

IMMIGRATION REVIEW

INSIDE...

- 1...RECENT IMMIGRATION CHANGES BENEFIT BUSINESS
- 2...VISA WAIVER PROGRAM
- 2...PERM UPDATE
- 3...FROM THE LAWYER'S DESK
- 4...IMMIGRATION 101

HIGHLIGHTS...

...All visitors traveling under the Visa Waiver Program must present a machine-readable passport for entry into the United States after October 26, 2005.

...PERM has rendered the 12- to 48-month waits for approved Labor Certification a thing of the past!

...E-3 visas are a new category of non-immigrant visas created for Australian nationals in May 2005.

Recent Immigration Changes Benefit Business

This year, President Bush signed into law a number of significant pro-business immigration provisions. Let's review the major provisions of several of these changes.

Additional H-1B Visas

The H-1B Reform Act created an exemption for up to 20,000 additional H-1B visas in addition to the FY2005 annual quota of 65,000. These additional visas are for foreign-born professionals who have graduated from a United States university with an advanced degree. This provision also applies to future fiscal year quotas and thus effectively increases the availability of H-1B visas to potentially 85,000 per year. The 2006 fiscal year begins October 1, 2005 and ends September 30, 2006.

H-1B visas are limited to professionals in "specialty occupations" (those requiring at least a bachelor's degree) and thus the additional visas, although limited to holders of a U.S. Master's degree or higher, will leave more of the traditional 65,000 visas available for bachelor's degree holders. This is good news, but with the H-1B quota being reached in August of 2005 for FY2006, businesses will require significantly more than 85,000 visas for the foreign-born professionals needed to fuel the current economic expansion. Contact your U.S. Representative and express your views on the number of available H-1B visas.

H-2B Changes

While not increasing the numerical limit of 66,000 H-2B visas, Congress created an exemption from the Cap for any H-2B worker who has entered the United States in H-2B status during one of the past three years. Since many H-2B workers return year after year, this will significantly increase the usefulness of this program. This exemption will expire at the end of FY2006. Contact your U.S. Representative and express your views on renewing this exemption for H-2B visas.

H-2B visas are available for skilled and non-skilled workers provided the work is seasonal and temporary, usually less than one year, or when the employer has a one-time or extraordinary need.

The 66,000 visa quota has been evenly divided into two parts; 33,000 visas beginning October 1 and the remainder available April 1 each year. Consequently, summer seasonal workers are no longer eliminated from the program because the Cap has been utilized by the winter workers.

Congress instituted a \$150 per petition fraud detection fee, increased sanctions for employers who misuse the program, and required DHS to file regular reports on the usage of the H-2B program.

Continued on page 2...



Intra-Company Transfers: L-1 Visas

L-1 visas are designed so U.S. firms with foreign-affiliated companies can transfer workers from the foreign firm to the U.S. firm, subject to special requirements. L-1B temporary workers can no longer work primarily at a worksite other than that of their petitioning employer if the work is controlled or supervised by a different employer or the offsite arrangement is essentially a labor-for-hire contract. This provision significantly affects IT consulting firms who place consultants at client sites and who are otherwise prevented from using the H-1B visa program.

Congress instituted a \$500 fraud detection fee on the initial grant of the L-1 visa. Workers transferred under the terms of an "L-1 blanket" must have worked for the foreign entity for at least one year in the past three years; an increase over the previously mandated six months. ☺

PERM Update

In our Spring '05 edition of this newsletter we reported on a new and improved method for obtaining Labor Certification; the first step in the Green Card process. This new approach, called PERM (Program Electronic Review Management), with its advantages of electronic filing, has rendered the 12- to 48-month waits for approved Labor Certification a thing of the past!

Visa Waiver Program

Not every person entering the United States requires a visa. The Visa Waiver Program (VWP) allows visitors from the following countries to enter the United States for business or pleasure without first obtaining a B visa:

Andorra • Australia • Austria • Belgium • Brunei • Denmark • Finland • France
Germany • Great Britain • Iceland • Ireland Republic • Italy • Japan
Liechtenstein • Luxembourg • Monaco • Netherlands • New Zealand • Norway
Portugal • San Morino • Singapore • Slovenia • Spain • Sweden • Switzerland

After October 26, 2005, visitors traveling under the VWP must present a machine-readable passport (MRP) for entry into the United States. Passports issued after that date must have a digital photo of the holder's face printed on the data page. Failure to present the proper passport will result in denied entry and probably a fine for the airline carrier the visitor used to enter the U.S.

An integrated circuit chip, or "electronic" passport requirement, will also go into effect in October, 2006. E-passports will include a digital representation of a biometric feature, like a fingerprint, for positive identification. After October 2006, visitors without a newer e-passport will not be able to utilize the VWP and will be required to obtain a B visa to enter the United States.

