

# IMMIGRATION REVIEW

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## HIGHLIGHTS...

...Recent legislation made an additional 20,000 H-1B visas available for Fiscal Year 2005.

...Mergers and acquisitions could affect the validity of all current non-immigrant and immigrant petitions filed either with the CIS or DOL.

...Since traditional labor filing will no longer be available, employers must plan PERM filings in time to afford employees the opportunity for 7th-year extensions on their H-1B visas.

## NEW! Fast Track for Green Cards

According to the Department of Labor, as of March 28, employers will be able to obtain approved Labor Certification Petitions in as few as 45 to 60 days! Now is the time to help employees obtain Permanent Resident status.

Using PERM (Program Electronic Review Management) and the advantages of electronic filing, the 12- to 48-month waits will be a thing of the past.

PERM recruitment requirements are now more objective. For all job positions, the employer must post the job internally, place a job order with the local State Workforce Agency office, and run two Sunday newspaper ads. For professional positions, those requiring at least a



bachelor's degree at entry level, three of the following recruiting resources must also be used:

- Job fairs
- Posting on the employer's web site
- Posting on a job search web site other than the employer's
- On-campus recruiting
- Trade or professional organizations
- Private employment firms
- Employee referral programs (with identifiable incentives)
- Campus placement offices (for jobs requiring a degree and little or no experience)
- Local and ethnic newspapers
- Radio and television ads

*Continued on page 2...*

## More H-1B Visas Available!

Interested in hiring H-1B workers but stymied by the Cap? On December 8, 2004, President Bush signed legislation making an additional 20,000 H-1B visas available for Fiscal Year 2005. Since the FY 2005 H-1B Cap was reached on the first day of the fiscal year, this legislation represents a special opportunity for employers to hire H-1B workers before October 1, 2005. Employers who are exempt from the Cap are free to file for new H-1B visas at any time.

These additional visas are available to workers who have earned a Master's degree or higher from a U.S. institution of higher education and who otherwise qualify for an H-1B visa.

Also included in this legislation are increased fees for all H-1B visas. The ACWIA (American Competitive Workforce Improvement Act) fee was reinstated and increased to \$1,500. A \$500 fraud detection fee was also introduced. For small companies—those with fewer than 26 employees—the ACWIA fee is reduced to \$750.

With the new rules, employers must now pay 100% of the Prevailing Wage versus the 95% required previously.

American business needs the U.S. Congress to increase the H-1B quota. Our economy benefits greatly from the pool of highly qualified foreign workers. Contact your U.S. Representative and U.S. Senators and let them know that the H-1B quota should be increased as soon as possible. ☺

New! Fast Track, continued from front.

Employers simply attest to having completed the required recruitment and that they were unable to find a qualified candidate. Supporting documentation will not be filed with the labor petition, but must be available for five years. If audited, employers must produce all supporting documentation or face stiff penalties and possible ejection from the PERM program.

Completing mandated recruiting efforts will take at least 60 to 90 days. Since traditional labor filing will no longer be available, employers must plan PERM filings in time to afford employees the opportunity for 7th-year extensions on their H-1B visas. Failure to file in time will result in the employee losing work authorization before the Green Card is issued.

It is possible to convert RIR cases to PERM under certain strict and onerous conditions. However, given these conditions and the accelerating approvals of existing RIR cases, relatively few RIR petitions will benefit from converting to PERM.

PERM applies only to DOL filings and has no impact on CIS processing times, visa availability, status adjustment, or consular processing.

These major changes will result in a reduction in the time needed to obtain an approved Labor Certification. Call us to see how we might speed your employees along the road to obtaining a Green Card.



## Should Employees Select Your Attorney?

Some companies permit their employees to select the attorney who will work on obtaining the employee's Permanent Resident visa (Green Card) or Non-immigrant visa (H-1B, etc.). You should consider the following factors before adopting this practice.

When seeking a visa based upon employment, the U.S. Citizenship and Immigration Service (CIS) requires the *company* to petition for the foreign-born worker.

Employees are not permitted to submit employment-based petitions for themselves, but rather they are the *beneficiary* of the petition submitted by the employer. The attorney is representing the *company* in the matter of obtaining a visa.

When employees select the attorney who will represent the company and when there are several employees seeking visas, Human Resources staff members are often faced with significantly increased workloads due to similar conversations and coordination with multiple attorneys on the same subjects.

Every time a new attorney is added to the mix, company personnel must cover the same introductory material to bring the new attorney "up to speed" regarding the company's business, finances, organization structure, and internal procedures.

With different methodologies for assessing costs, comparing relative costs for different attorneys is impossible. With a diversity of attorneys in the process, it is quite difficult to forecast costs and prepare necessary information for annual budgeting. Cost control, efficiency of effort, and economies of scale are often lost. Companies recognize that costs must be compared to the service provided and the best value may not be provided by the lowest cost provider.

