

Immigration Spotlight

Inside Spotlight

U.S. Citizenship and Immigration Services

<i>File transfers to Texas Service Center</i>	49.1
<i>Filing receipt delays</i>	49.1
<i>H-1Bs going quickly: Latest cap count</i>	49.2
<i>Premium processing of I-140s?</i>	49.2

Department of State

<i>June Visa Bulletin: Continued progress</i>	49.2
<i>Changes to the J-1 program</i>	49.2
<i>Expedited appointments in London</i>	49.3

Global Visas

<i>Global spotlight: Belgium</i>	49.3
<i>Global spotlight: The Netherlands</i>	49.3
<i>France meets e-passport requirement</i>	49.3

Other News

<i>Legislative Corner: Hope for immigration bill</i>	49.3
<i>J&H News</i>	49.4

USCIS News

File transfers to Texas Service Center

As previously announced in a March 24, 2006 news item on our website, the USCIS has created a “bi-specialization” system whereby the four Service Centers will be “paired” to handle certain types of cases. The Nebraska Service Center and the Texas Service Center (TSC) are paired to handle the adjudication of immigrant visa petitions (Form I-140) and their related applications, including applications for adjustment of status (Form I-485). Due to this shift in workload, the Service Centers have transferred certain pending files. For example, the California Service Center (CSC) transferred a number of pending I-140 petitions and I-485 applications to the Texas Service Center.

Despite the fact that our office submitted notices of appearance with all filings, it has come to our attention that employers may be receiving notices that some of their cases have been transferred to TSC, while the CSC is not sending duplicate notices to our office. These notices do not include the employees’ names, but simply include the case or receipt number(s). If you have receive(d) any of these transfer notices, we would appreciate it if you would send copies to our office so that we can scan them into our new database and insert them into the appropriate files.

If your employees have receive(d) transfer notices directly regarding the I-485 applications, kindly have them send copies to our office so that we can note the USCIS file transfer.

Filing receipt delays

In a press release dated April 27, 2006, USCIS announced a delay in the issuance of filing fee receipt notices by the Service Centers. “Due to an unusually large volume of receipts at the Service Centers during the first week of April, it is taking longer than expected for USCIS to enter cases into the system. Depending on the type of case and service requested, it may take nearly two weeks to generate and mail receipt notices. Once the receipt notice is generated, it may take an additional 2 to 3 days for customers to receive their receipt notices in the mail.”

Please note that J&H is monitoring cases for filing fee receipt notice issuance and will conduct inquiries with the Service Centers when receipts are overly delayed.

Abbreviations used in this issue

- AOS** - Adjustment of Status
- CSC** - California Service Center (of USCIS)
- DOL** - Department of Labor
- DOS** - Department of State
- EU** - European Union
- TSC** - Texas Service Center (of USCIS)
- USCIS** - U.S. Citizenship and Immigration Services
- VWP** - Visa Waiver Program

Spread the word! *Immigration Spotlight is written and 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.*

© 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.

H-1Bs going quickly: Latest cap count

The latest H-1B count from the U.S. Citizenship and Immigration Service strongly indicates that the fiscal year 2007 H-1B numerical limit will be reached much earlier than it was last year. As of May 12, 2006, USCIS has received 34,808 H-1B petitions eligible for the primary H-1B numbers and 4,638 petitions covered by the H-1B Advanced Degree Exemption. With only 58,200 H-1B numbers available under the primary cap, this means that more than half of all available H-1Bs for the upcoming fiscal year already have been taken. If usage of H-1Bs continues at this pace, the regular H-1B cap could be reached before the end of June 2006.

The latest cap count does suggest that H-1B numbers for persons holding advanced degrees from U.S. universities will be available after the regular H-1B cap is exhausted, but the usage rate of these numbers suggest that these also will be exhausted before the fiscal year starts on October 1, 2006.

Jackson & Hertogs advises employers to immediately file H-1B petitions for any foreign workers who do not have employment authorization beyond October 1, 2007. The only exception would be for those foreign hires who already hold H-1B status and have already been counted against the H-1B cap (note: those in H-1B status working for universities or non-profit research facilities have likely not had their H-1B visas count against the cap, and thus likely remain subject to this year's H-1B cap). Once this fiscal year's H-1B cap is reached, new H-1B petitions will not be accepted by the USCIS until April 1, 2007, and the earliest validity date that will be available on those petitions will be October 1, 2007.

If you believe that you have any employees or would-be employees who need H-1B status for FY 2007, please contact our office immediately.



Premium processing of I-140s?

USCIS has unofficially announced that premium processing of I-140 immigrant visa petitions shall be offered in the near future. If and when this occurs, most likely concurrent processing of I-140s and I-485s will cease to be offered. J&H will inform clients once confirmed changes to the process are established.

