

Immigration Spotlight

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© 2008 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

Proposed rule extending TN period of stay to three years

On May 6, 2008, the USCIS issued a press release announcing a proposed rule to increase the validity period for TN visas from one-year to three-year increments. If and when this regulation becomes final, annual extensions for Canadian and Mexican citizens holding TN visa status will no longer be necessary. Unlike the F-1 regulation that was issued last month, this is a proposed rule that needs to go through a comment period before it can take effect. The proposed rule changes only the TN visa's validity period from one year to three years. This proposed rule will not remove the TN visa category's nonimmigrant intent requirement, nor does it take away the ability of a qualified individual to extend the TN status indefinitely.

The full press release is available at http://www.uscis.gov/files/article/TNworkers_update_050608.pdf.

USCIS proposes ending concurrent I-140/I-485 filings

As part of the USCIS pending regulatory agenda, USCIS has recently indicated that they plan to publish a notice of proposed rule making ("NPRM") proposing to end the current practice of permitting concurrent filing of the USCIS Form I-140 Employer Petition for Immigrant Worker and the USCIS Form I-485 Application to Adjust to Permanent Resident Status. If this NPRM becomes a regulation, the USCIS would resume its former practice of requiring the I-485 application to be filed only after the underlying I-140 Petition has



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been approved. This rule would only meaningfully impact those who have priority dates current as of the date their I-140 petitions were filed. Those who do not have priority dates current as of the date of filing their I-140 immigrant petitions would rarely be eligible to file their I-485 applications until after their I-140 was approved in most cases. The group most likely to be impacted if this rule become effective are those foreign nationals qualifying for EB-2 or higher categories of employment-based immigration, and who are not born in India or China.

Please note that at this time, this rule has not been published. Concurrent filing of I-140 and I-485 continues to be available to individuals who meet the current eligibility requirements. USCIS has announced its intention to publish this NPRM in June 2008, with a 60 day period of comment to follow. An NPRM, unlike a Final Rule or Interim Final Rule, is not effective upon publication in the Federal Register, and it is possible that this regulation will never become final if, after public comment, USCIS does not move forward with the NPRM. In addition, while USCIS intends to publish this NPRM in June 2008, this is not mandatory, and it may be rescheduled to a later date if deemed necessary by USCIS or OMB.

Jackson & Hertogs will continue to monitor the status of the NPRM and provide updates to clients as information develops.

Summer travel advisory

With summer approaching, your employees may be planning travel outside the United States to see friends or family, in addition to perhaps making business visits. Before flight plans are firmed up, now is the time to review the expiration of all U.S. government-issued travel documents, so as to ensure your employee's safe return to the United States.



We have prepared the following checklist of issues for you to share and review with your foreign national employees before they make summer travel plans. Should you have any questions about these matters, do not hesitate to contact your attorney at J&H.

✓ Check documents for continued validity/expiration.

Passport, nonimmigrant visa (e.g., H-1B or L-1 visa), and I-94 card should be reviewed for both the employee and any spouse or children also traveling. In most cases it is required that the I-94 card be surrendered upon departure from the U.S. (Canadian citizens holding TN status are exempt). However the I-797 petition approval notice should not be surrendered.

Upon return to the U.S., the employee should present the I-797 ("Notice of Action") petition approval notice and nonimmigrant visa.

The nonimmigrant visa stamp must remain unexpired not only at the time of departure from the U.S., but also for a meaningful period of time after the planned return date. Any trips to Canada or Mexico lasting less than 30 days will not require a visa for return to the United States. However, if an application for a visa is made in Canada or Mexico, and the visa application is subsequently denied or delayed, return to the United States with just the I-797 approval notice will not be possible.

All passports must be valid for at least six months beyond the approved period of stay in the United States. If a passport will not be valid for the full period of authorized nonimmigrant stay, a new passport should be obtained prior to the trip. Otherwise, there is a chance the U.S. Customs & Border Protection officer may "short change" the period of authorized stay upon return to the United States, and fail to give the full period of stay.

✓ Book visa appointment to get a new visa.

If the employee has neither a nonimmigrant visa for his/her current employment category, or has a previously-issued but expired nonimmigrant visa, a new visa stamp must be obtained. This must be done prior to return to the U.S. Consular appointments are required to obtain a visa and should be booked as early as possible, even if the planned trip is not for several weeks due to high demand for appointments during summer travel months.

The consular appointment does not necessarily have to be made in the "home country". Appointments may be available in Canada or Mexico, or even in other countries, depending upon the circumstances. Please check the different U.S. consulates around the world by visiting the U.S. State Department website (<http://usembassy.state.gov/>).

✓ Beware of security clearance checks.

