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**USCIS NEWS**

**USCIS SITE VISITS, AUDITS INCREASING**

As reported in August’s Immigration Spotlight: <http://www.jackson-hertogs.com/JH/spot/8488.pdf>, USCIS is stepping up random site visits and investigations of H-1B petitions for possible fraud concerns. The American Immigration Lawyers Association (AILA) recently advised that the U.S. Citizenship and Immigration Services’ (USCIS) Office of Fraud Detection and National Security (FDNS) has commenced a major assessment of the H-1B visa program. AILA reports that approximately 20,000 H-1B petitions were just transferred to FDNS for investigation by the Vermont Service Center. A similar number of H-1B petitions appear to have been referred to FDNS by the California Service Center. These petitions are in addition to other H-1B petitions that had previously been referred to FDNS due to possible fraud concerns.

Most notably, this assessment will include site visits to H-1B employers and/or the H-1B worksite of the sponsored employee. Site visits are generally unannounced, and while FDNS will permit immigration counsel to participate in the interview, they generally will not reschedule the interview so that the attorney can attend. Employers should keep in mind that most of these site visits are being made as a result of random selection. There is no presumption that the H-1B employer or worker has done anything wrong. The site visit is to verify that the sponsored H-1B worker in fact is working for the employer as stated on the H-1B petition: the worker’s location, salary, and job duties will be confirmed. If the H-1B employee is working in the field or at a client site, the investigator may go directly to the client office, and not to the office of the H-1B employer.

As of the publication date, we have heard from approximately seven employer clients advising of an FDNS site visit. Of our clients who have been visited, they are of varying size and in various business types. In short, smaller employers are not necessarily being targeted over larger employers. The FDNS inspectors have generally been satisfied once they see a “brick and mortar” premise and meet with the H-1B employee. The

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## USCIS NEWS (CONT'D)

visits have been relatively short.

Please do note that the FDNS site visits are not to be confused with other investigative activities and should be limited to one individual petition. This is not the same as an audit conducted by DOL (LCA or PERM compliance) or ICE (I-9 audit) which does mandate advance notice and allows time for an attorney to be present. A badge/identification should be presented and you should keep the name and contact information of the person who conducts the visit.

We encourage you to make sure that HR professionals and managers at locations where H-1B workers are employed are aware of the potential of an FDNS site visit so that they are not taken by surprise.

Jackson & Hertogs urges clients who receive a visit from FDNS to contact our office to speak to an attorney. Jackson & Hertogs can also assist clients in preparing an action plan and instructions on how to handle FDNS visits before they happen.

### NEW NATURALIZATION TEST FULLY IMPLEMENTED 10/1/09

On October 1, 2009, all citizenship applicants began taking the new Naturalization test, regardless of when they filed their Application for Naturalization (Form N-400). USCIS began administering the new Naturalization test October 1, 2008, with two basic objectives – to ensure a uniform test administration nationwide and to develop a civics test that can effectively assess an applicant's knowledge of U.S. history and government. Up until October 1, 2009, applicants who had filed for Naturalization before October 1, 2008, had a choice of taking the old test or the new test. Currently, the overall pass rate for the new test is 91 percent.

To learn more about the Naturalization test as well as view practice questions, visit [www.uscis.gov/newtest](http://www.uscis.gov/newtest).

## GLOBAL NEWS

### INDIA: BUSINESS AND EMPLOYMENT VISA UPDATE

The Indian government has announced that business visas are not for foreigners working on projects or specific contracts in India. Foreign nationals on such visas have been given until October 31, 2009 to leave India and may return to the country after obtaining the appropriate Indian business or employment visa. Indian business visas authorize holders only to explore or establish business ventures or to purchase/sell products. Foreigners who are in India to execute or carry out projects or contracts should have an Indian employment visa and the employment visa applications should be submitted in the country of origin.

The Indian government also noted that employment visas will be given only to skilled workers or professionals. Visa extensions in India will no longer be possible. The Indian government also indicated that Chinese nationals may no longer be eligible for Indian business visas and Chinese nationals will be subject to additional screening requirements for employment visa applications.

Jackson & Hertogs reminds employers to confirm that an employee's proposed activities in a country fall within the permissible range of business visitor activities or whether employment authorization for that country is necessary. Please contact Jackson & Hertogs for specific information and assistance.

## LOCAL LEGISLATIVE CORNER

### SYMPOSIUM SEEKING IMMIGRANT BUSINESS OWNER

The San Francisco Immigrant Rights Commission (IRC), an advisory board that counsels the San Francisco Board of Supervisors and Mayor on immigration issues, is holding a symposium on Comprehensive Immigration Reform on Monday, November 9 from 5 to 7:30 p.m.. The symposium is co-sponsored by the American Immigration Lawyers Association Northern California Chapter. The IRC would like to hear from an immigrant business owner (ideally an individual whose business also employs other immigrants) who would be willing to speak briefly about his/her business at the symposium, and serve as a living example of the enormous economic contributions that immigrants make to our society. Significant media presence is expected. For information about the IRC, see [http://www.sfgov.org/site/immigrant\\_index.asp](http://www.sfgov.org/site/immigrant_index.asp).

If someone at your company is interested in speaking at this symposium, please let us know. J&H would be happy to assist with presentation preparation, if desired.

## DOS NEWS

### DV-2011 REGISTRATION OPEN

The annual Diversity Visa (DV) program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for DVs. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the period of the past five years. Within each region, no single country may receive more than seven percent of the available DVs in any one year.

