

IMMIGRATION REVIEW

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HIGHLIGHTS...

...Employees who hold a valid work visa are no longer able to have renewed visas issued *while staying* in the U.S.

...Sponsoring an employee for a visa is a tool companies use to enhance their competitiveness and retain the best and brightest employees.

...If there is a delay in visa issuance, your employees may need to spend more time overseas than you or they had originally planned.

H-1B 2005 Cap May Expire Before the Year Begins

Unless Congress increases the H-1B quota for fiscal 2005, the 65,000 authorized visas (130,000 fewer visas than FY 2003) may be issued very near October 1, 2004, the beginning of the 2005 fiscal year.

This means that you must initiate H-1B petitions as soon as possible. Prospective employees needing new H-1B visas and all employees on Optional Practical Training (OPT) are at risk. OPT is good for only one year and many authorizations expire in May and June.

Since April of 2004, the U.S. Citizenship and Immigration Services (CIS) has been accepting new petitions against the 2005 quota. Given the current rate of petition filings, it is doubtful that many new H-1B visas will be available much beyond October 1 start date.



Failure to obtain H-1B approval may mean that your employees' OPT work authorization will expire before you can obtain a "work visa" for them. While they may be allowed to remain in the United States, they will not be work authorized.

Extending a currently valid H-1B visa and transferring a valid H-1B from one employer to another employer are exempt

from the cap. Institutions of higher education, government research institutions, and their affiliated non-profit organizations are also exempt from the cap.

Contact your U.S. Representative or Senator to express your desire to see an increase in the annual H-1B quota. Current limits deprive many U.S. companies of the workers they need to grow and prosper.

Green Card Processing—Good for Business

Have you ever considered the advantages to your business by sponsoring an employee for a Green Card? Here's a short list:

... LOW EMPLOYEE TURNOVER

Unless your employee obtains Permanent Resident status, there is a predefined limit to the length of time he or she can work for you. The typical limit ranges from between one to six years. A Green Card ensures the uninterrupted employability of your most qualified foreign workers.

... COMMITTED WORKERS

It's currently taking between three to four years to obtain a Green Card. During the majority of the application period, the alien must remain employed by the sponsoring company. Green

Continued on page 2...

Renewing Visas in the U.S.

Due to enhanced security regulations, after July 16, 2004, employees who hold a valid work visa are no longer able to have renewed visas issued into their passports *while staying* in the United States.

All non-immigrant visas (for example: H, L, E, O, or P visas) that provide work authorization must be renewed when they expire. In the past, it was possible to simply mail the necessary documents to St. Louis and have a new visa entered into their passport.

Recently, however, the St. Louis processing office closed its doors because new biometric identifiers required by current security regulations cannot be issued through the old mail-in system.

The implications will be significant. Instead of simply mailing their passport and other required documents to St. Louis, employees will now be required to travel outside the United States to obtain a new visa.

A new visa is required *only* if the employee intends to travel internationally and then re-enter the United States. If international travel does not occur, employees can stay and work with nothing more than their Approval Notice, and then obtain their new visa in their passport the next time they visit their home country.

Everyone should understand that if there is a delay in visa issuance, your employees may need to spend more time overseas than you or they had originally planned. You can find information on U.S. visa processing posts and their visa interview appointment systems at www.USembassy.state.gov.

Proper planning is essential to ensure you coordinate you employee's travel plans with your business requirements. Of equal importance is planning for the visa interview prior to travel outside the United States. The State Department has directed the visa processing posts to give priority to applicants who would have benefited from the domestic visa revalidation service.



Good for Business, continued from front.

Card processing cannot be transferred between companies like the H-1B visa.

... SATISFIED EMPLOYEES

When the employee obtains a Green Card, it is possible for their spouse to obtain one, and thus be able to work in the U.S. Additionally, without a Green Card it's difficult—if not impossible—to buy a house. Providing your most qualified staff with these benefits enhances loyalty and employee satisfaction.

... FOCUSED EMPLOYEES

Immigration concerns are a part of everyday life for foreign-born workers. Since the Green Card is a permanent visa, these concerns disappear, allowing your employee to focus all their energies on their assigned tasks.

