

Immigration Spotlight

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Abbreviations used in this issue

- AILA** - American Immigration Lawyers Association
- AOS** - Adjustment of Status
- DHS** - Department of Homeland Security
- DOL** - Department of Labor
- DOS** - Department of State
- PERM** - Program Electronic Review Management
- USCIS** - U.S. Citizenship and Immigration Services

© 2007 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 nine attorneys and a staff of 30 legal assistants and office management personnel to assist you with immigration matters.

October Webinar: General PERM issues

Our October 24, 2007 Webinar will discuss in depth the requirements for PERM, including guidelines on drafting job requirements, experience that can be used to qualify for a PERM case, using experience gained with the petitioning employer, prevailing wages, other documentation issues, and implications of the new DOL rules restricting payment of PERM costs. We will also discuss the different and critical roles the attorney, the sponsored worker, the manager, and the human resources employee play in preparation of the successful PERM case. Please join attorneys Atessa Chehrazi and Grace Hoppin for this Webinar. (1.5 PHR/SPHR certification hours)



Please send an email to webinar@jackson-hertogs.com to register for any of our Webinars.

USCIS News

USCIS proposes 750,000 green card holders replace their cards

On August 22, 2007, USCIS solicited comments regarding a proposed rule in the Federal Register that will require approximately 750,000 lawful permanent residents carrying 'green cards' without expiration dates to apply for new cards. Since the early 1990s, green cards have been issued with 10 year validity, and green card holders are required to renew their cards when they expire. The proposed rule would allow a 120-day filing period for replacement card applications after the rule is published. After the 120-day filing period ends, USCIS would publish a notice in the Federal Register terminating the validity of any remaining cards that lack expiration dates.

The agency has not publicized what, if any, legal sanctions would be taken against green card holders who do not relinquish their unexpired cards, but has suggested that violators could face fines and/or imprisonment. Additionally, once USCIS terminates the validity of the cards, card holders will not be able to use them for employment authorization or travel purposes. USCIS is accepting comments until September 21,

USCIS News

2007. Given that the cost to replace a green card is \$370, this will have a significant financial impact on lawful permanent residents who will be subject to the new replacement rule.

Get ready for H-1B cap season!



The H-1B cap season is just around the corner and it would appear that Congress will not be increasing H-1B numbers any time soon. This means that employers need to start thinking about individuals that they want to sponsor for H-1Bs in FY2009. As a reminder, the government's fiscal year runs from October 1st to September 30th. H-1B visa petitions may be filed no earlier than six months before the proposed employment would commence. Therefore, for FY2009 cap subject H-1B nonimmigrant visa petitions, the earliest start date on the petition would be October 1, 2008 and the earliest date on which the USCIS would accept such filings is April 1, 2008.

Remember that during this year's filing for FY2008, an unprecedented number of cases – more than 135,000 – were received on the first two days of the filing season for regular cap H-1B visa petitions, essentially meaning that the cap was reached on April 2, 2007 (This was the first date cap cases were accepted, because April 1, 2007 fell on a Sunday). By regulation, all cap cases received on the first two days these cases were subjected to a random lottery. Cases that “won” the lottery were then adjudicated; cases that “lost” were rejected unprocessed. For the 20,000 advanced degree H-1B cap cases, the cap was reached on April 30, 2007. It is generally anticipated that the upcoming H-1B cap filing season will be just as frantic as 2007, if not more so, and that a record number of cases will be filed under the regular cap once more. We also believe that the master's cap will likely be reached even earlier this year, as many individuals in master's programs who did not graduate in time to apply under the FY2008 numbers will have received their degrees, and will be eligible to apply on April 1, 2008.

The USCIS has intimated that it may change procedures on how cap cases will be entered into the lottery, so that the Service is not faced with the daunting task of opening all of the packages and then returning rejected cases to petitioners. We hope that USCIS will provide details soon so that petitioners can be better prepared for the upcoming H-1B filing season.

