

IMMIGRATION REVIEW

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HIGHLIGHTS...

...It seems unlikely Congress will find an acceptable compromise position on Immigration Reform before the November mid-term elections.

...The CIS will soon make it possible to request 15-day Premium Processing for certain Green Card petitions.

...Starting the Green Card process early in an employee's tenure can reduce some of the negative affects of retrogression.

Immigration Reform


Earlier this year, we were excited about the prospect that Congress would pass a comprehensive immigration reform bill. The employment-based immigration system is clearly in need of major reform. When all H-1B visas are allocated four months before the beginning of the fiscal year, and when most Green Card applicants must wait five or more years to obtain a visa, the system is in need of immediate repair.

In May 2006, the United States Senate passed the "Comprehensive Immigration Reform Act of 2006" (S. 2611) which, if enacted, would have gone a long way toward remedying many of the short comings of the current employment-based system. Among other things, this bill included provisions to increase the number of H-1B visas to almost twice the current limit. The available number of Green Cards would have been substantially increased as well—significantly decreasing waiting times. (See *Retrogression*, page 2)

The House of Representatives, however, refused to pass any legislation pertaining to legal immigration issues before attempting to solve the problems of illegal immigration. (H.R. 4437) The House bill dealt mainly with enforcement of current laws and increasing border security on our southern border. In essence, the House is holding needed employment-based reforms hostage to their desire to solve the illegal immigration issues.

Due to the highly political nature of illegal immigration, it seems unlikely Congress will find an acceptable compromise position before the November mid-term elections. We sincerely hope we are wrong.

Perhaps in late 2006 or in early 2007, there will be beneficial immigration amendments to "must-pass" appropriation bills that address some of the concerns of America's employers. If we have your email on file, we will send you immediate notification of all pertinent legislation, as soon as it is passed. Simply complete the enclosed business reply card to ensure you receive these important updates.

In the meantime, please contact your representative and senators telling them just how important comprehensive immigration reform is to America's businesses. 



Premium Processing for Green Cards

The Citizenship and Immigration Services (CIS) has announced the expansion of its Premium Processing Program. Starting August 28, 2006, it will be possible to request Premium Processing for certain Green Card petitions (I-140). The program will start with two employment-based immigration categories and will phase into additional categories. By paying a \$1,000 fee, the CIS will process I-140 petitions within 15 calendar days or return your fee. This service has been available for various non-immigrant petitions (H-1B, L-1, etc.) for several years, but only recently expanded to include Green Card petitions.

Premium Processing does not apply to the Labor Certification petition (PERM) filed with the Department of Labor (DOL), nor to Adjustment of Status applications (I-485).

In addition to I-140 petitions, the CIS will expand the Premium Processing program to include other immigration benefits including petitions to change or extend nonimmigrant status in the following categories: J-1/J-2, dependents of E-1/E-2, H-4, L-2, O-3, P-4, R-2 and TD. Premium Processing will also be available for renewal Employment Authorization Document applications, where the basis of the request is due to a pending I-485 application which is supported by an employment-based I-140 petition.

Obtaining approved I-140 petitions within 15 days may be beneficial for some. For others, the impact may be less significant. If you think Premium Processing might prove helpful in one or more of your Green Card cases, please call us to discuss the potential impact on your specific case. ☺



Retrogression

There are a fixed number of employment-based Green Cards issued each fiscal year. Congress has limited that number to 140,000 visas. These visas are issued according to preference categories. Those with the highest level of work experience, reputation, and education are generally in the highest preference categories. The vast majority of H-1B visa holders fall into the 2nd and 3rd preference categories.

Additionally, no country may receive more than 7% of the visas available each year. Consequently, there are many more requests than available visas, and backlogs quickly develop. These backlogs vary by preference category and country of birth. Some categories are backlogged for many years. For an up-to-date report on the backlogs, see the Department of State's website at: http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html .

After obtaining Labor Certification, an individual seeking a Green Card will file the I-140 petition with the CIS. If there is no backlog in their Preference Category and for their Country of Birth, then they are able to file the final stage; the I-485 – Adjustment of Status. If there is a backlog at the time of I-140 filing, the beneficiary must wait until the backlog is cleared before filing the Adjustment of Status application.

The “backlogs,” if any, for each preference category are published monthly. See *From the Lawyers Desk* for a discussion concerning the monthly Visa Bulletin.

Retrogression adversely affects your business in several ways. Valuable employees may need to remain in non-immigrant status for many years. Without their Green Card, it may prove more difficult to obtain a mortgage and spouses are not work authorized. Concern over long waiting times can increase an employee's anxiety and thus decrease work efficiency.

