

Immigration Spotlight

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Abbreviations used in this issue

- AOS** - Adjustment of Status
- DOL** - Department of Labor
- DOS** - Department of State
- DV** - Diversity Lottery
- EU** - European Union
- NSC** - Nebraska Service Center (of USCIS)
- RFE** - Request for Evidence
- USCIS** - U.S. Citizenship and Immigration Services

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© 2006 Jackson & Hertogs LLP is one of the oldest and most respected immigration and nationality law firms in the United States. Established in 1950, we were one of the first legal firms in the country dedicated solely to the practice of immigration law. Today, Jackson & Hertogs has eight attorneys and a staff of more than 25 legal assistants and office management personnel to assist you with immigration matters.

USCIS News

NSC processes I-485s for pre-adjudication

On April 10, 2006, the NSC announced it would begin to process Employment-Based I-485 (AOS) cases for which visas are not currently available. This procedure only applies to AOS applications currently pending and effected by the visa backlog. In general, an AOS application cannot be filed unless a visa number is currently available. Where an AOS application was filed but there has been retrogression, the service centers have typically "shelved" these cases until visa numbers are available. Based on this NSC announcement, Officers will review any pending applications for eligibility and process the case to the fullest extent possible, including the issuance of RFEs where necessary. Applications that meet all eligibility criteria will have their cases forwarded to a visa staging area where NSC will check the cases monthly for visa availability. When an AOS application is identified as having a visa available, the case will then progress through final disposition. This change in policy does NOT mean that new I-485 applications can be accepted if priority dates are not current. This only impacts I-485 applications already on file at the NSC.

USCIS reports number of H-1B filings

The U.S. Citizenship and Immigration Services (has begun to report (<http://uscis.gov/graphics/services/temp/benefits/cap.htm>) on the number of H-1B petitions received for fiscal year 2007. The report indicates that, as of April 3, 2006, USCIS had received 1,631 H-1B petitions eligible for the primary H-1B numbers and 340 petitions covered by the H-1B Advanced Degree Exemption. Note that these numbers only include H-1B petitions actually processed and entered into USCIS's database on April 3; this does not capture H-1B petitions in the USCIS mail-room awaiting processing. USCIS will update these numbers until the H-1B cap has been reached. Please note that a link to the USCIS H-1B cap count can be found on the Quick Access Tools drop down menu on our homepage.



USCIS warns of immigration fraud

USCIS issued a notice warning of potential immigration fraud by individuals or organizations claiming the existence of a temporary worker program, "Although Congress has been debating immigration legislation, all customers should be advised that currently no temporary worker program exists for aliens unlawfully present in the United States. Congress has not passed any legislation that would create a temporary worker program. Therefore, there are no benefits currently available because this program does not exist. Customers should not pay any fees or fines to any person or organization claiming they can help apply for or receive benefits for a temporary worker program. Be wary of persons or organizations that claim they can assist in applying for benefits that do not exist."

J&H reminds employers and individuals to contact their attorney in connection with any immigration benefit questions.

DOL News

PERM statistics from DOL

In a recent meeting with AILA, DOL advised that as of March 17, 2006, over 82,000 PERM applications had been filed since launch of the PERM system on March 28, 2005. Of those cases, 36,687 have been certified (approved), 23,205 denied, and 24,960 audited. As some PERM cases have been denied after audit, and other certified after audit, there is some overlap in these figures. In addition, DOL advised AILA that the denial total includes some cases that were denied in error, such as cases denied due to logic errors in reviewing the forms.

DOS News

May Visa Bulletin: Limited movement

On April 5, 2006, The Department of State released the May 2006 Visa Bulletin: http://travel.state.gov/visa/frvi/bulletin/bulletin_2868.html. As seen in the prior month's Bulletin, the EB-1 and EB-2 categories continue to show significant forward movement while the EB-3 category remains stagnant and the EB-3 "other workers" category retrogressed.

For Chinese-born individuals, the EB-1 category moved forward six months to July 1, 2004, while EB-2 moved forward one year to January 1, 2004.

Similarly, for individuals born in India, the EB-1 category moved forward six months to July 1, 2005 and EB-2 moved to January 1, 2003. EB-1 and EB-2 re-

main current for all individuals born in countries other than India and China. While the forward progress in the immigrant visa numbers for the EB-1 and EB-2 categories is encouraging, we would note that DOS cautions applicants not to expect this rate of progress to continue for the rest of the fiscal year. DOS advises that movement over the past several months has been greater than originally anticipated as a result of low visa number demand by U.S. Citizenship and Immigration Services.

