

NEW IMMIGRATION LEGISLATION TO BE ENACTED

May 11, 2005

The Emergency Supplemental Appropriations Package Bill is set to be signed into law by the President. While the majority of the Bill was enacted for the purpose of providing additional funding to U.S. troops in Iraq for the War on Terror, it also contains some important immigration related legislation. Among other things, the Bill:

1. Provides temporary relief to H-2B workers through the "Save Our Small and Seasonal Businesses Act."
2. Recaptures 50,000 unused Employment Based visas from Fiscal Years 2001-2004 for use in Schedule A Green Card cases.
3. Institutes a new E-3 visa for citizens of Australia.
4. Enacts the REAL ID Act.

The following are the key provisions of the Bill that relate to immigration:

Save Our Small and Seasonal Business Act of 2005 – H-2B Relief

Exemption from Cap

The Act exempts from the annual H-2B cap (currently 66,000) any foreign national who has been counted toward the H-2B cap in one of the prior 3 fiscal years. These workers will be referred to as "returning workers." This exemption will be retroactive as if enacted on October 1, 2004, and will only be applied to fiscal years 2005 and 2006.

This section also directs DHS to project the number of "returning workers" which were counted towards the FY 2005 cap. This seems to indicate that there will be additional cap-subject numbers available for FY 2005.

Allocation of H-2B Numbers

The Act reallocates the 66,000 H-2B numerical limits so that no more than 33,000 numbers can be used during the first 6 months of the fiscal year. This reallocation of H-2B numbers in practice creates two seasons: a winter season and a summer season.

Fraud Prevention Fee

The Act imposes a \$150 fraud prevention and detection fee on employers filing an H-2B petition. The fraud fee will take effect beginning in FY 2006. These provisions of the Save our Small and Seasonal Business Act are scheduled to take effect 14 days from the date of enactment, however, we will have to wait for implementing regulations from the CIS before we can begin to file H-2B petitions.

Please check back to our web site for further updates on when and how to file your H-2B petitions.

Recapture of Visa Numbers for Schedule A Green Card Occupations

Amendment of AC21

The law amends the American Competitiveness in the Twentieth Century Act (AC21) by placing the unused employment based Green Card visa numbers from fiscal years 2001-2004 in a “bank” for use in future fiscal years.

The use of the “bank” visa numbers collected from fiscal years 2001-2004 is reserved for immigrant worker petitions (e.g. Green Card) based on Schedule A immigrants (Nurses, Physical Therapists, and Performing Artists of Exceptional Ability) and their family members. The total number of visas used from the “bank,” however, cannot exceed 50,000.

Reciprocal Visas for Nationals of Australia

The Bill creates a new E-3 non-immigrant visa category for Australian nationals. The E-3 visas are intended for workers who will be performing work in a “specialty occupation” similar to that of an H-1B visa. The major difference from the H-1B visa is that no prior CIS petition approval is needed. 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, and does not include spouses and children. The Bill does not create a maximum period of admission for the E-3 visa category.

REAL ID Act – Driver’s Licenses

While the majority of the REAL ID Act deals with preventing terrorism through changing the standards for granting asylum, there is a provision on the issuance of driver’s licenses that affects many foreign nationals. The provision prohibits federal agencies from accepting for any official purpose a state-issued identification card or driver’s license that does not meet numerous minimum document requirements and issuance standards, including verification of immigration status.

Persons who have valid non-immigrant status, a pending application for asylum, a pending or approved application for temporary protected status, approved deferred action status, or a pending application for adjustment of status to lawful permanent residence or conditional resident status may obtain only a **temporary** driver’s license. The validity period of the driver’s license may not exceed the period of authorized stay. If the period of authorized stay does not have an expiration date, the validity period of the temporary driver’s license shall not exceed one year.

Once implemented, this provision could cause difficulties to foreign nationals wishing to renew a driver’s license. It may require more planning and effective timing strategies when applying for extensions of stay in the U.S. In short, while the CIS will accept requests for the extension of a valid status up to the date of the current status’ expiration, the alien will likely be unable to renew a driver’s license without having the extension approval notice. Since it can take several months to receive this approval, it is essential that this factor be carefully considered when planning on renewing your immigration status.