

Immigration Spotlight

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Abbreviations used in this issue

- AC-21** - American Competitiveness in the 21st Century Act
- CBP** - U.S. Customs and Border Protection
- DHS** - Department of Homeland Security
- DOL** - Department of Labor
- DOS** - Department of State
- ICE** - Immigration and Customs Enforcement
- OMB** - Office of Management and Budget
- USCIS** - U.S. Citizenship and Immigration Services
- VAWA** - Violence Against Women Act

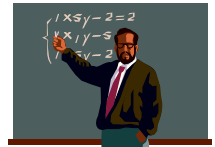
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March Webinar: H-1B Basics

Our March 21st 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 Department of Labor (DOL) Public Access File and Personal Immigration File.



We will also discuss the implications of the annual H-1B cap and strategies for extensions beyond the maximum six year limit under the American Competitiveness in the 21st Century Act ("AC-21"). *Pending PHR/SPHR certification.*

Send an e-mail to webinar@jackson-hertogs.com to register for any of our webinars.

USCIS News

USCIS accepting new H-1B petitions as of April 1, 2007

We would like to remind clients that on April 1, 2007 the USCIS will begin accepting new H-1B petitions that are subject to the Fiscal Year 2008 (FY 2008) numerical cap. The effective start date of employment for these petitions can be no sooner than the first day of FY 2008, which is October 1, 2007. However, employers can file these petitions six months prior to the requested start date. Because April 1, 2007 falls on a Sunday, the USCIS has indicated that cases filed on March 30, 2007 (marked for Saturday delivery) will not receive any advantage over cases received on Monday, April 2, 2007.

With the economy growing, it is anticipated that the H-1B numbers will be exhausted quickly. The FY 2006 H-1B numbers were exhausted in just over four months (cap reached on August 10, 2005) and just last year, we reached the FY 2007 H-1B cap on May 26, 2006 – less than two months from the time employers were allowed to start filing H-1B petitions. We expect the FY 2008 H-1B visa cap to be reached at least as quickly this year if not sooner.

Beginning in 2006, as a result of the H-1B Visa Reform

Act of 2004, a second cap of 20,000 additional H-1B visas was created for individuals who hold a Master's or higher degree from a U.S. educational institution. The FY 2007 cap for U.S. advanced degree holders was reached on July 26, 2006 and we expect these numbers to be exhausted just as quickly, if not more so, in FY 2008.

There is no way to determine how fast either the regular H-1B cap or the Master's degree H-1B cap will be reached for FY 2008, but we highly recommend that employers start planning NOW. To be ready to file cases on April 1, 2007 preparation of these H-1B petitions should be started as early as possible.

We do note that President Bush and members of Congress have recently been making statements that the H-1B numbers should be increased. However, until any such legislation is actually passed and signed into law, employers and foreign nationals will need to deal with the fact that there are not going to be enough H-1B numbers to meet the demand. Do not wait for H-1B numbers to be increased. You need to act NOW.

Please inform us ASAP if you have any current employees or new hires who you believe will need a new H-1B or a change of status to H-1B. You should especially be looking at any individuals who are in F-1 or J-1 status or who are in another nonimmigrant status such as TN or L-1B who, for strategic reasons, may benefit from being changed to H-1B. Please do not delay in reviewing your employee population.

Please contact our office if there are any questions. Please make sure that your hiring managers and recruiters are aware of this very important issue.

Naturalization test redesigned

On January 22, 2007, USCIS issued a fact sheet regarding the naturalization test redesign. The naturalization test would be revised to create a standardized and fair test that would include uniform testing protocols and procedures nationwide. The test will be piloted in ten cities beginning in February 2007 and will last between two to four months. The ten pilot cities are: Albany, NY; Boston, MA; Charleston, SC; Denver, CO; El Paso, TX; Kansas City, MO; Miami, FL; San Antonio, TX; Tucson, AZ; and Yakima, WA.

The new exam will still require applicants to correctly answer six out of 10 questions from a master list of 100 civics questions and answers. However, the new test will focus on civics and history, rather than a general range of topics. The reading and writing portions of the exam will contain more civic-based vocabulary. During the written section of the test, the testing officer will dictate a sentence and ask the applicant to write every-

thing the officer reads. The reading portion of the test will ask the applicant to read each word out loud in that sentence.

