

Immigration Spotlight

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Abbreviations used in this issue

- AJB/AJE** - America's Job Bank / America's Job Exchange
- AP** - Advance Parole
- BEC** - Backorder Elimination Center (DOL)
- DOL** - Department of Labor
- DOS** - Department of State
- EAD** - Employment Authorization Document
- USCIS** - U.S. Citizenship and Immigration Services
- VAWA** - Violence Against Women Act

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July webinar: "Hot Topics"

Our July webinar will provide immigration updates from DOS, including the changes to the Visa Bulletin, DOL's new regulations and progress on clearing their backlog, new developments at CIS, and the latest updates on immigration reform. Please join Daniel C. Horne and Grace Hoppin for this useful overview of new developments in immigration.

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

USCIS News

USCIS to increase filing fees



On May 29, 2007, USCIS announced a new fee schedule for immigration benefit applications and petitions. The new fee schedule, published in the Federal Register on May 30, 2007, largely implements unchanged the proposed fee structure that was published for public comment on February 1, 2007. Applications or petitions post-marked or filed on or after July 30, 2007 must include the new fees.

Key highlights of the new fee schedule include:

- The filing fee for adjustment of status applications (Form I-485) for applicants between ages 14 and 79 will be \$1,010. This fee will include the biometric fee and the fees for filing ancillary applications for work and travel applications. Please note that the fee will apply even if the individual does not wish to have an Employment Authorization Document (EAD) and/or Advance Parole (AP). USCIS is in the process of revamping its approval documents to provide a combined EAD and AP card that will serve as evidence of employment and travel authorization. Applicants for adjustment of status who file *before* the fee rule becomes effective will have to continue to file separate applications with fees for employment and travel authorization (Employment Authoriza-

tion Document and Advanced Parole). Those who file an adjustment of status application (Form I-485) on or after July 30, 2007 will not have to pay additional fees for employment and travel authorization as these costs have been included in the new adjustment of status application fee. Children under 14 applying for adjustment of status and filing their application concurrently with the Form I-485 of at least one parent will be subject to a \$600 filing fee. If a child under 14 files for adjustment of status separately from both parents, a \$930 filing fee will apply.

- Fee waivers will be allowed for some adjustment of status applicants. For instance, if the person's eligibility for adjustment of status stems from a prior grant of asylum or refugee status, "T" nonimmigrant status (victims of human trafficking), or if they are self-petitioning under the Violence Against Women Act (VAWA), the applicant may be granted a fee waiver. All refugee and asylum applicants are also eligible for fee exemptions.
- More fee exemptions are available. USCIS will also exempt "Special Immigrant Juveniles" from the \$375 filing fee for Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant). USCIS will also be able to waive the \$80 biometric fee on an individual basis.

The last time USCIS raised fees was on October 26, 2005. After a comprehensive fee review in early 2006, USCIS concluded that current fee revenues were insufficient to recover full operating costs. With the release of the new fee schedule, USCIS has stated that it will focus on substantially reducing processing times, from six months to four months, by the end of Fiscal Year 2008 for four key applications: 1) Form I-90, Application to Renew or Replace a Permanent Resident Card; 2) Form I-485, Application to Register Permanent Residence or Adjust Status; 3) Form I-140, Immigrant Petition for Alien Worker, and 4) Form N-400, Application for Naturalization. In addition, USCIS also intends to reduce the average case processing times for all applications and petitions by 20%. Time will tell if these stated goals will be accomplished as a result of the fee increase.

You may view the new fee schedule at www.uscis.gov. You may also wish to review the [USCIS press release](#) on the fee increase, and the USCIS [Questions and Answers](#) regarding the new fee schedule.

As stated above, the new fees go into effect for all cases that are filed on or after July 30, 2007. While Jackson & Hertogs will make every attempt to file cases expeditiously so that they may be filed under the current fee

schedule, cases initiated in the latter half of July will likely not be able to beat the fee change deadline.

Update: H-1B cap & Master's cap cases

Many petitioners who filed H-1B visa petitions under either cap are still in the dark as to what has happened to their filings because they have neither received a rejected filing nor have they received a receipt showing that the case has been accepted. To recap what happened this year, the H-1B regular cap was reached on April 2, 2007, the first day that the USCIS was able to accept H-1B cap case filings. The Master's cap was reached on April 30, 2007. By regulation, when the H-1B cap is reached on the first filing day, USCIS is required to subject the received cases to a lottery system to randomly select the cases that will be adjudicated. The USCIS received 130,000+ petitions on April 2nd.