Employees waiting to file Adjustment of Status may not be able to take advantage of promotions to advance their careers or change employers without beginning an entirely new Green Card with their new employer.

Starting the Green Card process early in an employee's tenure can reduce some of the negative affects of the long waiting periods. See the *Library and Resources* section of our website for more comprehensive information on obtaining Green Cards for your most valuable employees. ☺

FROM THE LAWYER'S DESK

Kendra S. Kembel, Esq.



Q I have heard the word “bi-specialization”. What does it mean and how does it affect the filing of our petitions?

A Bi-specialization is a new filing and adjudication procedure at the USCIS for I-129 and I-140 employer-sponsored petitions, which went into effect on April 1, 2006. The main goals of the bi-specialization program are to make adjudications more efficient and consistent. Under these new procedures, the CIS has broken down the four Regional Service Centers into two centralized filing centers. The Vermont Service Center (VSC) and California Service Center (CSC) will share adjudication responsibilities for all I-129 petitions and related applications, while the Nebraska Service Center (NSC) and Texas Service Center (TSC) will share adjudication responsibilities for all I-140 petitions and concurrently filed adjustment of status applications, including I-765 and I-131 applications

Q What is the current status of existing RIR applications at the Backlog Elimination Centers? Will my case be processed any time soon?

A The DOL has completed its initial data entry process and issued 45-day letters on all pending LCP cases. By late summer, the DOL

hopes to publish a list of their current processing times. The DOL also hopes to set up a system whereby individuals can check the status of their case online by inputting their case number.

Q What is the meaning of “dual intent?”

A Dual intent refers to the notion that an individual can simultaneously have the intent to remain in the U.S. temporarily on the basis of a nonimmigrant visa status, and a future intent to be a lawful permanent resident. Dual intent is recognized by law for H-1B, L, and V nonimmigrant categories, but it is also recognized by policy at the CIS for E-1/2 visa holders.

Q What is the Visa Bulletin and how does it relate to Retrogression?

A The Visa Bulletin is a monthly publication issued by the Department of State (DOS), which summarizes the availability of immigrant visa numbers during the upcoming month, based on the priority date of a case and the country of birth of the individual. The priority date establishes the cutoff date for cases eligible for I-485 filing and/or adjudication. The DOS determines the cutoff date by estimating the number of visas available for issuance in the upcoming month compared to the number of requests for immigrant

visas it has received. When the demand for visas exceeds the number of visas available for issuance, backlogs will occur. This is the phenomenon commonly referred to as retrogression.

Q What is the difference between the USCIS and ICE?

A While both agencies are part of the Department of Homeland Security (DHS), the USCIS (U.S. Citizenship and Immigration Services) is responsible for adjudication of immigration benefits, while ICE (Immigration and Customs Enforcement) is responsible for investigating immigration violations and enforcing the departure of individuals not authorized to stay in the U.S. ☺

THE DEPARTMENT OF LABOR HOPES TO SET UP A SYSTEM WHEREBY INDIVIDUALS CAN CHECK THE STATUS OF THEIR RIR, OR REDUCTION IN RECRUITMENT, APPLICATIONS ONLINE BY INPUTTING THEIR CASE NUMBER.

Immigration 101

The U.S. Constitution vests Congress with the power to establish rules pertaining to naturalization; granting citizenship to those born outside the United States.

To qualify for naturalization, a person must be a Legal Permanent Resident (LPR); exceptions are available for those serving in the U.S. military, especially during a time of war. An applicant for naturalization must be at least 18 years old and have lived in the United States for five years after receiving LPR status. The residency requirement is reduced to three years for those who received LPR status by marriage to a U.S. citizen or who qualify for special conditions under the Violence Against Women Act of 1994.

Applicants must reside for at least three months immediately preceding the date of filing in the state in which the petition is filed. Additionally, he or she must have been physically present in the United States for at least half of the permanent residency requirement—with no absence longer than one year.

The individual must be a person of good moral character throughout the residency requirement. The definition of good moral character is enumerated in the statute but it is a discretionary finding. Finally, the applicant must have a minimal level of ability to read, write and understand English, and must understand the fundamental history and principles of the government of the United States. ☺

IMMIGRATION 101

COMING TO A DESKTOP NEAR YOU!

ISS Webinar Series: Delivering Essential Immigration Knowledge Directly to Your Desktop

Immigration Support Services is recognized throughout the country as the leading provider of timely and accurate immigration information, and now that information is as close as your desktop. The ISS Webinar Series provides you with answers to your immigration questions from various experts as they address topics that range from the basics of immigration to the latest breakthroughs in immigration reform.

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