Employers who limit their employees to a pre-selected attorney or short list of attorneys can save money, reduce duplicative work, improve communication, enhance budgetary and processing control, and have more satisfied and productive employees. ☺



# FROM THE LAWYER'S DESK

**Kendra S. Kembel, Esq.**



**Q** What are the guidelines for acceptable birth certificates?

**A** The CIS requires that birth certificates contain the following information: applicant's name, date and place of birth, and the names of both the mother and father. If a birth certificate is not available or it contains incomplete information, alternative documentation—such as baptismal certificates, church records, and school records—might be accepted. When alternative documentation is submitted, an affidavit stating that the birth certificate is not available must accompany the birth documentation. All documentation submitted must be translated into English.

**Q** How do mergers and acquisitions affect immigration status?

**A** When corporate employers undergo name changes, mergers, restructuring, changes in Federal Employer Identification Number, or other corporate changes, they must keep in mind the potential affects on immigration matters. Such changes could affect the validity of all current non-immigrant and immigrant petitions filed either with the CIS or DOL. It is best to consult with your immigration attorney prior to such changes taking effect in order to ensure the continued work authorization and legal

status of all affected foreign national employees.

**Q** When filing for a Green Card, is it essential to prove continuous non-immigrant status?

**A** In order to Adjust Status in the United States, each applicant must establish that they: 1) entered pursuant to a lawful admission; 2) did not overstay a lawful period of stay; 3) did not fall out of status during any lawful period of stay; and 4) did not engage in unlawful employment. To establish these elements, applicants must submit passport pages, I-94 cards, I-797 Approval Notices, I-20 Forms, and DS-2019/IAP-66 Forms. It is important that each adjustment applicant save copies of all immigration-related paperwork in order to show their continuous non-immigrant status. An applicant who did not enter pursuant to a lawful admission, i.e. they entered without inspection by an immigration officer, is ineligible to Adjust Status.

**Q** Does portability still apply if I'm on an H extension beyond six years?

**A** Portability does apply to extensions beyond six years as long as the alien complies with all other provisions of Section 105 of the American Competitiveness in the 21st Century Act.

**Q** How long must I wait before I can naturalize and become a U.S. citizen?

**A** After obtaining Lawful Permanent Resident (LPR) status, an applicant generally must wait three or five years to apply for U.S. citizenship. If the applicant is married to a U.S. citizen, the wait is only three years. However, if LPR status was granted by any other means, the wait is usually five years. During this time, all LPRs should be aware of any lengthy absences from the United States which could affect not only your eligibility to naturalize, but also your intent to remain a bona fide LPR. ☺

*Kendra S. Kembel, Esq. focuses exclusively on Immigration Law and is a member of the American Immigration Lawyer's Association (AILA).*

## EMPLOYMENT VERIFICATION LETTERS

Letters supporting prior work experience are often an essential part of a Green Card petition. But not any letter will do. Visit [www.ImmigrationSupport.com](http://www.ImmigrationSupport.com) for a sample letter and guidelines to help your employees meet immigration standards.

## Immigration 101

As in most things, knowing the terminology is critical to understanding a subject. Employment-based immigration is no different. Perhaps 'decoding' some commonly used acronyms and terms will help remove some of the mystery.

<b>ACWIA</b>	American Competitiveness Workforce Improvement Act
<b>AILA</b>	American Immigration Lawyers Association
<b>AP</b>	Advance Parole—the ability to travel while a Green Card is pending approval.
<b>CIS</b>	U.S. Citizenship and Immigration Service (formerly known as the INS)
<b>DOL</b>	U.S. Department of Labor
<b>DOS</b>	U.S. Department of State
<b>EAD</b>	Employment Authorization Document
<b>EB-1-5</b>	Employment-Based preference categories designated EB-1 through EB-5 for Green Cards
<b>LCA</b>	Labor Condition Application. DOL approval associated with the H-1B process. Not to be confused with LCP.
<b>LCP</b>	Labor Certification Petition. DOL approval associated with the Green Card process. Not to be confused with LCA.
<b>LPR</b>	Lawful Permanent Resident—status of those having a Green Card.
<b>OPT</b>	Optional Practical Training. One year of work authorization after completing higher education at a U.S. university.
<b>PERM</b>	Program Electronic Review Management System. The electronic method of obtaining an approved LCP.
<b>PW</b>	Prevailing Wage. The approved minimum wage for a specific job in a specific MSA.
<b>SWA</b>	State Workforce Agency. Source for obtaining a PW determination and placing a PERM job order.

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## DON'T LOSE THE RACE AGAINST TIME!

Recent changes to immigration law indicate that **now** is the time to file visa petitions for your employees.

The implementation of PERM will take place on March 28 and the DOL says they will issue approvals in as few as **45** days! Sponsoring employees for their Permanent Resident visa is one of the tools you can use to enhance your competitiveness and make certain you retain the best and brightest employees.

We can file H-1B petitions as early as April 1 for FY 2006! With signs of a growing economy and a limited number of H-1B visas available, the companies that file **accurate**, **timely**, and **comprehensive** petitions will get the visas they need. Will you be one of them?

At Immigration Support Services, our speed, accuracy, and experience are key to your visa processing success. To submit your visa request, simply visit us online at [www.ImmigrationSupport.com](http://www.ImmigrationSupport.com) and click on “Initiate a Visa.” Or call **1-800-437-7313** and we'll begin processing your petition today!

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