

IMMIGRATION REVIEW

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HIGHLIGHTS...

...Employees working on the one-year Optional Practical Training (OPT) program must obtain a valid H-1B before their OPT expires.

...Applying for an employment-based Green Card in a preference category for which one is marginally qualified may result in denial.

...Employees with a valid H-1B stamp may safely travel internationally, subject to H-1B rules, throughout the Green Card process.

Will Congress Expand the H-1B Program?

With control of the U.S. Congress returning to the Democratic Party, comprehensive immigration reform is still on the agenda. In 2006, the highly political nature of illegal immigration and national security prevented Congress from tackling a revision of legal immigration policy. Current congressional leadership states that 2007 is the year for major reform, but at press time, it is still an unfulfilled promise. Call our office to be added to our immediate notification list of critical legislative changes and actions.



In the meantime, what should you do? Simply put, you must plan ahead. Fiscal year 2008 begins October 1st, 2007, and we will begin filing H-1B visa petitions on April 1st, the first permissible date to do so. Last year the 65,000 H-1B visa quota was exhausted on May 26th, so it is clear you must file early if you desire new H-1B visas in October.

Remember, those seeking to extend or transfer their existing H-1B visas are exempt from the numerical limitations. Additionally, institutions of higher education and government and non-profit research organizations are exempt from the “cap.” H-1B employees working for “cap-exempt” organizations who transfer to non-exempt organizations are subject to the cap.

H-1B aliens who did not use all of their original six year maximum stay, and have left the United States even for more than one year, are eligible to apply for their remaining time on H-1B without being subject to the “cap.” Moreover, those eligible for a “7th year extension” under AC21 may file for that extension, even if they are out of the United States.

Qualified spouses and dependants currently on H-4 or L-2 status are now eligible to apply for independent H-1B and L-1 visas and receive the full term of the H-1B (6 years) or L-1 (5 or 7 years) regardless of time spent on H-4 or L-2 status.

Employees working on the one-year Optional Practical Training (OPT) program must obtain a valid H-1B before the expiration of their OPT if they wish to have uninterrupted work authorization. This may be problematic for those whose OPT expires in May through September of this year.

In all of these cases, speed is of the essence. If you want to ensure that your petitions are filed as quickly as possible, or you have additional questions, 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.

EB Envy

Employment-based Green Cards are issued based on the “preference category.” Designated EB-1, EB-2, EB-3, EB-4 and EB-5, these categories can determine the speed with which a Green Card is issued. EB-1 requests are filled first, then EB-2 and EB-3. These three categories are most often applicable in employment-based cases.

EB-1 is limited to very few professionals who have attained the highest level of international recognition in their field. EB-2 is reserved for individuals who have earned an advanced academic degree (Master’s and above) or who have a Bachelor’s degree and five or more years of progressively responsible work experience. EB-3 applies to other applicants defined as “skilled worker or professional.” Remember, EB-2 and EB-3 qualifications are based on the actual requirements of the job, not the qualifications of the applicant.

Most applicants believe it’s best to apply in the highest possible preference category, but this may not be correct. Applying for a category for which one is only marginally qualified may result in a denial or a Request for Evidence; seeking justifications which may be difficult or impossible to provide. Additionally, the higher preference categories assume higher employment qualifications and thus correlate to higher prevailing wage requirement levels the employer may be unwilling or unable to pay.

The best course of action is a candid evaluation of all the relevant factors, followed by a proper determination of the optimum preference category. Based on the successful completion of hundreds of green card cases, we provide this type of analysis to every case we file. Call us to discuss your options. ☺

Travel and Green Cards—What’s the Deal?

It’s a common misconception that travel outside the United States is forbidden as soon as an individual begins the Green Card application process. While the question of international travel can be very complicated, there are some simple principles that will provide guidance in most cases.

Let’s examine the straightforward case of an employee who is currently on H-1B status, has a valid H-1B stamp in his passport, and

begins the application process for Permanent Residence—a Green Card. Very briefly, the Green Card petition process is divided into three major steps: Labor Certification, CIS petition (I-140), and Adjustment of Status (I-485).

Since the employee has a valid H-1B stamp, he may safely travel internationally, subject to existing H-1B rules, throughout the Green Card process. Entering the United States on a valid H-1B is not adversely affected by having initiated your Green Card. In the case of some countries, China for example, the H-1B visa stamp is only issued for a single entry thus necessitating revisiting the U.S. Consulate during each trip abroad. Likewise, even if the visa stamp has been issued for multiple entries but has expired, visiting the Consulate is required and in many countries this can be a time-consuming and challenging process.

Once the Adjustment of Status application, I-485, is filed, the applicant has a new option available. He may file for Advance Parole—essentially permission to travel and re-enter the United States as an “adjustee” rather than on the current H-1B. This eliminates the need for a new H-1B visa stamp and the unpopular trip to the U.S. Consulate. However, entering as an adjustee means the employee is technically no longer on H-1B status, and even though the CIS continues work authorization under the current H-1B or L visa, this may have adverse consequences for H-4 and L-2 dependents.

