

IMMIGRATION REVIEW

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HIGHLIGHTS...

...April 1st is the earliest possible filing date for H-1B visa petitions.

...Due to PERM, Labor Certification approval times have dropped in most cases from two or more years to only a few weeks!

...J-1 International Exchange Visitor Visa holders may be required to return to their home country for at least two years before changing visa classifications.

Ready...Set...GO! The Race for H-1B Visas is On!

It is months before October 2006, the beginning of the 2007 Fiscal Year, and employers are already lining up to obtain the H-1B visas they need. Unless Congress acts to increase the quota of 65,000 visas (plus an additional 20,000 for those with advanced degrees from United States universities), the allocated number of H-1B visas will all be assigned well before the fiscal year even begins. Last year, all available H-1B's were allocated by the middle of August, and this year it could be even earlier.

Informed employers are preparing now to file their petitions on April 1st—the earliest possible filing date. By planning ahead, these employers are assuring their employees will receive the work authorization they require.

The quota of 65,000 H-1B visas applies only to new petitions. Those seeking to extend or transfer their existing H-1B visas are exempt from the numerical limitations. Additionally, institutions of higher education, government research organizations, and non-profit research organizations are exempt from the Cap.

Employees working on the one-year Optional Practical Training program must obtain a valid H-1B before the expiration of their OPT if they wish to have uninterrupted work authorization.

Speed is of the essence. If you want to ensure that your petitions are filed as quickly as possible, give us a call today. We are usually able to have a fully prepared petition ready for signature within 48 hours of receiving the supporting documentation.

Given the woefully inadequate number of H-1B visas available, only those companies filing early will be able to hire the foreign workers they need. Contact us if you would like a sample letter to Congress expressing your concern with the H-1B program. ☺





Two-year Home Residency Requirement

Individuals on a J-1 International Exchange Visitor Visa may find that they are subject to a two-year residency requirement. Sometimes referred to as “INA paragraph 212 (e)” this provision requires the visa holder to return to his or her home country for at least two years or obtain a waiver before being able to change status to most other visa classifications. Check your visa in your passport or your copy of DS 2019 (IAP 66) to see if this requirement applies to you.

Recent additional security checks have extended the time needed to obtain a waiver. For detailed instructions on the process to obtain a waiver, see the Library & Resources section of our web site. ☺

PERM is only Part of the Story

About a year ago, the Department of Labor (DOL) introduced a new and faster method to obtain Labor Certification—the first major step in applying for Permanent Residence. Called PERM, this system promised very fast Labor Certification approvals. With almost a year of experience behind us, the DOL’s promises have been kept. Labor Certification approval times have dropped in most cases from two or more years to only a few weeks!

While this is good news indeed, there are unintended consequences that you should understand. There are a fixed number of employment-based Green Cards issued each 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 available visas. 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 backlogs, see Links under Library & Resources at our web site.

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 petitioner must wait until the backlog is cleared before filing the Adjustment of Status application.

Unless Congress increases the number of available visas each fiscal year, the overall time to obtain a Green Card may still exceed several years for most applicants; despite the increased processing speed associated with PERM. Faster PERM processing will only serve to increase the number of individuals desiring to file their I-140 and I-485 petitions and this will tend to increase further the backlogs at the CIS.

Fortunately, if the Green Card process is started before the end of the 5th year on H-1B status, the alien may extend his or her H status until the Green Card is adjudicated. While a long and tedious process, it is usually best to begin the Green Card process at the earliest opportunity.

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 How do I obtain an appointment at a foreign Consulate when seeking to obtain a visa stamp in my passport? How long does it take?

A In order to obtain an appointment at a foreign Consulate, you must consult the specific Embassy's Consular web site for all local procedures at the post (see Links under Library & Resources at our web site). Some may allow you to schedule an appointment online or by phone, and others may not require an appointment at all. Each Consular Post is different. The amount of time it takes to obtain an appointment will also vary by Consular Post. See our web site for a list of Visa Appointment Wait Times for all Consular Posts. Note that wait times from the date of appointment to actual receipt of the visa stamp may vary depending on the special clearances and administrative processing required.

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 process of transferring all Labor Certification Petitions filed before March 28, 2005 to the Backlog Elimination Centers has proven to be a tedious task. The

DOL estimates that it will have sent out the 45-day Center Receipt Notification Letter for all cases by June 2006. Once that process is complete, we can expect to see more cases being certified at the BECs. When the 45-day Letter is received and returned to the DOL, all cases will be processed on a first-in first-out basis according to priority date.

Q Should I consider converting my RIR Labor Certification to a PERM case?

A There are many important considerations to take into account when converting a case from RIR to PERM. One of the most important, however, is the maintenance of a priority date. It is possible to convert an already filed RIR case to PERM, as long as the case is "identical." The DOL considers an identical case to be the same employer, employer address, alien, job title, job location, job requirements, and job description. If the case is found not to be identical, the DOL will assign it a new priority date. The loss of a priority date could affect the ability to obtain a 7th year H-1B extension or the timeframe in which an alien is eligible to adjust status.

Q Can I have workers coming from many different countries on the same H-2B petition?

A Yes. Workers from different countries can apply on the same I-129 Nonimmigrant Worker Petition, however, the approval can only be forwarded to one Consulate. For each additional Consulate you wish to be notified, you must file Form I-824.

Q Do I have to report to the government every time I move?

A Yes. See the *Immigration 101* section of this newsletter for further details.

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Immigration 101

If you are a foreign national, even if you have your Green Card, and you move to a new address, there are several things that you must do within 10 days in order to comply with Immigration laws.

The first thing is file Form AR-11. you will find this form on our web site under miscellaneous information. The form should be completed and returned to the Kentucky address.

The consequences of not filing the Form AR-11 could be severe. In fact the Immigration and Nationality Act (INA) states that it is a deportable offense not to file the Form AR-11.

Practically speaking, the Department of Homeland Security would probably not use this as a means to deport a foreign national unless they were looking for a reason to do so, but it is always a possibility.

In addition to filing Form AR-11, if you have a petition or application pending at the USCIS, you must call the National Customer Service Number (800-375-5283) to update your address with the USCIS. Filing Form AR-11 does not change the USCIS records, and if the USCIS does not have your correct address information, notifications or communications could be lost or delayed.

Also, note that even if you are a Lawful Permanent Resident (LPR) Green Card holder, you must file Form AR-11. An LPR has this obligation until the time they become a U.S. citizen. ☺

IMMIGRATION 101

*“I regret we didn’t
use your firm
from the beginning.
I love working
with Immigration
Support Services!
Our employees are
pleased as well.”*

DIRECTOR HR
WORLD LEADER
AIRLINE TRAVEL INDUSTRY

SPEED IS OF THE ESSENCE FOR H-1B VISAS!

Our lead article in this issue, “Ready...Set...GO! The Race for H-1B Visas is On!” indicates that now more than ever it is crucial that you have the right team of professionals handling your immigration needs.

Our **speed**, **accuracy**, and **experience** are the key to your visa processing success.

- **We do all the work** because you have more important things to do.
- Thousands of petitions filed with a **99.4% success** rate.
- Most H-1B petitions completed within **48 Hours**.

Look no further than Immigration Support Services for **fast**, **accurate**, and **cost-effective** visa filing. Don't miss out on this year's H-1B quota. Contact ISS today to initiate your case. **CALL** 800.437.7313, **RETURN** the enclosed reply card, or **CLICK** on “Initiate a Visa” at www.immigrationsupport.com.

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