DOS News

June Visa Bulletin: Continued progress

On May 12, 2006, the Department of State ("DOS") released the June 2006 Visa Bulletin (http://travel.state.gov/visa/fvi/bulletin/bulletin_2924.html). As seen in recent Bulletins, the EB-1 and EB-2 categories continue to show significant forward movement while the EB-3 category moved forward only two months. The "Other Workers" category is now "unavailable."

For individuals born in China, the EB-1 category moved forward one full year to July 1, 2005 and EB-2 moved forward six months to July 1, 2004. For individuals born in India, the EB-1 category moved forward six months to January 1, 2006; however, EB-2 for Indians remained unchanged at January 1, 2003. EB-1 and EB-2 remain current for 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, the lack of progress for the India EB-2 priority dates suggests that continued progress in that category may be limited. DOS has previously advised visa applicants that priority dates will not continue to advance at the same rate for the rest of the fiscal year.

In the EB-3 category, there was two months progress to July 1, 2001 for Chinese-born and Philippine-born individuals as well as for the world-wide cut off (individuals born in all countries other than India, China, Mexico, or the Philippines). There was slight forward movement for India-born individuals of one month to April 8, 2001.

DOS notes that, for the EB-3 "Other Workers" category, "continued heavy demand for numbers (particularly for adjustment of status cases at USCIS offices) will result in the 5,000 annual numerical limit being reached in May. Therefore, it has been necessary to make the Employment Third preference "Other Worker" category "unavailable" for June, and it will remain so for the remainder of the fiscal year."

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, <http://www.jackson-hertogs.com/quota/0quota.htm>, which includes detailed charts of quota movement for the past decade.

Changes to the J-1 program

On April 7, 2006, DOS proposed regulatory changes to the J-1 trainee and intern category that will severely limit the ability of most program sponsors to continue participation. The proposed changes will eliminate J-1 trainee or intern status for anyone who has not already completed a post secondary degree program; only allow J-1 trainee status for individuals who possess at least three years of employment experience related to the U.S. on-the-job training opportunity or individuals who completed a post secondary degree program within the 12 months preceding entry in J-1 intern status; and establish cumbersome requirements, including individual, face-to-face, in-home country interviews of every participant by sponsors, even where the trainee or intern is self-placed and has already made direct contact with the U.S. host company.

J&H urges employers who utilize the J-1 trainee and intern category to send comments to the DOS regarding the effect such changes would have to your program. The public comment period is open to June 6, 2006. Signed PDFs of comment letters can be emailed directly to the DOS at the following e-mail address: jexchanges@state.gov.

Expedited appointments in London

The U.S. Embassy in London has announced that expedited appointments for H-1B and L-1 applicants are now available regardless of the country of nationality. Appointments are scheduled by contacting the call center at 090 42 450 100.

Global Visas

Global spotlight: Belgium



On May 1, 2004, 10 new Member States joined the European Union. The nationals of Cyprus and Malta obtained the same work rights as the nationals of the "old" EU Member States immediately as of May 1, 2004. The nationals of the 8 other "new" EU Member States (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) are not entitled to work in Belgium without a work permit during a 2-year transition period which was supposed to end April 30, 2006. After much discussion, the Belgian government extended the transition period to May 1, 2009 at the latest (the transition period may end earlier if certain conditions are met).

As of June 1, 2006, however, the "new" EU nationals may obtain a Belgian work permit, without labor market test, within 5 working days, if they will be working in one of the "knelpuntberoepen" ("labor shortage professions"). The labor shortage list varies per Belgian region and the appropriate list should be confirmed depending upon the place of employment.

Some additional changes to Belgian immigration laws are pending. One of the future changes would amend the procedure for an individual to obtain a professional card (authorization for self-employed work) to authorize a Belgian civil servant to determine the application for a professional card instead of it first being sent to the "Raad voor Economisch Onderzoek inzake Vreemdelingen" ("Council of Economic Investigation of Foreigners") for an informal advice on the matter. Under the new procedure, any appeal from the civil servant's decision would be sent to the Council of Economic Investigation of Foreigners. The Belgian Parliament approved this legislation but it still must be approved by Royal Decree before it can take effect.

The Belgian Parliament also approved legislation that would amend the laws concerning certain exemptions from work permits for long term assignments (mostly for researchers or executive level personnel working for a multinational or European headquarters in Belgium) as well as for certain short term assignments up to 4 weeks (individuals attending scientific conferences and meetings, company-related training, performing urgent repair or maintenance, or testing prototypes). In addition, the legislation would simplify and speed the procedure for work permits. This legislation also still must be approved by Royal Decree before it can take effect.

Global spotlight: The Netherlands

The Netherlands government relaxed some of its immigration laws recently. The government relaxed the requirements for those foreign employees of foreign companies who must work temporarily in the Netherlands to provide after-sales services to Dutch customers or as part of a joint venture with a Dutch company. This means that it should be possible to obtain the necessary authorization in 2 weeks instead of 10 weeks.