What employers can do **now** to prepare is to start looking at their employment lists. Have any new F-1 or J-1 students been hired who would need to have H-1B visa petitions filed on their behalf? Are there any TN employees or L-1B employees who may benefit from a change of status to H-1B? While J&H will be compil-

ing lists to send to employer clients, those lists will not necessarily include your F-1 or J-1 employees if they were hired directly by departments with current F-1 or J-1 work authorization unless our firm was consulted or involved at the time of hire.

Hiring managers and recruiters should again be reminded of the H-1B cap issues so that as they are interviewing candidates, they are identifying individuals who not only may require immigration sponsorship, but specifically looking at individuals who would be H-1B cap subject. Issues that managers should specifically be aware of include the pitfall of hiring an individual with work authorization that would expire before October 1, 2008. In those situations, even if the individual is one of the lucky ones to secure an H-1B visa number, s/he would likely have a gap in employment authorization between the end date of the current or anticipated work authorization and October 1, 2008. In some situations where work authorization



expires more than 60 days before October 1, 2008 for an F-1 nonimmigrant, or 30 days before October 1, 2008 for a J-1 nonimmigrant, the individual would have to depart the United States and remain outside until s/he can apply for and be issued an H-1B visa to return to the United States.

Also important to keep in mind, particularly for employers who hire researchers and scientists, is that not all individuals who are currently in H-1B status have been counted against the cap. For example, if an individual's current H-1B employer is a university or a not-for-profit research institute, that employer is exempt from the cap and therefore the H-1B employee has not yet been counted. This means that the individual is H-1B cap subject and you may or may not be successful in the lottery. Therefore, even if someone is in H-1B status, you have to look at who the petitioner on that H-1B visa petition is and whether the individual was counted or not. Please contact your Jackson & Hertogs attorney if you have questions about a potential H-1B applicant, or about the upcoming H-1B cap filing season.

Update on I-485 AOS cases

As you will remember, we had a busy summer filing I-485 applications for adjustment of status (AOS) for many clients and their family members who were—or became—eligible to file their I-485 AOS applications based on the July visa bulletin, which indicated that all employment-based immigrant visa dates were current. The large number of I-485 AOS cases that were filed in July and August has resulted in a “front-log” at the USCIS service centers for inputting data and issuing receipts. We know that some cases that were filed with the Texas and Nebraska Service Centers are being routed to the California Service Center for ini-

tial data entry and receipt issuance. The cases should then be transferred back to the original service center for processing.

The USCIS has been sporadically issuing front-log updates to provide information on where they are for issuing receipts by case filed dates. Unfortunately, the information that they are providing is a bit misleading and they have now indicated that the dates should be used as a “guideline.” In short, USCIS is not willing to accept inquiries on missing receipts at this time. This is being addressed through the American Immigration Lawyers Association (AILA) liaison.

What this means to your employees is that many of them are still waiting for I-485 AOS receipts to be issued, even though processing dates issued by USCIS may indicate that their receipts should have been processed by now. The receipts are important to the foreign nationals for several reasons. First, the receipt is the best assurance that the case was properly accepted into the system and second, for individuals who hold H or L status, they must have the I-485 AOS receipt in their possession in order to travel internationally. We have many clients who have had to put both business and personal travel on hold to wait for the filing receipts. Overall, this has been a frustrating situation for both our office and our impacted clients.

To add insult to injury, when receipts are issued, we have noticed that quite a few of them contain data errors. We are contacting the USCIS to correct the misspelling of names, which are at this point minor. Some of the other errors are that the section of law under which the case was filed is listed as “unknown.” We believe that this is a glitch in the system on the I-485 AOS cases that has been brought to the attention of the USCIS. For I-485 AOS cases, this is not that troubling and eventually the USCIS will sort out the classification at the time of adjudication. However, for the I-140 receipts on concurrent processing when “unknown” is listed, it leads to a data error that is reflected on the USCIS On-Line case status system. These issues are also being brought to the attention of the USCIS through AILA.