The questions and answers along with a study guide are available on the USCIS website: <http://www.uscis.gov/natzpilot>.

Proposal to raise USCIS filing fees by an average of 66%

The Bush administration formally announced on Wednesday, January 31, 2007 its proposal, "Building an Immigration Service for the 21st Century," for raising fees for immigration services by an average of 66%. Under the proposal, the cost to applicants for application and petition fees will now average about \$438, compared to the current average of \$264. Most notably, the current fee of \$330 to apply for citizenship (naturalization) will rise under the proposed rule to \$595 and the \$70 fingerprinting fee is set to rise to \$80. The fee for Form I-485 for adjustment of status is also set to rise by roughly 280% from the current fee of



\$325 to \$905. The proposal, however, will eliminate fees for applications for certain "interim benefits," such as applications for work or travel while one's Form I-485 is pending. The proposal also contains an exemption of fees for initial applications for benefits for certain individuals, including those seeking T-Nonimmigrant status (Victims of Human Trafficking) and applicants seeking immigrant status under the Violence Against Women Act (VAWA). Other fee waivers based on "inability to pay" will still exist under the proposed rule, although the USCIS plans on modifying and clarifying eligibility for these waivers.

The USCIS uses the fees to cover its costs for processing immigration and naturalization benefit applications and petitions, biometric services and associated support services. The USCIS has stated that the increase is based on a determination that the current fees are not allowing the Agency to recover the full costs of services. The last significant fee increase occurred in 2004, when the USCIS cited more intense background checks in the wake of September 11, 2001 as the reason for fee hikes.

Immigrant advocates have argued that USCIS costs cannot be absorbed by the application fees alone and have suggested in the past that Congress should appropriate money to help pay for costs. Advocates fear that the proposed fee increase will create a significant hardship on applicants, keeping lower-income and less-educated individuals from becoming citizens.

The proposal for this fee increase was published in the

Federal Register on February 1, 2007 and is currently undergoing a 60-day comment period before it may be finalized. Fee increases will take effect no sooner than 120 days after the February 1, 2007 publishing. If you would like to comment on the proposed fee increase please visit <http://www.regulations.gov> to view the proposed rule and to submit a comment. You may also fax a comment to the Federal eRulemaking portal at 866-466-5370 or mail a comment to (please reference DHS Docket NO. USCIS-2006-0044 in your correspondence):

Director, Regulatory Management Division
U.S. Citizenship & Immigration Services, DHS
111 Massachusetts Avenue, NW, 3rd Floor
Washington DC 20529

case. While OMB review of the proposed rule suggests that a rule may be published in the coming months, there is no way to know when the final rule will be published, or what will be the rule's effective date.



More importantly, there is no way to know what the draft final rule contains as regulations in process are not public documents until the final rule goes to the Federal Register for publication.

DOL describes the draft rule on the OMB website as:

“The Department of Labor proposed changes to reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States. Among other key changes, the Department is eliminating the current practice of allowing the substitution of alien beneficiaries on applications and approved labor certifications. DOL proposed to further reduce the likelihood of the submission of fraudulent applications for the permanent employment of aliens in the United States by proposing a 45-day deadline for employers to file approved permanent labor certifications in support of a petition with the Department of Homeland Security. The Final Rule expressly prohibits the sale, barter, or purchase of permanent labor certifications or applications, as well as related payments. The proposed rule also addresses enforcement mechanisms to protect program integrity, including debarment with appeal rights. These amendments would apply to employers using either the Application for Alien Employment Certification (Form ETA 750) or the Application for Permanent Employment Certification (Form ETA 9089).”

While it is likely that the labor certification substitution process is going to be eliminated, please note that the final rule would only apply to future filings, not to pending I-140 petitions based on labor certification substitution. Employers and individuals with pending I-140 petitions based on a labor certification substitution will not be impacted by this rule. It is unknown if the rule includes a grace period during which substitutions may be filed, or if any of the other proposals that were designed to eliminate fraud have survived to the final rule.

You may review our original news item on the proposed rule here: <http://www.jackson-hertogs.com/news/2006/0210a.htm>.