The USCIS confirmed on June 15, 2007, that they have still not issued receipts on all lottery accepted cases and that they hope to finish sending receipts out to petitioners by June 22, 2007. While they indicated that all rejected cases had been returned to petitioners, until a petitioner has an actual receipt, the petitioner will not have confirmation that the case was not rejected. AILA liaison will implement a procedure for following up with the USCIS on cases where neither the receipt was issued nor the petition returned. J&H is monitoring this situation and will update impacted petitioners as soon as we have additional information.



CSC: Delayed approval notices

Due to a technical computer glitch, many foreign nationals with petitions approved by the California Service Center (CSC) in early May 2007 still have not received paper copies of the approval notices. According to USCIS representatives, the CSC has indicated that its IT department is working on fixing the technical problem that caused the failure of the system to generate and mail the approval notices. The CSC plans to generate a one-batch print job of all cases where approval notices have not been issued. The CSC has requested that attorneys and individuals not make inquiries at this time. J&H is closely monitoring this situation.

Incorrect customer service number

On June 8, 2007, USCIS reported that notices sent out between March 23 and June 5, 2007 listed the wrong phone number for the National Customer Service Center. The correct customer service phone number is 1-800-375-5283. USCIS estimated that the error affected approximately 200,000 people.

DOL News

New DOL regulation takes effect 7/16

The DOL's final rule published on May 17, 2007, *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity*, will take effect on July 16, 2007. The rule applies to Labor Certifications filed under PERM and pre-PERM filings.

Labor Certifications

- The petitioning employer, and not the beneficiary, must pay the costs associated with preparing, filing and obtaining an approved labor certification application, including the payment of attorney's fees when the same attorney represents both the alien beneficiary and the employer.
- The employer is also prohibited from receiving any payment as an incentive or inducement to filing the labor certification application.

I-140 Immigrant Visa Petitions

- Prohibits substitution of alien beneficiaries on any permanent labor certification application after the application has been filed with DOL. Prior to this rule, an employer could substitute or change the identity of the originally intended beneficiary on any application for permanent labor certification as long as the substituted beneficiary satisfied the experience and education requirements as of the priority date on the labor certification application. The new rule bars beneficiary substitutions, and will be effective for any I-140 substitution requests received by the USCIS after July 15, 2007. Substitution requests received by DOL or CIS prior to July 16 will be accepted for processing.
- Establishes a 180-day time period within which a DOL-approved labor certification must be filed with USCIS in support of a Form I-140 petition in order to remain valid. If the I-140 petition is not filed within 180 days of approval, the labor certification is void, and cannot be used to support an I-140 petition.
- Requires that any labor certification approved by DOL prior to July 16, 2007 be filed with USCIS in support of an I-140 petition within 180 days after the effective date of the DOL final rule in order for the certification to remain valid. This means that all I-140 petitions based

on LCs approved prior to July 16, 2007, must be filed with the USCIS by January 12, 2008.

Debarment

- Gives DOL authority to debar employers, attorneys and agents from filing labor certifications if DOL determines that certain violations have occurred, including sale or barter of approved labor certifications, willful provision of false or inaccurate information in a labor certification application, fraud, or a pattern and practice of failure to comply with the terms of a labor certification application. The rule specifies that a debarment action may be brought up to six years after the labor certification at issue was filed, and a party may be debarred from filing labor certifications for up to three years.



As a reminder, the provisions of the rule will become effective on **July 16, 2007**. If you have cases for possible substitution of beneficiaries, you must file your substitution case ASAP and prior to that date. Please contact your J&H attorney for more information.

BEC switches from AJB to AJE

On June 30, 2007, America's Job Bank (AJB) will cease operation as a recruitment tool. The BECs will be switching to America's Job Exchange (AJE) as the new site for posting recruitment advertising on traditionally filed labor certifications. The BECs will make the change to AJE effective June 1, 2007 to ensure a full 30 day recruitment period on the new site. If your advertisement was placed on AJB prior to June 1, 2007, it will continue there for its full 30 day recruitment period.

DOS News

July Visa Bulletin:

All EB categories are "Current"!

On June 13, 2007, the U.S. Department of State (DOS) released the [July 2007 Visa Bulletin](#), indicating that the priority dates for all employment-based (EB) categories are now "Current". This is a substantial move forward from the June 2007 Visa Bulletin. The "Other Workers" category is the only exception, as it is unavailable for July 2007.

