

Immigration Spotlight

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© 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.

USCIS News

New Form I-9 released

On November 9, 2007 USCIS released a new version of the I-9 Employment Eligibility Verification Form to the public. On November 26, 2007, USCIS published the new I-9 Form and its instructions in the Federal Register.

Employers should begin using the form immediately, although they are not legally required to do so until December 26, 2007. Employers who fail to use the new form after that date may face fines and other penalties. The new I-9 Form should be used for all new hires and to perform any required reverification of employment authorization for current employees or for rehired employees. Employers are not required to update or replace any I-9 Forms that have been completed using a previous version of the form. Employers may download the [new I-9 Form](http://www.uscis.gov/files/form/I-9.pdf) from the USCIS website, <http://www.uscis.gov/files/form/I-9.pdf>.

The new form updates the list of acceptable documents by removing five documents from the previous list of acceptable proof of both identity and employment authorization: Certificate of U.S. Citizenship (Form N-560 or N-561), Certificate of Naturalization (Form N-550 or N-570), Alien Registration Receipt Card (I-151), Unexpired Reentry Permit (Form I-327), and Unexpired Refugee Travel Document (Form I-571). The new form also clarifies that the employee is only required to provide his or her Social Security Number if the employer is participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify).

In addition to removing five previously acceptable documents, the new I-9 Form adds the Unexpired Employment Authorization Document (I-766) to List A of the List of Acceptable Documents.

Please contact your J&H attorney if you have questions about the new I-9 Form.

USCIS issues “Advisory” on processing times – expect major delays

On November 23, USCIS released an advisory on its processing times and workload, and indicated that many types of applications will see significant delays in processing times. USCIS reported a significant increase in the number of applications filed with the Service, which received nearly 2.5 million applications and petitions in July and August 2007, versus 1.2 million applications and



petitions received in the same time period in 2006. USCIS also reported receiving 1.4 million applications for naturalization (citizenship) in fiscal year 2007, nearly double the volume the Service received the prior year.

As a result of this increase in workload, USCIS reports that average processing times for certain application types may become longer. In particular, USCIS now predicts that naturalization applications filed after June 1, 2007 may take approximately 16 - 18 months to process. USCIS did not make predictions for processing times for any other type of applications.

Why did USCIS receive so many filings in 2007? In large part, the increase in filings was driven by the filing fee increase which went into effect on July 30, 2007. Facing fee increases of more than \$300 for some types of applications, thousands rushed to file cases before the new fees went into effect. Similarly, the sudden availability of immigrant visa numbers under the July 2007 Visa Bulletin led to thousands of individuals submitting applications for adjustment of status while the filing window was open in July and August 2007. While the fee increase may have led many to file before the end of July 2007, the increase in naturalization filings may also have been driven by the recent legislative efforts in the area of Comprehensive Immigration Reform, as many eligible permanent residents chose to apply for citizenship so that they could become part of the political process. Whatever the specific causes of the increase in applications, the result of this surge means that most individuals will see significant delays in the processing time for their applications. You can view the latest USCIS processing times on our website by selecting "USCIS processing times" under Quick Access Tools.

Receipt requirement removed for traveling I-485 applicants in H and L status

On November 1, 2007 USCIS published its final rule removing the I-485 receipt notice requirement for certain H and L nonimmigrants traveling and returning to the U.S. during the pendency of their I-485 adjustment of status applications. The rule became effective immediately and eliminates the need for I-485 applicants who are in valid H or L status and have unexpired visas (for those required to carry visas), to carry the original I-485 receipt with them upon entry into the U.S.

Under the final regulations, certain applicants for adjustment of status who are in lawful H or L status will not be deemed to have abandoned their applications if,

upon returning to the U.S., they can demonstrate they remain eligible for H or L status, are coming to resume employment for the sponsoring employer, and are in possession of a valid H or L visa, if a visa is required. This new rule is welcome news for applicants, who have had to endure long waits for their receipts and, in some cases, have had to cancel trips abroad while awaiting issuance of their receipts.