Security clearance checks can delay visa application at any U.S. consulate. Sometimes these delays can last days, weeks, or even months. Though security clearance checks are rare, there is always a chance a visa application can be delayed as a result of security clearance checks. Travel should be planned accordingly, so that a delay in return date due to security clearance checks does not come as a total surprise to those expecting a timely return to the United States. Applicants for adjustment of status (I-485) should renew advance parole early.

Those applying for adjustment of status (Form I-485) can travel internationally only with an advance parole document, issued prior to departure, that will remain unexpired until after they return to the United States from their trip abroad. (The only exception is for those adjustment of status applicants who hold valid, unexpired H-1B or L-1 visas.) The USCIS can often take as long as three to four months to process an advance parole renewal application. For that reason, it is wise to apply for renewal of any advance parole document within four months of its expiration date, to ensure that a new advance parole document will arrive before the existing advance parole document can expire. Otherwise, the new advance parole document may not be received in time to be used on the next international trip.

✓ Review the I-94 and send J&H a copy.

The white I-94 card issued from U.S. Customs & Border Protection controls ability to lawfully work and remain in this country. I-94 cards are typically issued by CBP each and every time there is an international flight. Sometimes, the new I-94 card lists an expiration date later than prior I-94 cards (CBP officers are not consistent in providing for a 10 day "grace period"). Sometimes, the expiration date is "short changed," and the new I-94 card expiration date is shorter than the prior I-94 card. Sometimes, the I-94 expiration dates of family members are not in alignment with the employee's own I-94 card.

For that reason, it is very important that a copy of the I-94 card (front and back) is sent to J&H immediately upon return. Please be sure to scan and e-mail (or fax with a cover sheet) a copy of the new I-94 card after each entry into the United States to J&H.

DOS News

June Visa Bulletin – EB2 India, China progress; EB3 retrogression likely

The DOS Visa Bulletin for June 2008 (http://travel.state.gov/visa/frvi/bulletin/bulletin_4231.html) indicates that employment-based second preference (EB-2) for India and China will move forward three months in the month of June. All other EB categories are unchanged from the May Visa Bulletin.

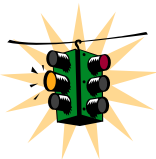
EB-1 remains current for all countries, including China and India. EB-2 is current for all countries other than India and China, which will move forward three months to April 1, 2004. EB-3 is unchanged

from the May Visa Bulletin, with EB-3 for all countries other than China, India and Mexico remaining at March 1, 2006. For the other EB-3 categories, EB-3 China will remain at March 22, 2003, EB-3 India at November 1, 2001, and EB-3 Mexico at July 1, 2002.

In discussing the current visa numbers, DOS warns that EB-3 may soon retrogress or be unavailable for all countries for the remainder of the fiscal year:

Demand for numbers, primarily by Citizenship and Immigration Services Offices for adjustment of status cases, is expected to bring the Employment Third preference category very close to the annual numerical limit in June. As a result, this category is likely to experience retrogressions or visa unavailability beginning in July. Such action would only be temporary, however, and a complete recovery of the cut-off dates would occur for October, the first month of the new fiscal year.

In light of this guidance from DOS, individuals in the EB-3 category who are now eligible to file for adjustment of status (AOS) should do so, as they may be unable to submit an AOS application later in the year. When a priority date retrogresses or becomes unavailable, any AOS applications are effectively put on hold until the priority date becomes available again.



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., Indian citizens who become Canadian citizens) are still considered nationals of their birth country for immigrant visa purposes.

CBP News

Summer travel: Plan ahead before crossing the border

On May 19, 2008, CBP reminded travelers to Canada that Memorial Day weekend is traditionally the start of heavy traffic jams due to summer travel across the Canadian border. The CBP suggests checking traffic conditions and having all travel documents ready before you stop at the inspection booth to help facilitate your trip through the border.

As a reminder, as of January 2008, all travelers must present valid proof of citizenship (i.e. official passports, passport cards, copies of birth certificates along with government-issued photo identification, enhanced driver's licenses, NEXUS or FAST cards) as an

oral declaration of citizenship will no longer be accepted. For further tips regarding travel to Canada, please see the CBP's press release: http://www.cbp.gov/xp/cgov/newsroom/news_releases/05192008_2.xml


Global Entry pilot program: Applications accepted now

As reported last month in *Spotlight*, the Global Entry pilot program will be initiated at John F. Kennedy International Airport in New York, George Bush Intercontinental Airport, Houston, and Washington Dulles International Airport. The program will start on June 10, 2008, and is designed to expedite the screening and processing of low-risk, frequent international travelers entering the United States. Global Entry is available for U.S. citizens or lawful permanent residents.