The Department of State noted that the priority dates have been made "Current" in the July 2007 Visa Bulletin "in an effort to generate increased demand by USCIS for adjustment of status cases and to maximize number use under the annual numerical limit". However, DOS warns that there is "the possibility that not

all Employment preferences will remain Current for the remainder of the fiscal year". The DOS also stated:

Should the rate of demand for numbers be very heavy in the coming months, it could become necessary to retrogress some cut-off dates for September, most likely for China-mainland born and India, but also possibly for Mexico and Philippines. Severe cut-off date retrogressions are likely to occur early in FY-2008.

This effectively means that individuals with approved labor certifications and approved or pending I-140 immigrant petitions will be eligible to submit their applications for adjustment of status in July. While we had cautioned individuals with fairly recent priority dates based on recently approved PERM cases that it may be years before they would be eligible to file adjustment applications, these individuals will now be able to submit their applications in July. It is fully expected that thousands of applications will be filed.

When the predicted retrogression hits, those who filed applications for adjustment of status will wait in an adjudication queue, USCIS will not be able to make a decision on the application until the priority date again becomes current. The priority date must be current at the time that the application is filed *and* at the time it is approved. Therefore, if there is severe retrogression, it is quite possible that individuals will remain pending immigrants for quite sometime unless new employment based visa numbers are added by Congress through legislation.

Individuals who are pending adjustment applicants are eligible for employment and travel authorization documents by the very fact that they have filed the application for adjustment of status. This means that spouses and children who did not previously have employment authorization will now have it incidental to this application status. It also means that individuals will not necessarily need to obtain visas for travel and will be able to rely on Advance Parole documents.

While it is recommended that individuals with pending applications for adjustment of status maintain underlying H-1B/H-4 or L-1/L-2 nonimmigrant status, it is not mandatory, with one major exception. If an individual is unmarried at the time s/he submits his/her application and anticipates marrying an individual who is not a Lawful Permanent Resident or Citizen of the United States, then it is imperative that H-1B or L-1 status be maintained to ensure that the spouse can enter the U.S. as an H-4 or L-2 dependent, unless the spouse can obtain his/her own nonimmigrant status that is not dependent on the employee's status. In this

situation, the spouse would have to maintain dependent status in the U.S. until the employee's priority date is again current so that s/he would then be able to submit an application for adjustment of status. Please do note that in order for a spouse to file as a "derivative" the marriage must take place before the principal visa applicant is granted lawful permanent resident status. Any individual with marriage plans who wants to submit his/her application for adjustment of status prior to marrying must be cognizant of these issues and bears the risk that if their case is adjudicated before they marry, the spouse will not be a derivative beneficiary and would be subject to the Family Based immigration process whereby an immigrant visa petition would be required based on the family relationship—this would mean a new priority date and a different quota stream.

On a final note, even though DOS projects that the visa bulletin will stay current through September, we will not know for certain until the August bulletin is issued in mid-July. The DOS issues each month's bulletin around the 10th of the month proceeding it. Therefore, we anticipate that the August bulletin will be issued around July 10th. If numbers retrogress for August, then all cases must be filed before August 1st. If the numbers remain current, then we will be looking for the September visa bulletin to be issued around August 10th and will then know whether there is retrogression to start on September 1st. If there is, all cases must be filed before the end of August. We will follow this same wait and see approach with each passing month to determine which cases can be filed in the next month.

J&H is in the process of contacting affected foreign nationals and their employers so that individuals who are eligible to proceed with filing their applications can commence the process. If you have a specific question about your employee's eligibility, please contact your J&H attorney.

Temporary travel flexibility for U.S. passport applicants



On June 8, 2007, DOS announced that U.S. citizens who applied but have not received their passports can temporarily travel to Canada, Mexico, the Caribbean and Bermuda by air with a government issued photo identification and DOS official proof of application for a passport. This temporary accommodation will be available through September 30, 2007.

Legislative Corner

AILA statement on revival of Senate bill

On June 20, 2007, AILA issued the following statement on the Senate immigration reform bill. This statement is reprinted with the permission of AILA.



The Senate immigration reform bill is unworkable in its current form, said the American Immigration Lawyers Association (AILA) today. If the bill should pass the Senate as now written, AILA will advocate vigorously to ensure that the House of Representatives does not replicate the Senate's mistakes.

Since the bi-partisan "grand bargain" proposal was originally introduced, AILA has expressed strong opposition to a number of its central components. Largely the product of intense backroom negotiations, the compromise that emerged was more an earnest attempt to find the political sweet-spot for Senate passage than a reasoned roadmap for comprehensive reform. Political considerations eventually warped the proposal in ways that would bring more chaos to our immigration system instead of the order and rationality that this bill was intended to restore.