In the EB-3 category, there was no movement for Chinese-born and Philippine-born individuals and for the world-wide cut off (individuals born in all countries other than India, China, Mexico, or the Philippines). There was slight movement forward for India-born individuals of one month to March 1, 2001.

DOS notes that for the EB-3 "other workers" category that "continued heavy demand for numbers (particularly for adjustment of status cases at USCIS offices) has brought allocations close to the 5,000 annual numerical limit. Therefore, it has been necessary to retrogress the Employment Third preference "Other Worker" cut-off date in an effort to limit future demand. Should the annual limit be reached, it will be necessary to immediately make the category "unavailable" for the remaining months of the fiscal year."

For more information on the Visa Bulletin and country quota movements, including information movement in the Family-Based Quotas, please see our DOS Visa Bulletin and Quota Movement page (<http://www.jackson-hertogs.com/quota/0quota.htm>), which includes detailed charts of quota movement for the past decade.

DV 2007 lottery winners

Applicants who applied online to the DV 2007 visa lottery will be selected at random by a computer and those selected will receive notification between May and June 2006. Individuals not selected will not receive any notice. Applicants selected in the Diversity Visa random drawing are notified by the Department of State, Kentucky Consular Center by letter, not



email, and are provided instructions on how to proceed to the next step in the process. No other organization or company is authorized by the Department of State to notify Diversity Visa lottery applicants of their winning entry. For more information on the 2007 DV lottery, please see the Department of State's website: http://travel.state.gov/visa/immigrants/types/types_1318.html. J&H is available to assist 2007 DV lottery winners, please contact your J&H attorney for more information.

Global Visas

France: High-level executives



In a ministerial circular, France recently favorably modified the criteria for transferring high-level executives to the French payroll to remove the parent company profile and to reduce the qualifying prior employment requirement to six months. Please contact Jackson & Hertogs for further information regarding the requirements to transfer a non-EU national employee to work in France.

U.K.: Non-EU immigration system

As part of its long-term plan with regard to immigration, the United Kingdom (U.K.) Home Office recently proposed to launch a points-based immigration system for non-EU nationals to work or study in the U.K. The new system will replace all the current immigration categories with one single points based system that is divided into five tiers. Although applications will be filed by individuals instead of employers in the new system, in four of the five tiers the individual will be required to have a U.K. employer sponsor. The new system will place a greater onus on the employer sponsor to give undertakings about the employee and to ensure compliance. The Home Office plans to roll out the points-based system on a tier by tier basis but has not stated when it will begin the implementation. Please contact Jackson & Hertogs for further information if you have questions about a work permit for sending a non-EU national to work in the U.K. or in other countries.

Office closure dates

Jackson & Hertogs' Netherlands' office will be closed on the upcoming dates: May 25-26, 2006, and June 5, 2006.

J&H News

J&H improves immigration client database system capabilities

After careful consideration and planning, Jackson & Hertogs has adopted a new immigration client management database system that offers many new features to our clients. We will soon be distributing new User IDs and passwords to human resources profes-

sionals and foreign national employees, so that they may log on to this new system. The new system will offer many improvements over our prior on-line offerings, including, most notably, improvements to on-line questionnaires for various visa processes, and the ability for HR professionals to initiate online visa project requests of Jackson & Hertogs.

The new system will also allow for secure messaging within the database's secure "intranet," so that sensitive documents can be distributed between HR professionals and their employees with maximum privacy.

Jackson & Hertogs will soon be offering webinar training on how HR professionals can best to make use of our system in the coming weeks. Be on the look out for future announcements!

J&H seminars and webinars



May 17, 2006 (Webinar) – Visa retrogression

This webinar will address some of the questions regarding immigrant 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? (PHR/SPHR cert pending)

June 2006 – No seminar scheduled

Immigration Trivia

Which of the following answers is the most accurate?

U.S. employers are obliged to pay their H-1B workers:

- The higher of the prevailing wage or the actual wage for the position
- Within 5% of the prevailing wage for the position
- A figure within the company wage range for that position
- Whatever the Labor Department tells them to pay for that position

Answer: a. The higher of the prevailing wage or the actual wage for the position. The prevailing wage is the wage determined by the DOL or an acceptable wage survey like Radford. The actual wage is the wage paid to other employees in your company holding the same position within the same geographic area.