Applications for enrollment in the Global Entry program are now being accepted through the Global On-Line Enrollment System (GOES). The Global Entry application process consists of three steps: (1) the applicant completes an on-line application through GOES and pays a \$100 fee; (2) CBP officers will review the applicant's information and conduct a background investigation; (3) the applicant will undergo an interview with CBP officers at an Enrollment Center at JFK, Houston or Dulles Airports.

For an application, please visit the CBP's website: http://www.cbp.gov/xp/cgov/travel/trusted_traveler/global_entry/

Expedited travel for Dutch citizens

On May 19, 2008, CBP signed a joint agreement with  the government of the Netherlands to develop a process to integrate CBP's Global Entry program with the Dutch "Privium" program. This agreement would potentially facilitate expedited travel of U.S. and Dutch citizens between the two countries.

The Global Entry pilot program for U.S. citizens and Permanent Residents is now accepting applications. It is expected that citizens of the Netherlands will be invited to apply by the end of 2008 or early next year.

For full information about the agreement, please see the CBP's website: http://www.cbp.gov/xp/cgov/newsroom/news_releases/05192008.xml

Global Visas

Canada: Post-grad work permit changes



Canada recently announced changes to its post-graduate work permit program for international students. The amendments extend the duration of the work permit to three years across the country for those students whose program of study is at least two years. The amendments also provide new graduates flexibility to work in any field, not just their field of study. Finally, the amendments remove the requirement that a graduate have a job offer.


To be eligible for the new post-graduate program, international students must have studied full-time for the eight months preceding the completion of their



program of studies and have graduated from a public post-secondary institution, such as a college, university, or a qualifying private post-secondary institution. Moreover, students must apply for a work permit within 90 days of receiving written confirmation (for example, a transcript or an official letter) from the institution that they have met the requirements of the academic program. Students also must have completed and passed the program of study and received a notification that they are eligible to obtain their degree, diploma or certificate. Finally, students must have a valid study permit when they apply for the work permit.

If the student's program of study is less than two years but at least eight months, the student may be eligible for a post-graduate work permit but the validity period of the work permit may not be longer than their period of study at their Canadian post-secondary institution. Certain international students are not eligible for the program. Graduates who are already working with a work permit issued under the previous rules are eligible to apply for an extension. If you have questions about a specific matter, please contact Jackson & Hertogs.

Germany: Language requirement applied case-by-case

A 2005 amendment to German immigration law that requires compulsory basic knowledge of the German language for certain foreign nationals wishing to reside in Germany is being applied  on a case-by-case basis to foreign nationals taking up long-term residency in Germany. Although nationals of countries that do not require a visa to enter Germany, such as United States nationals,

are exempt from the German language requirement, nationals of other countries may be required to prove basic German language ability or enroll in a language course. Certain exceptions not related to nationality may also apply. If you have questions about a specific matter, please contact Jackson & Hertogs.

Other News

Immigration OnPoint



Immigration OnPoint is a project coordinated by the Immigration Policy Center. This online system allows for access to short documents and fact sheets on commonly asked questions about immigrants and immigration. The database is open to the public and can be accessed at <http://www.immigrationpolicy.org/index.php?content=onpoint>.

Immigration Trivia

The TN visa classification is available for which foreign nationals?

- a. U.K. citizens
- b. Australian citizens
- c. Mexican citizens
- d. Canadian citizens



J&H complimentary webinars



June 18, 2008 – New Regulations Extending F-1 Optional Practical Training Status: Boon or Burden?

The Department of Homeland Security (DHS) recently published regulations offering a 17-month extension of the current 12-month F-1 optional practical training (OPT) period. This would allow eligible U.S. university graduates a total of 29 months of employment authorization in the United States after graduation. However, the F-1 OPT extension period only applies to certain graduates of U.S. universities, and only allows work with employers who have enrolled in the DHS E-Verify program for electronic I-9 verification. This extension can prove a boon to certain US employers who are seeking to hire university graduates in so-called "STEM" (Science, Technology, Engineering, and Mathematics) fields.

This webinar will explain which types of U.S. university degrees fall within the "STEM" definition, so as to allow eligible students to gain the 17-month F-1 OPT extension. We will also explain the potential trade-offs for employers and foreign national employees wishing to take advantage of the 17-month F-1 OPT extension program. We will also briefly review the pros and cons of E-Verify registration, required for employers who take advantage of this program, and identify potential liabilities employers may assume by enrolling in E-Verify.

July 16, 2008 – Mid-Year “Hot Topics” in Immigration Law

This webinar will provide updates from DOS, DOL, and USCIS. Please join us for this useful overview of the latest developments in immigration.

Answer: (c) and (d). TN nonimmigrant visa status is available to Mexican and Canadian citizens under The North American Free Trade Agreement (NAFTA) multi-faceted treaty among Mexico, Canada and the U.S. Please contact J&H for further details of eligibility for TN visa status.