We will update our clients as soon as additional information becomes available.

DOL News

Final rule on labor cert substitution and validity sent to OMB for review

On January 26, 2007, the U.S. Department of Labor (DOL) sent a draft final rule eliminating so-called “labor certification substitution” and limiting the validity period for approved labor certifications to the Office of Management and Budget (OMB) for review. “Labor certification substitution” is the procedure by which an employer files an immigrant petition on behalf of a foreign employee based upon a labor certification approved for a different foreign national, who has since left the employer or is otherwise no longer in need of the approved labor certification. This can be a very handy tactic for employers who need to quickly help a valued employee immigrate, but would rather avoid the costly and time-consuming process of filing a new labor certification. Even where a foreign employee already has an approved labor certification filed on his or her behalf, employers may effectively use labor certification substitution to secure an earlier priority date for employees in need of them.

The proposed rule was published in February 2006 for notice and comment by interested parties and DOL accepted comments on the rule until April 2006. The final rule now pending at OMB includes DOL's responses to the comments submitted. After OMB review, the final rule may be returned to DOL for additional changes, or cleared as a final rule for publication in the Federal Register. The OMB review stage usually takes 60-90 days, but the length of the review may vary.

The referral of the draft final rule to OMB has led to rumors and speculation that labor certification substitution has already been eliminated, or it will be eliminated in the immediate future. This is not the

Update on RIR conversion cases

The DOL has advised the American Immigration Lawyers Association (AILA) that DOL has responded to roughly 75% of the RIR conversion request emails DOL received during the “hold harmless” period for RIR conversion. Pending cases with RIR conversion requests submitted under the hold harmless provision are put on hold at DOL until the RIR recruitment results are submitted to DOL. All recruitment results for these cases must be submitted to DOL no later than April 1, 2007. For these RIR conversion requests, DOL has either provided prevailing wage information or rejected the RIR conversion request. For the rejected cases, there will be no rebuttal process for the RIR conversion opportunity. These cases may still be eligible for RIR processing; however, the employer runs the risk that the case may be put into supervised recruitment before the RIR request is submitted to DOL. If supervised recruitment instructions are issued by DOL before the RIR conversion request is submitted, the employer cannot request RIR conversion, but must undergo supervised recruitment. DOL will notify the public as soon as possible when it has responded to all the RIR request emails.

In addition, DOL continues to send out resumes received from job orders where the job order activity was initiated by the DOL before the RIR conversion email was received. Resumes are being sent as part of the processing of the RIR conversion request emails. The resumes are being sent to the attorney of record.

The DOL also indicated that it is reviewing cases where they receive an email concerning incorrect case types on their Backlog Public Disclosure System (PDS) and updating their system as appropriate. DOL is not advising attorneys or employers when these corrections are made, but instead suggests that attorneys check the PDS after a couple of weeks to determine if the change has been completed.

DOS News

March Visa Bulletin: No changes; little progress of EB-3 category expected

On February 13, 2007, the U.S. Department of State (DOS) released the [March 2007 Visa Bulletin](#). There were no changes in the priority date for any employment-based immigrant visa categories from the prior month. EB-1 remains current for all countries. EB-2 is current for all countries other than India and China. For individuals born in India, the EB-2 priority date is unchanged at January 8, 2003. For individuals born in China, the EB-2 priority date remains April 22, 2005.

In the EB-3 category, the priority date remains August 1, 2002 for China-born and Philippine-born individuals as well as for the world-wide applicants (individuals born in all countries other than India, China, Mexico, or the Philippines). The EB-3 priority date for India-born individuals is May 8, 2001. The EB-3 cutoff date for persons born in Mexico is unchanged at May 15, 2001.

It is important to note that the country of “chargeability” is not the same as citizenship. Generally, DOS looks at the country of birth in determining whether a person is chargeable to a given country. As a result, persons who become citizens of other countries (i.e., Indians who become Canadian citizens) are still considered chargeable to their birth country for immigrant visa purposes.

DOS states in the Bulletin that there will be little if any forward movement of the EB-3 numbers in the near future, due to backlog reduction efforts at both the U.S. Department of Labor and U.S. Citizenship and Immigration Services (CIS). DOS also notes that the backlog reduction “could easily cause a retrogression of the current Employment Third preference cutoff dates should that demand begin to materialize at CIS offices during the spring and summer months.”