Under the agreement to revive the immigration bill announced by the Senate leadership teams, a pre-determined package of 20-24 amendments (10-12 per party) will be voted upon. The expectation is that in exchange for this agreement on amendments, the leadership teams will be able to secure the 60 votes necessary to invoke cloture (cut off debate on the bill) and move to a vote on final passage.

AILA's continuing top concerns with the bill include:

1. Decimation of the employment-based immigration system through creation of a misnamed "merit-based" point system that disconnects employment-based immigration from employer sponsorship and eliminates existing avenues of migration for aliens of extraordinary ability, multinational executives, and outstanding researchers.
2. Evisceration of family-based immigration by eliminating 4 out of 5 long-recognized family relationships that qualify an individual for green card sponsorship in exchange for a partial reduction of the backlogs in those categories.
3. Lack of meaningful opportunities for new temporary workers to transition to permanent residence.
4. Lack of sufficient future numbers for employment-based immigrants at all ends of the skill spectrum.
5. Unwarranted restrictions on the H-1B and L-1 nonimmigrant visa programs.

6. Lack of sufficient confidentiality protections for Z-visa applicants.

Nothing that transpired during the earlier Senate Floor debate served to allay these concerns. Of the 14 amendments that passed by recorded vote, none addressed these most problematic aspects of the bill. To the contrary, most of the amendments that passed have made the bill even more unworkable. Although we understand that two or three amendments included in the final package to be voted on address these concerns on the margins, there are also amendments in the offing that could further distort the original objectives of this bill.

AILA's Position

For years, AILA has been at the forefront in advocating for a comprehensive solution to the multitude of problems plaguing our immigration system. Our collective experience on the frontlines of immigration law and policy highlights the dire and urgent need for workable reform that advances the nation's economic, social, and national security interests. We fear, however, that the product likely to emanate from the Senate will be neither workable nor in our national interest.

The necessary architecture for meaningful, effective reform must include:

1. A clear path to lawful residence for those who come forward, pay fines, and demonstrate their commitment to becoming Americans by earning their status through working and learning English.
2. A new worker program that includes labor protections, job portability, and a realistic path to permanent residence.
3. Elimination of the existing unconscionable backlogs in family immigration and recalibration of our employment-based immigrant visa quotas to accommodate the needs of our dynamic and growing economy.
4. Smart border and worksite enforcement mechanisms that protect our national security interests, while respecting civil rights.

While the current Senate bill may give the appearance of adhering to this skeletal architecture, its full content has hollowed out these essential building blocks. The revolutionary changes to future family and employment based immigration represent an unwarranted and unacceptable tradeoff for a fatally flawed legalization program, partial backlog reduction, and an untenable temporary worker program. AILA cannot support enactment of the Senate bill in its current form and will do everything possible to significantly improve the bill as the legislative process continues.

J&H News



J&H complimentary webinars for HR professionals

Send an e-mail to webinar@jackson-hertogs.com to register for any of our webinars. You can always find a list of scheduled webinars on our web site at <http://www.jackson-hertogs.com/JH/spot/0spot.htm>.

July 2007 – MidYear “Hot Topics” in Immigration Law

See page 1 for a description of this webinar.

August 2007 – LCA Recordkeeping and Compliance

Do you know where your LCAs are? Do you know what an LCA is? This webinar will present an overview on employer requirements for labor condition application (LCA) recordkeeping, including public and DOL access file guidance, location of records, how to update LCAs, and when LCAs may be destroyed. We will also discuss some of the immigration consequences for employers related to corporate mergers, acquisitions, and restructuring. *PHR/SPHR certification pending.*

September 2007 – Travel Considerations: Issues Raised by International Travel

This seminar will address immigration issues raised by international travel, and address the following questions: Who needs a visa stamp? What are the visa requirements for travel to a contiguous territory? What issues arise from travel while an extension/change of status is pending? As many people will be applying for initial H-1B visas on or about October 1, 2007, what will be the potential impact for people applying for visas during this period? Finally, what current issues must be considered for visa processing at consulates, including interviews, appointment wait times, and potential delays due to security reviews. *PHR/SPHR certification pending.*

Immigration Trivia

USCIS is increasing filing fees on July 30, 2007 and if I file a petition on July 27, 2007, I must include the new fees.

True or False ?

Answer: True. The fee increase affects cases filed on or after July 30, 2007. If your petition is filed on July 27, it will reach immigration on July 30 and must include the new filing fees.

Jackson & Hertogs

Half a century of experience in the exclusive practice of immigration and nationality law. Highest rating for corporate immigration law in Martindale-Hubbell Bar Register, International Who's Who, and Best Lawyers in America. Representation ranges from Fortune 500 multinationals to venture-backed startups.

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