We are closely monitoring the receipt issuance concerns outlined above and will make appropriate inquiries on cases where receipts are not issued timely or where those receipts which are issued contain errors that need to be corrected.

DHS News

SSA “no match” letters delayed

In response to a lawsuit filed against the Department of Homeland Security and the Social Security Administration (SSA), a federal judge has blocked the enforcement of a new regulation which could require employ-

ers to fire workers identified as illegal immigrants in government records or face possible prosecution. The judge issued a nationwide temporary restraining order that will prevent the SSA sending out “no match” letters to employers demanding that they clear up any inconsistency between the worker’s name and his or her social security number, which may include completing a new Form I-9 to prove that the worker has employment authorization. The order is in effect until October 1, 2007, when another federal judge will consider whether to grant an injunction that would block implementation of the “no match” rule until a trial on the lawsuit against the government is held.



DOS News

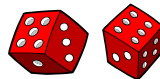
October Visa Bulletin: Limited progress for some categories

On September 11, 2007, the Department of State (“DOS”) released the [October 2007 Visa Bulletin](#). There was no retrogression, and limited movement forward for some categories.

EB-1 is now current for all countries. EB-2 is current for all countries other than China and India. For individuals born in China, the EB-2 category remains at January 1, 2006. For individuals born in India, EB-2 remains at April 1, 2004.

In the EB-3 category, the world-wide cut off (individuals born in all countries other than India, China, and Mexico) remains at August 1, 2002. For Chinese, Indian and Mexican-born individuals, priority dates are now available: for individuals born in China, the EB-3 category moved forward to September 1, 2001; and for individuals born in India and Mexico, the priority date is now April 22, 2001. These dates are a giant step back from the July 2007 Visa Bulletin, which is the last Bulletin with priority date cut-offs for these categories.

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 which includes detailed charts of quota movement for the past decade.



DV-2009 lottery program application period announced

DOS has announced that the application period for the 2009 Diversity Immigrant Visa Program (DV-2009) green card lottery will begin at 12:00pm EST on Wednesday, October 3, 2007 and will end at 12:00pm EST on Sunday, December 2, 2007. Applications not

submitted during this period will not be accepted. The lottery will enable 50,000 randomly chosen people to obtain permanent residence in the United States. Applicants who are selected will be eligible to become permanent residents during FY 2009 (October 1, 2008 to September 30, 2009).

Each year, the DV program makes available permanent residence visas to individuals meeting certain eligibility requirements. Applicants for Diversity Visas are initially chosen through a random computer-generated lottery drawing. Visas are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country can receive more than seven percent of the available Diversity Visas in any one year.

Please check our website at www.jackson-hertogs.com for updates regarding this program.

Travel Reminder: U.S. passports required as of October 1, 2007

As of October 1, 2007, under the Western Hemisphere Travel Initiative (WHTI), U.S. citizens traveling by air to Canada, Mexico, the Caribbean, or Bermuda must present a passport to enter or depart from the U.S. The temporary travel accommodation in place that allows U.S. citizens to depart the U.S. with proof of passport application receipt and government-issued identification will end as of September 30, 2007. However, U.S. citizens who depart prior to September 30, 2007 with these documents will be allowed to return to the U.S. after September 30, 2007 with the same documentation.

For more information, please see DHS's press release: http://www.dhs.gov/xnews/releases/pr_1188939218061.shtm.

DOL News

PERM update

We and other immigration practitioners have noticed an increase in the number of random audits being issued by the DOL on filed PERM cases. As part of this trend, it appears that the DOL system may be also issuing audit notifications, but that the notifications are not actually being sent out to employers or representatives. Therefore, when audit responses are not received within the deadline period, the DOL issues a denial for failure to respond. We are closely monitoring this situation for our clients.