Advance Parole documents usually afford three trips outside the United States and are valid for one year. If the employee is outside the U.S. when the I-485 Adjustment of Status is approved, then he or she must re-enter on “deferred inspection.”

Provided the employee maintains a valid non-immigrant H or L status, travel while processing a Green Card is not problematic. Complications may arise for certain other non-immigrant classifications. In all cases, since travel is often confusing we encourage our clients to call and review your travel intentions whenever you have any questions. ☺



FROM THE LAWYER'S DESK

Kendra S. Kembel, Esq.



Q When seeking an extension of H-1B status beyond the 6-year limit, when is an employee eligible for a 3-year extension versus only a 1-year extension?

A An employee is eligible for a 1-year H-1B extension beyond the 6-year limit if, prior to the expiration of the 6-year limit, 365 days have elapsed since the filing of a Labor Certification Petition (LCP) or I-140 Immigrant Petition on the employee's behalf. An employee is eligible for a 3-year H-1B extension when an I-140 Immigrant Petition has been approved on the employee's behalf and the employee is not eligible to receive a green card because the employment based category and country of birth are retrogressed.

Q How does a merger or acquisition of a company affect the immigration status of its employees?

A When corporate employers undergo name changes, mergers, restructuring, changes in Federal Employer Identification Number, or other corporate changes, they must keep in mind the potential affects on immigration matters. Such changes could affect the validity of all current non-immigrant and immigrant petitions filed either with the CIS or DOL. It is best to consult with your

immigration attorney prior to such changes taking effect in order to ensure the continued work authorization and legal status of all affected foreign national employees.

Q If an EB-3 green card case has been filed for an employee who has now been promoted into a new job level that supports and EB-2 classification, can a new petition be filed seeking EB-2 status?

A Yes. When an employee is promoted into a new job which has requirements that meet the EB-2 criteria (i.e. either a Master's degree or a Bachelor's degree plus 5 years of progressively responsible experience), it is possible to begin a new green card process. The employer will need to file a new PERM LCP and once certified, a new I-140 Immigrant Petition. If the employee's prior green card case already has an approved I-140 Immigrant Petition, the employee may also maintain the priority date from the prior case.

Q If a "traditional" labor certification petition has been filed for an employee, can it still be converted to an RIR case after the January 22, 2007 hold harmless deadline?

A Yes. A traditional case is eligible for conversion to RIR if it has not yet received a final disposition, has not been issued a Notice of Findings (NOF), is not a Schedule B occupation, and has not received a Recruitment Report Instructions Letter. If you decide to convert a traditional case to RIR after the January 22nd hold harmless deadline, however, there is no guarantee the DOL will place the recruitment instructions on hold. You may also risk having to re-advertise the position according to the DOL instructions if the DOL begins traditional recruitment before your RIR conversion request is received.

WHEN CORPORATE EMPLOYERS UNDERGO NAME CHANGES, MERGERS, RESTRUCTURING, OR OTHER CORPORATE CHANGES, THEY MUST KEEP IN MIND THE POTENTIAL AFFECTS ON IMMIGRATION MATTERS.

ISS Webinar Series: *Immigration Overhaul*

What is a Webinar? It's attending a seminar without ever having to leave your office by utilizing web and phone conferencing to bring essential immigration information right to your desktop.

Due to the overwhelming response to our last Webinar series which featured topics like, *The Challenges of Understanding the USCIS*, *Special Handling*, and *All My Foreign-Born Employees Want Green Cards—Now What?*, we've decided to add some additional Webinars to our list.

As indicated in our lead article, congress has yet to pass a comprehensive immigration bill, but we're confident there will be significant changes that will take place over the next few months. In his recent State of the Union address, President Bush pledged to push for an "immigration overhaul."

How will you be able to determine the impact this will have on your business, on your valued employees, or on your ability to hire the brightest and best to work for your organization?

ISS can help! As a continuation of our Webinar series we initiated last fall, we are planning a series of Webinars based on the outcome of the action Congress takes in the next few months to enact immigration reform.

Sign Me Up! If you would like to pre-register for these informative Webinars, simply indicate so on the business reply card or visit our website at www.immigrationsupport.com and click on the Webinar link.

The Webinars are FREE, but space is limited so make sure you sign up early. We will notify you of the time and day the Webinars will be offered.



“ISS is always extremely helpful and knowledgeable with all questions asked. All calls are promptly returned and answers are found...thank you very much! We enjoy working with your firm!”

ADMINISTRATOR
LEADING PROVIDER OF PHYSICAL
AND OCCUPATIONAL THERAPISTS

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

Here we go again. It's that time of year when you *must* consider filing the H-1B visa or risk not having the qualified professionals you need. A very tight window exists to get these petitions filed and ensure that you don't miss out on this year's quota. 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. Act Now. 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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