOL. Generally, cases that were transferred to the BEC from the DOL regional offices received 45 day letters much more quickly than cases that were transferred to the BEC by the SWA offices. The Dallas BEC appears to be processing cases more quickly than the Philadelphia BEC, but this rate of processing is likely to change as more cases complete data entry and are assigned to analysts for review. No official processing times are available from either BEC, and the BECs will not answer questions on the status of pending cases.

On a more troubling note, many immigration attorneys have reported receiving notices of case closure from the BECs, which claimed that no response was received to the 45 day letter; however, neither the attorney nor the employer received the 45 day letter from DOL. Jackson & Hertogs is monitoring all cases closely, and we are notifying DOL immediately as we receive 45 day letters. Jackson & Hertogs clients should advise our office if they receive any correspondence from DOL, to ensure that we may timely follow up on any letters or requested documents.

Updated PERM guidance on multiple filings

DOL has revised its PERM FAQs on the issue of multiple applications for the same alien for the same job opportunity. The FAQ response includes DOL's procedures and timeline for purging multiple filings from the PERM queue. The FAQ did not address the question of whether an employer could file a PERM case for an alien beneficiary if the employer already has a labor certification for the same alien for the same job opportunity pending at the DOL Backlog Elimination Center.

The FAQ clarifies that an employer may not have more than one Form 9089, Application for Permanent Employment Certification, in process under the PERM regulation for the same alien beneficiary for the same job opportunity at any given time. If an employer currently has multiple applications in process under PERM for the same alien and job opportunity, the employer must withdraw, by January 19, 2006, all applications other than the one it wants processed.

As of January 19, 2006, if multiple applications from an employer for the same alien and same job opportunity are still pending under PERM, DOL will assume that the employer wishes the last-filed application to be processed and any other pending PERM applications for the same alien/job opportunity will be denied.

After January 19, 2006, if an application for a particular employer/alien/job opportunity is pending under PERM and a second application is filed under PERM

for the same employer/alien/job opportunity, DOL will continue to process the first-filed PERM application and deny any subsequent PERM filings. If an employer wishes to file a *new* or *changed* application under PERM for the same alien and job opportunity, the employer should not file the new PERM application until the employer formally withdraws the PERM application currently in process or the employer has received the Final Determination form notifying the employer that the previous application is denied.

Legislative Corner

Budget reconciliation bill passed without H-1B and EB visa provisions



On December 20, the Senate approved a conference report on the budget reconciliation bill (S. 1932) that did *not* include the Senate Judiciary Committee's provisions to recapture unused H-1B and employment-based visa numbers. The House proposal to impose a \$1,500 fee increase on L visas was also stripped from the final bill. The Senate passed the bill by a vote of 51-50 (Vice President Cheney cast the tie-breaking vote). Before the bill passed, Senate Democrats forced the removal of three provisions that violated Senate rules. Because the bill was amended, it must now return to the House for final passage. Most likely, the House will pass the bill as it is, without the H-1B and EB visa provisions.

Global Visas

Outbound visas and work permits



In response to growing demand for these services, J&H has been expanding its visa and work permit services to include many countries outside the United States. If your business needs to send an employee abroad for a business trip or is considering transferring an employee outside the United States, J&H can assist in the process and/or will liaise with its in-country representatives to determine and obtain the appropriate visa or work permit for that individual.

Please remember that it is always best to plan ahead on immigration and work permit issues when transferring personnel to other countries, just as you would do when you are planning to bring a foreign individual to the United States to work. Like the United States, many countries have extensive rules regarding visas or work permits for foreigners trying to enter their

labor markets and may have quotas on the number of work permits that are issued each year. Depending on the country, a visa or work permit request may take a few weeks to several months for the government to process the application. Moreover, some countries require extensive documentation or that some or all documents be certified by a Hague Convention Apostille and/or translated into the official language of that country. Accordingly, J&H urges you to contact us in advance to discuss the feasibility and timing for the visa or work permit process. J&H also reminds employers and potential expatriates to consult their tax and employment advisors of the ramifications of such transfers on all the parties involved.

Our Global Visa Program is being managed by our newest attorney, Kirsten Anderson. Kirsten joined J&H from Holland Van Gijzen, a Netherlands law firm, where she managed legal implementation of multi-country corporate and organization restructuring projects as well as advising clients on general aspects of U.S. business and corporate law. Kirsten will periodically write articles in *Spotlight* outlining trends and issues in global visas. You may contact Kirsten at kanderson@jackson-hertogs.com.

J&H News

J&H seminars & webinars



J&H is pleased to present our schedule of Immigration Seminars and Webinars for the first half of 2006.

February 15, 2006 – Reaching the H-1B Cap: Employer Strategies in Dealing with Affected Employees

With the 2006 H-1B quota reached in August 2005 and the H-1B advanced degree quota reached in January 2006, no new H-1B petitions will be approved with a start date sooner than the first day of the government's new fiscal year—October 1, 2006. This seminar will explore the impact of the H-1B cap on employers, and outline strategies for dealing with affected employees. We will also discuss alternative nonimmigrant and immigrant visa categories that may provide employers with options for hiring new foreign national employees during the cap period.

March 15, 2006 (Webinar) – H-1B Basics

This webinar will focus on the basics of petitions for H-1B non-immigrant temporary workers from the point of view of the sponsoring employer. We will explain such terms of art as "specialty occupation" and "prevailing wage" as they relate to H-1B eligibility.

We will examine the Labor Condition Application process, including requirements for the DOL Access File and Personal Immigration File. We will also discuss the implications of the H-1B quota cap and strategies for extensions beyond the maximum 6 year limit under the American Competitiveness in the 21st Century Act.

April 19, 2006 (Webinar) – PERM, one year later

The first year of PERM has proven to be the best of times and the worst of times: some cases have been approved in a matter of days, others languish for months; two identical cases may receive different decisions on the same facts, with no explanation for the disparity; PERM cases are approved quickly, but due to visa retrogression, the beneficiary is not eligible to apply for the green card upon the approval. This webinar will focus on these and other evolving trends one year after the implementation of the PERM regulations. Issues to be discussed will include: What are the patterns for approvals and audits? Are there actual patterns? What processing times should employers expect after a case is filed? How are employers justifying requirements that exceed what DOL considers "normal" for the occupation? Are these business justifications proving successful when cases are filed? If there is no immigrant visa available when PERM is approved, can anything be done? Can you file a PERM application when a labor certification is already pending?

May 17, 2006 – Visa retrogression

What is immigrant visa retrogression and what does it mean for an employer? What is the difference between "EB-3," "EB-2" and "EB-1"? Does it matter where the employee was born, what country s/he is a citizen of, or whether s/he is married? Is it better to sponsor an employee for a PERM labor certification or an outstanding researcher immigrant visa petition? How does retrogression affect 7th year H-1B extension petitions?

June 2006 – No seminar scheduled



Special seminar in February

In addition to our regular Wednesday series, we are offering a special program on **February 22**, focusing on the **Immigration Options for the Life Sciences Sector**. This program will be held at the **Hyatt Regency San Francisco Airport** hotel and will address some of the unique challenges and opportunities that exist for foreign personnel working in the life sciences sector.