DHS News

DHS blinks on "no match"— plans to publish revised rule by March 2008

On November 23, 2007, DHS filed a motion to stay proceedings in the pending lawsuit over the "no match" rule. DHS stated it requested the motion to stay in order to conduct additional rule-making proceedings to address the issues raised by the court, including preparing a Regulatory Flexibility Act analysis and publishing an amended final rule. The plaintiffs in the lawsuit have objected to the motion to stay. On November 26, the Court granted DHS's motion, and the court proceeding have been placed on hold until March 28, 2008.



Background: In August 2007, DHS published a regulation that was designed to limit the ability of employers to continue to employ unauthorized workers. The regulation included a plan by both the Social Security Administration (SSA) and DHS to issue "no-match" letters to employers whose employee's name and social security number does not match agency records, or where the employee's immigration documentation was not assigned to that employee. Under the proposed regulations, employers would be required to attempt to resolve any discrepancies within 90 days. If they were unable to do so, the employer would then have to terminate the impacted employee or risk liability for continued employment of an unauthorized worker. The "no match" letters were scheduled to be issued on September 14, 2007, but were put on hold after labor groups and immigrant activists filed a federal lawsuit and requested an injunction. The court issued the injunction, and implementation of the "no match" regulations has been put on hold pending the outcome of the lawsuit.

While DHS still could appeal the ruling by the court to issue the injunction, an appeal is unlikely at this time. Further, the motion to stay strongly suggests that DHS has determined that revisions to the "no match" rule as published are necessary. J&H will continue to monitor the status of the no match regulations, and update clients as news becomes available.

Legislative Corner

Proposed new H-1B fees removed, but could return



J&H reported in October that the U.S. Senate passed an amendment (Grassley-Sanders) that would have added an additional government fee of \$3500 to the cost of filing an H-1B petition. Employers with 25 or fewer employees would have been required to pay a reduced fee \$1750. The Grassley-Sanders amendment had been incorporated into the Senate's version of the Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act of 2008. This new fee would have been in addition to the existing \$500 anti-fraud fee and \$1500 scholarship and training fee already required for new H-1B petitions, thus raising the cost of a new H-1B petition to nearly \$6000 in government fees alone. Furthermore, the \$3500 fee would apply to all H-1B petitions and would not include an exemption for H-1B extensions or amended petitions.

Fortunately, this measure was stricken from the proposed Act during an appropriations meeting between representatives from the House and Senate on November 1. However, President Bush has threatened to veto the final Act, creating the possibility that this fee increase proposal could return in later versions of the Act. J&H will notify clients if this proposal appears again, and we encourage clients to contact their Senators to oppose such an amendment.

DOS News

EB-2 retrogression for India and China



The Department of State (DOS) [Visa Bulletin for December 2007](#)



indicates that visa numbers will significantly retrogress for EB-2 employment-based immigrant applications for India-born and China-born individuals. Effective December 1, 2007, the priority date for the EB-2 India category will move back more than two years to January 1, 2002. EB-2 China will move back three years to January 1, 2003. Individuals in these categories may see additional retrogression later in the fiscal year.

DOS advises in the Visa Bulletin that retrogression of the China and India EB-2 numbers was necessary due to "extraordinarily heavy applicant demand for numbers, primarily by Citizenship and Immigration Services offices for adjustment of status cases." DOS also notes that demand for visa numbers in these categories

for October and the first week of November has already resulted in use of over 38% of the annual limit. DOS hopes that the "December retrogressions will return monthly number use within the target range. If not, further retrogressions [for India and China] cannot be ruled out."

While the news for EB-2 India and China was disappointing, the rest of the Visa Bulletin includes favorable news for most other employment-based green card applicants. EB-1 remains current for all countries, including India and China; DOS does not foresee any retrogression in the EB-1 category for countries other than India and China. Retrogression of the India and China EB-1 categories may be required later in the fiscal year, depending upon the rate of demand. EB-2 remains current for all countries other than India and China.

