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New Rule Affecting H-1B, L-1, and Other Petitions Temporarily Postponed

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Employers must soon certify their compliance with the U.S. Department of Commerce's and Department of State's "deemed export" rules, which govern the release of controlled technology to foreign persons.

Initially scheduled to begin December 23, 2010, the new rule that affects petitions for Nonimmigrant Workers in the H-1B, H-1B1 Chile/Singapore, L-1 or O-1A categories will be implemented instead on February 20, 2011. This new rule will require the petitioner to certify that either:

1. A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release proscribed technology or technical data to the foreign person; or
2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Employers must take into account that forms of exportation are not only limited to the traditional sense (shipping overseas), but also to the release of certain technology or technical data to any Foreign National within the United States. Any "Deemed" exports must have the correct authorization through a specialized export license issued by the corresponding government agency. This requirement will be enforced by the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR).

To understand how these rules apply to you or your company, please contact us for further consultation.

DREAM Act Fails to Pass Senate

The DREAM Act, short for *Development, Relief and Education for Alien Minors Act*, recently failed to pass in the Senate at the conclusion of the 2010 lame duck Congress. First introduced in 2001, it proposed to provide a pathway to permanent residence for unlawfully present foreign national students who came to the United States while they were children.

Since it failed to pass in the Senate, it will likely not be proposed again until after the 2012 elections.

H-1B Quota Approaching Cap

At the current pace, H-1B numbers may run out in January or February. Therefore, we recommend that you contact us soon if you have an employee who needs an H-1B.

As of December 31, 2010, nearly all of the H-1B quota numbers available for fiscal year 2011 have been used. For the H-1B regular cap there are 65,000 regular H-1Bs allotted and 57,300 eligible petitions have been received; as for the H-1B Master's Exemption cap, all 20,000 H-1Bs allotted have been used.

"H-1Bs tend to go fast"

Nonimmigrant Visa delays at US Consulates Abroad

We have received an increasing number of reports of late concerning the slow pace of nonimmigrant visa applications abroad. In most cases clients seeking nonimmigrant employment visas such as H-1B, L-1A, and L-1B visas are experiencing considerable delays even with pre-approved petitions from Citizenship and Immigration Services. In our opinion, most delays are incurred by US embassies and consulates abroad taking more time for visa interviews. This causes a backup in scheduling appointments. Other applicants, particularly from majority-Muslim countries, are required to undergo security background checks. These background checks, labeled "administrative processing" can take months.



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In the past, US embassies and consulates have returned passports with new visa stamps to applicants on the day of or the day after the interview. Applicants must now submit to a confusing process where passports are returned by mail or by courier. Not only is there an additional charge for this service, but return of passports can now take a week. We strongly urge that employees applying for work visas abroad schedule their visa interview appointments prior to departing the US. If abroad, we suggest that applicants schedule visa interviews in advance of receiving their petition approvals. In addition, we suggest that applicants carry additional documentation concerning eligibility for the visa sought.

If you have any questions concerning the visa application process abroad, please contact Rosner Partners.

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