For DV-2011, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the United States in the previous five years: Brazil, Canada, China (Mainland-Born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and Its Dependent Territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible. For DV-2011, no countries have been added or removed from the previous year's list of eligible countries.

Entries for the DV-2011 DV Lottery must be submitted electronically between noon, Eastern Daylight Time (EDT), Friday, October 2, 2009, and noon, Eastern Standard Time (EST) Monday, November 30, 2009. Applicants may access the electronic Diversity Visa (E-DV) Entry Form at <http://www.dvlottery.state.gov> during the registration period. Paper entries are not accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in Web site delays. No entries will be accepted after noon on November 30, 2009.

Applicants do not require assistance in registering and should be extremely wary of any individual or business offering to register them for a fee. Such services should be treated as highly suspect. There is no way to increase the odds of selection by retaining anyone to file the lottery application. Any such promise or intimation should be regarded as possibly a scam. If someone is later selected under the lottery, then retaining counsel to assist in either the immigrant visa application or application for adjustment of status is appropriate. Be careful!

### NOVEMBER VISA BULLETIN: SMALL MOVEMENT FORWARD

The Department of State (DOS) [Visa Bulletin for November 2009](#) shows a small amount of progress in the employment-based second preference (EB2) category for China-born individuals. For China, the EB2 priority date has moved to April 1, 2005 from March 22, 2005. For India-born individuals, there was no change to the EB2 priority date, remaining at January 22, 2005. All countries other than India and China remain "current" in the EB2 category. Employment-based first preference (EB1) remains current for all countries as well.

The employment-based third preference (EB3) numbers for all countries other than India will be June 1, 2002 showing a slight movement forward for China and Mexico. EB3 India will move forward to April 22, 2001 from April 15, 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.

For general information on visa retrogression, please see our [FAQ](#) on this subject. 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 nationality-specific charts of quota movement since 1996.

## J&H NEWS

### RECEIPT NUMBER FIELD ADDED TO ESTATUS

We are pleased to report an enhancement to the Jackson & Hertogs eStatus Case System that allows Human Resources personnel to search employees via their USCIS receipt number. The new receipt number field is visible on the Employee Status search page. Results will return based on the receipt number entered.

HR personnel have access to the following information on eStatus: contact information, project status (e.g. H-1B, L-1, TN, Labor Certifications, etc.), document expiry dates (e.g. I-94, I-797, etc.), and biographical information for each employee. In addition, HR personnel have the ability to generate reports containing most of this information as well. If you have not received your logon or password information or are having other technical problems with your eStatus account, please e-mail us at [eStatus@jackson-hertogs.com](mailto:eStatus@jackson-hertogs.com).

### J&H ATTORNEYS ON THE GO

J&H Senior Associates Grace Hoppin and Daniel Horne were guest speakers at Golden Gate University on October 19. They spoke about immigration law as part of the University's Criminal Litigation Clinic.

Senior Associate Grace Hoppin will be speaking at the AILA Annual California Chapters Conference on November 13. Grace will be discussing the DOL's new iCERT LCA system, and changes in prevailing wage processing. Grace's scheduled co-panelists are Jeanne Malitz and Dr. William Carlson, Administrator, Office of Foreign Labor Certification.

Managing Partner Ilana Drummond and Senior Associate Daniel Horne will be hosting a webinar in November through HR.com entitled "E-Verify and I-9 Compliance: Are You Ready?" See below for more information.

### November 10, 2009 - HR.com Webinar E-Verify & I-9 Compliance: Are You Ready?

Jackson & Hertogs will present a free one-hour webinar, "E-Verify and I-9 Compliance: Are You Ready?" on Tuesday, November 10, 2009, at 12:00 PM Pacific Time (3:00 PM Eastern Time) in conjunction with [HR.com](http://hr.com).

One of the fundamental duties of most HR departments is to complete and maintain I-9 Forms for all hires. Completing the I-9 Form has often been viewed as a simple HR function, but there are significant liability issues that attach to this form. Robust I-9 practices are the foundation of an effective corporate compliance strategy for immigration issues. This webinar will focus upon the procedures and requirements employers must follow

when completing and maintaining their Forms I-9. We will also review recent changes to the Form I-9, and trends in I-9 enforcement, including compliance issues with contractors and creating best practices.

**Registration is through HR.com:** <http://www.hr.com/Nov10-webinar>. If you are already a member of HR.com, please login to register for this webcast. If you are not a member of HR.com, you will need to sign up for an HR.com membership by visiting [HR.com](http://HR.com). This will only take you a moment to fill in the required information. Once you have confirmation of your membership, you will be able to register for this complimentary webcast.

### November 18, 2009 – J&H Webinar Green card processing: AOS vs. consular processing

This in-depth webinar will provide an overview of all aspects of the final stage of the green card process. We will address issues of concern for employees pursuing either Adjustment of Status or Consular Processing. We will also discuss the differences between the two processes as well as the effects of retrogression of visas, employment authorization and travel issues and portability under the American Competitiveness in the 21st Century Act ("AC21"). Please join Jackson & Hertogs for this webinar designed for both the HR professional new to immigration, as well as the veteran with an update on immigration issues and a general update on immigration law. To register, please send an e-mail to [webinar@jackson-hertogs.com](mailto:webinar@jackson-hertogs.com).

## IMMIGRATION TRIVIA

Which of the following immigrant visa applicants are likely to be affected by backlogs in immigrant visa categories? (Assume 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.