In an increasingly competitive environment, reducing employee turnover is an effective way to lower costs, increase corporate expertise, and provide a higher quality of customer service. Sponsoring employees for their Permanent Resident visa is one of the tools companies use to enhance their competitiveness and ensure they retain the best and brightest employees.

FROM THE LAWYER'S DESK

Daniel W. DeArment, Esq.



Q Dan, what is *VisaScreen*™ and does it apply to me?

A U.S. immigration law requires that after July 26, 2004, certain clinical healthcare professionals—other than physicians—complete a screening program in order to enter the United States to work in certain occupations. *VisaScreen*™, a trade name of CGFNS, enables healthcare professionals to meet this requirement by verifying and evaluating their credentials to ensure compliance with the government's minimum eligibility standards.

Applicants who successfully complete *VisaScreen*™ receive a *VisaScreen*™ Certificate, which must be presented to a consular office, or in the case of adjustment of status to the attorney general, as part of a visa application. All healthcare professionals currently on a valid work visa (except TN non-immigrant workers) must have a *VisaScreen*™ certificate to reenter the United States after July 26, 2004. Healthcare professionals in TN status must have *VisaScreen*™ no later than July 26, 2005.

Q What are the rules for payroll deduction of taxes for our employees on non-immigrant visas?

A You should contact your tax and accounting advisors for specific advice, however, we've included a Congressional Research Service (CRS) report titled *Federal Taxation of Aliens Working in the United States, 2004*, in the Library & Resources section of our web site. You will find this a helpful resource.

Q Do processing times vary widely, and where can I obtain reliable information on the U.S. Citizenship and Immigration Services and Department of Labor processing times?

A Unfortunately, processing times vary widely from region to region in the country as well as from time to time. Government agencies update their processing times on a monthly basis, and we provide links to those sites directly from the Immigration News section of our web site. Remember that these times are an indication of current conditions and may not accurately reflect the speed of processing in the future.

Q I've heard of PERM. What is it and when will it go into effect?

A PERM stands for Program Electronic Review Management system and is a proposed improvement of the currently available methods of obtaining Labor Certification (LC). Green

Card applicants who require LC currently file for either Traditional Processing or Reduction in Recruitment (RIR), processes that can take several months to several years. For over two years, the Department of Labor has promised PERM will be introduced with the goal of significantly reducing processing times, but as of this writing, nothing has been formally implemented. When we know more, we will notify our clients immediately.

Q When applying for a Green Card, can an employee ever change employers without losing their Green Card petition?

A Section 106 of the American Competitiveness in the 21st Century Act says that aliens may change employers without losing their priority date only after the Adjustment of Status (I-485) has been filed for more than 180 days. Prior to this time, if an employee leaves the sponsoring employer, any progress towards the Green Card is lost.

Daniel W. DeArment, Esq. focuses exclusively on Immigration Law and is a member of the American Immigration Lawyer's Association (AILA).



Immigration 101

The U.S. Citizenship and Immigration Services (CIS) has never issued a visa and most likely never will. Visas, the physical stamp located in a worker's passport, are issued by the Department of State, not the CIS. Officials working for the Department of State at U.S. consulates and embassies, located in foreign countries, issue visas.

To obtain a work visa such as an H-1B or L-1, your foreign-born employees must first obtain a valid Approval Notice (I-797) from the CIS. This approval is often mistaken for a visa—it is not.

With an approval from the CIS, a worker already in the United States can usually remain and work, but cannot re-enter without first obtaining a visa. Prospective employees not in the United States must visit the Consulate and obtain a visa before being admitted to the U.S.

For security reasons, all individuals will have a personal interview at the consulate before a visa is issued.

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SLOW AND STEADY LOSES THE RACE!

With the H-1B cap reduced to 65,000 visas beginning October 1st, competition for H-1B visas will be fierce. Companies that wish to hire foreign workers will need to lead the race when it comes to filing for visas—will you be one of them? With signs of a growing economy, close scrutiny of the Citizenship and Immigration Services, and greater competition, obtaining H-1B visas this coming year will be limited to those who file **accurate, timely, and comprehensive** petitions.

At Immigration Support Services, H-1B petitions are completed within **48 hours** upon receipt of all documentation. Our speed, accuracy, and experience are key to your visa processing success.

To submit your visa request, visit www.ImmigrationSupport.com and click on “Initiate Visa,” or call us at **1-800-437-7313** for immediate assistance.

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