The EB-3 priority date for all countries other than China, India and Mexico moved forward one month to September 1, 2002. DOS also notes that "slow forward movement [in this category] should be possible" as demand patterns are established. EB-3 for China-born individuals has moved forward to October 15, 2001, EB-3 India-born advanced to May 1, 2001, and EB-3 Mexico-born advanced to April 22, 2001.

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

Visa retrogression immediately impacts only those individuals in the final stages of the permanent resident process (i.e., those seeking to file an application for adjustment of status (AOS), who are waiting for an AOS application to be adjudicated, or who are seeking to apply for an immigrant visa at a U.S. Consulate or Embassy based on an approved immigrant visa petition). Visa retrogression has no impact on the processing of a labor certification that is about to be filed or is pending with the Department of Labor. Furthermore, visa retrogression does not prohibit the filing of an immigrant visa petition (I-140) based on an approved labor certification, even if that immigrant visa petition will be filed under the EB-2 category.

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.

DOL News

PERM audits on the rise

Following DOL's announcement of completion of its pre-PERM backlog of cases, J&H and other immigration practitioners have noticed a marked increase in the number of audits DOL is issuing. Most of these audits are focusing on the employer's stated requirements on the PERM application, with particular emphasis on the "business necessity" of requirements that exceed what DOL considers "normal" for the occupation. DOL refers to a standard classification system, O*Net, in determining the "normal" amount of education, training and experience for a given occupation. If the employer's stated PERM requirements exceed what DOL considers normal for the occupation, the employer must provide documentation that the requirements are necessary due to the employer's business necessity and the nature of the sponsored position at the employer. Employers are required to maintain business necessity documentation, but only must submit it to DOL if requested in an audit. When J&H believes that business necessity will apply to a case, J&H works with the employer and the sponsored employee to gather the necessary documentation before filing the PERM case with DOL – this advance preparation has led to smooth processing of PERM cases even when they are selected for audit.

While it appears that many of the PERM audits now being issued are focusing primarily on business necessity, employers should not assume that this is the only issue DOL is investigating. William Carlson, Chief of DOL's Office of Foreign Labor Certification, recently announced at an AILA conference that DOL will be examining PERM cases more closely than they have in the past. When the PERM regulations were published in December 2004, DOL anticipated auditing 10-20% of all cases filed. In actuality, a much smaller percentage of PERM cases have been audited over the past three years. Mr. Carlson indicated that DOL would like to audit cases at the rate originally anticipated, which would mean a substantial increase in audits for 2008. Even with an increase in PERM audits, most audited cases are ultimately approved by DOL – employers should not assume that an audit means that there is a problem with the PERM case, or that the case will be denied after an audit. However, employers should anticipate that an audit may be issued on PERM cases now being filed, and that PERM cases will likely take longer to process than they did earlier this year. Please contact your J&H attorney if you have questions about this issue.

Global Visas

Australia / U.S. visa agreement



Australia and the United States have entered into an agreement making it possible as of October 31, 2007 for U.S. citizens between the ages of 18 and 30 to apply for a work and holiday visa allowing them to work in Australia for up to 12 months. The general requirements for US citizens wishing to come to Australia are as follows: (1) be aged 18 to 30 inclusive; (2) be outside of Australia when applying for and granted the visa; (3) show evidence that they are enrolled in a post secondary course of study or hold post secondary qualifications; (4) have a return ticket or sufficient funds for a return or onward fare as well as sufficient funds for the first part of their stay, and (5) meet health and character requirements. Holders of this visa can work for an employer for up to 6 months and there are no restrictions on the type of work that may be done. The work and holiday visa cannot be renewed. For further information about this or Australian work authorizations in general, please contact us.



Mark your calendars! J&H will be closed on the following dates:

December 24-25;

December 31; and

January 1, 2008



Happy holidays from all of us at J&H !

Immigration Trivia

All foreign nationals must have a visa stamp in their passport if they hold TN, H-1B or L-1 status.

True or False?

Answer: False. Canadian citizens are visa exempt and do not need to obtain a visa stamp to enter the U.S.