Global Visa News

New entry requirements for visitors to Japan



By November 23, 2007, Japan will implement new landing examination procedures, which will require all foreign visitors to Japan to be fingerprinted and photographed at immigration in addition to the immigration interview. A visitor who refuses to comply with the fingerprinting and photograph requirement will be denied entry and ordered to leave. Visitors under 16, diplomats and special permanent residents will be exempted from the new rule. The new landing examination procedure is designed to assist with the prevention of terrorism in Japan. The Japanese Bureau of Immigration has produced a short video explaining the procedure: <http://nettv.gov-online.go.jp/prg/prg1203.html>.



Australia alters long stay visa requirements

The Australian Department of Immigration has announced changes to its regulations concerning its Subclass 457 long stay visa. When a standard business sponsor nominates a position under this classification, the occupation must be specified in a relevant Australian Gazette Notice at the time the nomination is decided. The nomination will not be approved if the occupation is no longer specified in the Notice. Further, in order for a visa application to be approved, the applicant's occupation must be specified in a relevant Australian Gazette Notice at the time of the application. The exception to these amendments is if the sponsor has become a party to a labor agreement that covers the nominated position. Refunds of nomination and visa application fees may be available if sponsorship is no longer feasible due to a change in the relevant Gazette Notice. For more information contact the Australian Department of Immigration: <http://www.immi.gov.au>.

J&H News

eStatus: Jackson & Hertogs' online case status system

As a reminder to our corporate clients, if you have not visited eStatus, our online case status system, we highly encourage that you do so. eStatus is an interactive website that provides valuable information about your employees' immigration processes and cur-

rent immigration status. Each of your employees has access to his/her own information and uses eStatus to provide us with the information and documentation we require to process applications and petitions. For the HR side, the website also includes robust reporting tools that enable you to run reports on visa expirations, priority dates, job sites, and other vital immigration information. The system also allows you to easily initiate new cases and processes on-line. If you are interested in exploring this option, please contact your J&H attorney so that we can walk you through the easy-to-use system.

eStatus is available only for current clients and requires a login and password to access the system. The interface will be updated in a few weeks, so expect to see some changes that should make the use of the system even easier. If you are a current client and have not yet tried eStatus, please contact your J&H attorney for login information and instructions on how to use the system.

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/seminars.htm>. Both Webinars will be held from 10:00 am to 11:30 am Pacific time. We hope that you can take advantage of this convenient method of keeping up with immigration changes—without having to leave your office!

October 2007 – General PERM issues

See page 1 for a description of this Webinar.

November 2007 – Recruitment for PERM

The November 14, 2007 Webinar will focus exclusively on the recruitment process for PERM, addressing types of recruitment that may be used, how employers can establish PERM recruitment programs for multiple cases, how to track applicants, and reasons that employers may and may not lawfully reject U.S. workers who apply to a PERM position. Please join attorneys Norman C. Plotkin and Grace Hoppin for this Webinar. *PHR/SPHR certification pending.*

J&H welcomes Gwen!

We are pleased to announce the birth of Gwen Garvin-Dai Sullivan to J&H attorney Nadia G. Johnson. Gwen was born on September 23, 2007 and weighed in at 8 lbs. and 20 inches long.



Immigration Trivia

Which of the following immigrant visa applicants are likely to be affected by backlogs in immigrant visa categories? (Assume that all individuals are in the U.S. and have lawful non-immigrant status.)

- Canadian citizen who was born in India and is immigrating in the EB-3 visa category
- Indian citizen who is immigrating in the EB-1 category
- Indian citizen who is married to a native citizen of Canada and is immigrating in the EB-3 category.

Answer: A is most likely to be affected by a change in priority dates, as s/he is in the EB-3 category and is immigrating from a country that sends a large number of residents to the U.S. each year. C could be affected; however, by cross-charging against his or her spouse's country, s/he can be counted under Canada's quota list instead of India's. B could be affected, but only if a backlog develops in the EB-1 category.