The Netherlands government also amended the rules for foreign students doing internships in the Netherlands so that after October 2006 an employer no longer has to apply for a work permit for a foreign student following an internship at the company. Instead the educational institution, the student and the employer will sign a declaration.

The Netherlands government also authorized the Immigration and Naturalization Service to examine the financial position of the company without requiring "certificates of good behavior" from the Netherlands' tax authority or the Netherlands' social authorities when deciding a work permit application for the employee of a start-up company.

France meets e-passport requirement

As of May 4, 2006, new digital passports issued by France are compliant with the U.S. technical requirements for countries participating in the Visa Waiver Program (VWP). Travelers with e-passports issued by France will immediately be entitled to enter the United States without a visa if they are otherwise eligible for the VWP. Individuals holding French passports that are not electronic and issued after October 26, 2005, will continue to require a visa for any visit to the U.S.

E-passports are part of a multi-layered approach to reduce the widespread use of fraudulent passports without impeding the flow of legitimate trade and travel to the United States. With e-passports, visitors traveling to the United States under the VWP – approximately 13 million people per year – can transmit their biographic and biometric information quickly, conveniently and securely to readers at U.S. ports of entry. Travelers applying for admission under the VWP are allowed to enter the United States for up to 90 days for business or pleasure without obtaining a non-immigrant visa. Please note that this 90 period cannot be extended and individuals admitted under the VWP cannot change status to another nonimmigrant category while in the United States.

Legislative Corner

Hope for immigration bill



The Associated Press reported the following on Thursday, May 11, 2006: "Senate leaders reached a deal Thursday on reviving a broad immigration bill that could provide millions of illegal immigrants a chance to become American

citizens and said they'll try to pass it before Memorial Day."

The agreement brokered by Senate Majority Leader Bill Frist, R-Tenn., and Minority Harry Reid, D-Nev., breaks a political stalemate that has lingered for weeks while immigrants and their supporters held rallies, boycotts and protests to push for action.

Key to the agreement is who will be negotiating a compromise with the House, which last December passed an enforcement-only bill that would subject the estimated 11 million to 12 million illegal immigrants in the United States to felony charges as well as deportation.

The compromise bill builds on legislation approved by the Senate Judiciary Committee 12-8, with six Republicans voting and all Democrats approving the measure.

That measure absorbed a bill drafted by McCain and Sen. Edward Kennedy, D-Mass., that called for allowing illegal immigrants to work toward becoming legal permanent residents.

J&H reminds clients that now is the time to contact your representatives in Congress to voice your support. You can contact your representative in Congress quickly and easily via the Internet at <http://capwiz.com/aila2/home/>.

J&H News

Office holiday closure



The Jackson & Hertogs Netherlands office will be closed for public holidays on May 25-26, 2006, as well as June 5, 2006.



The Jackson & Hertogs San Francisco office will be closed on May 29, 2006 for Memorial Day.

Welcome, Peter Mark!

J&H is happy to welcome Peter Mark as our newest paralegal. Peter is a San Francisco native. He graduated from UC Berkeley in 1995 with a BA in Political Science. He has one and a half years' of experience working with class action suits re: products liabilities (asbestos and silicone breast implants) and five and a half years' prior experience working in corporate immigration matters, primarily working on immigrant visa projects (Labor Certs, I-140 [including Multinational Managers and Outstanding Researchers], and AOS). Peter is loving it here at J&H!

Welcome, Marc Lowe!

Please join us in welcoming another new employee to the J&H team: Marc Lowe. Marc has joined our team of legal assistants and will be primarily working with attorneys James Crescitelli and Nadia G. Johnson. Marc was born

and raised in San Francisco. He has a BA in Politics from Brandeis University (2005). Marc previously worked at the San Francisco Ethics Commission (Campaign Finance Reporting) and The Impact Fund's Discrimination Research Center (employment discrimination research). He also has 4 years' experience with IT desktop support. Coincidentally, Marc has the same birthday as Peter Mark!

J&H seminars & 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 1.5 hrs*)

June 2006 – No seminar scheduled

July 2006 (Webinar) – "Hot Topics" from the Annual AILA Conference

This seminar will provide updates on PERM, DOL backlog processing, H-1Bs and more exciting news from this year's annual AILA conference.

Immigration Trivia

Which of the following answers is the most accurate?

Foreign nationals entering the U.S. under the Visa Waiver Program (VWP):

- Will most likely be admitted for six months with no chance of extension
- Will most likely be admitted for 90 days, but can extend this period while in the U.S. up to one year
- Will most likely be admitted for 90 days with no chance of extension
- Can come into the U.S. under the VWP and then change their status to another nonimmigrant category (i.e. H-1B, TN, L-1B).

Answer: c. Travelers applying for admission under the VWP will most likely be admitted to the United States for up to 90 days for business or pleasure without obtaining a non-immigrant visa. This 90 day period cannot be extended and individuals admitted under the VWP cannot change status to another nonimmigrant category while in the United States.