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.

Visa applications now accepted in New Delhi, Chennai and Mumbai



The U.S. Embassy in India issued the following notice regarding applicants for non-immigrant visas in India. This announcement should improve processing times for those waiting for an appointment:

In an effort to improve service, nonimmigrant visa applicants who speak fluent English now have the option to apply for a nonimmigrant visa at the U.S. Embassy, New Delhi or the U.S. Consulates in Chennai or Mumbai. Applicants who wish to take advantage of this option should book their appointment online through VFS (<http://www.vfs-usa.co.in>).

If you are a resident of India, you are required to select your current ‘State of Residence’ where you have been residing for the past six

months or longer. Later in the process, when you are scheduling your interview, you may see calendars offering dates at more than one post. If you are a fluent English speaker and have not been previously refused a visa, you may select an interview date from any post shown. If you are not fluent in English or were previously denied a visa, you must select a date only from the post covering the area where you reside. Applicants denied a visa can only seek to have the decision reviewed by reapplying at the post where the denial occurred.

J&H News

Atessa Chehrazi elected Treasurer of AILA NorCal

J&H is proud to announce that Senior Associate Atessa Chehrazi was elected as Treasurer of the Northern California Chapter of the American Immigration Lawyers Association (AILA NorCal) in December 2006. AILA NorCal is a nonprofit organization of over 600 immigration attorneys in Northern California, and is a chapter of AILA. Among other activities, AILA NorCal organizes monthly immigration law seminars and periodically sponsors the California Chapter Conference, liaises with government agencies including CIS, CBP, ICE, and DOL on a regular basis, sponsors an annual 5th grader essay contest on what it means to be "American" as part of AILA's national essay contest, and works with congressional offices in organizing naturalization clinics. Atessa will continue to serve on the Executive Committee of AILA NorCal until she becomes Chapter Chair of AILA NorCal.

J&H welcomes Yoshie Kikuchi !

J&H is excited to welcome back Yoshie Kikuchi. Yoshie rejoins J&H as a paralegal after taking some time off to spend with her two year old son. Yoshie previously worked for J&H as a paralegal for more than seven years, handling both Immigrant and Non-immigrant cases. Yoshie holds a B.A. degree in International Relations, with a minor in World Development Studies, from San Francisco State University, and an M.A. degree in Education from the School of Education, Stanford University. She is interested in education for women and children. Besides playing with her son, Yoshie enjoys the Japanese tea ceremony, cooking, traveling, and reading children's books.

J&H webinars



March 21, 2007, H-1B Basics

See page 1 for a description of this webinar. *Pending PHR/SPHR certification.*

April 25, 2007, Legislative Updates

This webinar will focus on an update from Washington D.C. We will not only review current pending legislation but also the pulse from the capital in regards to immigration reform, the H-1B cap and new immigrant visa numbers. We will provide information on contacting congressional representatives and discuss advocacy issues so that your company's views can be heard. This webinar will provide an update not only from AILA's March Lobby Day but from the organizations Spring Conference which boasts the movers and shakers from the heads of the agencies which we deal with on a day-to-day basis. Please join Ilana Drummond and Atessa Chehrazi for this timely webinar.

May 16, 2007, Immigration 101

This webinar will present a broad overview of immigration issues, including a review of nonimmigrant visa categories and the immigrant visa categories and process. This is an excellent overview for HR staff who are new to immigration issues, or for experienced HRs who want to brush up on the basics. Please join Daniel C. Horne and Grace Hoppin for a whirlwind tour through the alphabet soup of visas, petitions and applications.

June 2006 – No seminar scheduled

July, 18 2006 (Webinar) – "Hot Topics" from the Annual AILA Conference

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

Send an e-mail to webinar@jackson-hertogs.com to register for any of our webinars.

Immigration Trivia

The H-1B cap for Fiscal Year 2008 opens on April 1, 2007. When was last year's (Fiscal Year 2007) cap reached?

Answer: The regular H-1B cap was reached on May 26, 2006 and the cap for U.S. advanced degree holders was reached on July 26, 2006. Remember to get your cap cases started early!