Most VWP countries indicate that they will not be able to re-issue e-passports in time for the October 2006 deadline and may have difficulty issuing MRPs required by the October 2005 deadline. Therefore, the number of B visa applications at U.S. Consulates may dramatically increase, slowing down the issuance of all other visa applications (for example; H-1B, L, or E visas). ☺

Since March 28, 2005, employers have filed hundreds of PERM Labor Certifications and cases are being approved in weeks rather than several years. The Department of Labor (DOL) has diligently worked out the initial bugs in the system and PERM is a vast improvement over Reduction in Recruitment (RIR) processing.

Of course it will take many more months until most of the questions concerning the details of PERM will be answered in full, but PERM is up and running. Employees and their families

seeking Green Cards are realizing the advantages of faster DOL processing.

PERM applies only to DOL filings, the first of three major Green Card processing steps, and has no impact on USCIS processing times, the availability of visas, adjustment of status, or consular processing.

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

FROM THE LAWYER'S DESK

Kendra S. Kembel, Esq.



Q I recently heard about E-3 visas. What are they and do they apply to me?

A E-3 visas are a new category of non-immigrant visas created for Australian nationals under the Emergency Supplemental Appropriations Package Bill in May 2005. The E-3 visas are intended for Australians who will be performing work in a “specialty occupation” similar to that of an H-1B visa. Applications can be made directly at the Consulate following the approval of a Labor Condition Application (LCA). E-3 visas will be limited to 10,500 per fiscal year for principal applicants. This number does not include spouses and children. The Bill does not create a maximum period of admission for the E-3 visa category.

Q Currently there is no fee to file Green Card Labor Certification Petitions. Is this likely to change in the future?

A Although no final decision has been made, the Department of Labor (DOL) is considering instituting a filing fee for Labor Certification Petitions in Fiscal Year 2006 in order to cover administrative costs.

Q Can you obtain a current status on cases that have been sent to the Backlog Elimination Center?

A No. The DOL has confirmed that the Backlog Elimination Centers (BEC) do not have the resources to respond to general status updates, whether or not the 45-day notification letter has been received. It will respond, however, to inquiries relevant to obtaining proof of filing for purposes of H-1B 7th year extensions.

Q What are the potential consequences of deliberately misrepresenting information on an immigration form?

A A foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa, other documentation, admission into the United States, or other immigration benefits is inadmissible. Without a waiver, an alien who is found to be inadmissible will be ineligible to receive visas (immigrant or non-immigrant) and ineligible to be admitted to the United States.

Q How does the recent REAL ID Act affect my ability to obtain a driver's license?

A The REAL ID Act obligates all states to require proof of lawful immigration status before obtaining or renewing a driver's license. Persons who are not lawful permanent residents or U.S. Citizens may obtain only a temporary driver's license. The validity period of the driver's

license may not exceed the period of authorized stay, or, if the period of authorized stay does not have an expiration date, the validity of the temporary driver's license shall not exceed one year.

Once implemented, this provision may require more planning and effective timing strategies when applying for extensions of stay in the United States. Foreign nationals will likely be unable to renew a driver's license without first having the extension approval notice. Since it can take several months to receive this approval, it is essential that you carefully consider this factor when planning on renewing your immigration status. If the extension approval notice is not received before the current driver's license validity period ends, you could be left without a license. ☺

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

IMMIGRATION 101

Immigration 101

For every non-immigrant visa classification, there is an associated visa for the dependants of the primary visa holder. For example, with the H-1B the dependent version is the H4; for the J-1 it is the J-2; for the L-1 it is the L-2; and for the TN visa it is the TD. This visa permits the dependant (legal spouse and natural or adopted children) to reside in the United States as long as the primary applicant's visa is current. With only a few exceptions the dependent visa does not provide work authorization. However, spouses of J-1 and L-1 visa holders can file for a separate Employment Authorization Document to obtain permission to work in the United States. ☺

FOR EVERY NON-IMMIGRANT VISA CLASSIFICATION, THERE IS AN ASSOCIATED VISA FOR DEPENDANTS OF THE PRIMARY VISA HOLDER.

“I wanted to thank you and all the staff at ISS for making me look good! The University is so pleased with how the immigration process is working, and our foreign employees are thrilled as well. There is no question that all of our immigration needs will be handled by Immigration Support Services!”

DIRECTOR OF HR
UNIVERSITY SPECIALIZING
IN THE SCIENCES

IMMIGRATION 101

ALL THAT'S CERTAIN IS CHANGE!

The past few months have seen sweeping changes by the DOL and CIS alike. How can you keep up with all the changes? How can you continue to employ and hire the necessary foreign-born workers you need to make your business or organization grow? We can help. Immigration Support Services offers **clear, concise, and accurate** information to guide you through the maze of changes that are occurring in the immigration process and all in a **cost-effective** manner.

While the H-1B cap has been reached, there are still numerous ways to employ the foreign-born professionals you need. H-1B transfers, H-1B for individuals with U.S. Master's degree or higher, exemption from the H-1B cap, L-1, and TN are **all options currently available**. Also, the new E-3 category will provide an additional source of visas as well as the H-1B1 for citizens of Singapore and Chile. The PERM program now makes it possible to have an employee work authorized through the green card process in a matter of a few months.

Want to know more? Call us toll free 1.800.437.7313 or visit our website at www.immigrationsupport.com.

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