

Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner and Associates, L.L.C.

This periodic newsletter features current developments in employment-based immigration. It is designed to inform you of changes in immigration law that may affect your business.

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This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties. If you have any questions, please do not hesitate to contact us.



Concurrent Filing of Forms I-140 and I-485 Now Permitted

INS recently published a rule which allows for concurrent filing of Form I-140, the employment-based immigrant petition, and Form I-485, the application to adjust status to permanent resident. Prior to this rule, green card applicants were required to wait for approval of Form I-140 before Form I-485 could be filed, resulting in lengthy processing times. A Form I-485 for the beneficiary of the I-140 and his/her dependents may be filed along with the Form I-140, or while the Form I-140 is pending. In cases where approval of the I-140 is potentially problematic, such as cases involving outstanding researchers or national interest waivers, it is advisable to wait until the I-140 is approved before filing Form I-485. As this procedure is new, we do not have any guidance from INS on how concurrent filing will affect processing times. For additional information, please contact Rosner & Associates.



Diversity Visa Lottery Begins October 7

On October 7, the Department of State will open a one month application period for the Fiscal Year 2004 green card lottery. To be eligible, applicants must NOT be natives of any of the following countries: CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, INDIA,

JAMAICA, MEXICO, PAKISTAN, PHILIPPINES, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM. Persons born in all other countries, including Hong Kong SAR, Macau SAR and Taiwan, are eligible. Application procedures and additional eligibility requirements are available from Rosner & Associates, or on the State Department's website at <http://travel.state.gov/DV2004.html>. We are sending a separate letter concerning the lottery to our clients via "snail mail"; if you would like to be on our mailing list, please let us know.



Annual INS Internal Audit, September 23 - October 4

INS has announced that it has begun its annual internal audit in its four Regional Service Centers. As a result, movement of files currently in process will be halted at least until October 4. This does not necessarily mean that adjudicators will not be working on pending cases, but it does mean that no files will move between INS offices (or from one workstation to another) until the audit is complete. Reportedly, INS will continue to work on premium processing cases. We do not have word, at the present time, on how INS District Offices are affected by the audit.



Online INS Status Inquiries

INS has just launched an online case status inquiry capability on its website. Using this system, you may check the status of a case that is pending at an INS Service Center. The information provided is the same information which is accessible from the INS automated telephone system. The web address is <https://egov.ins.usdoj.gov/graphics/cris/jsps/index.jsp>.



Special Registration Procedures Implemented

Effective September 11, 2002, INS implemented special procedures requiring registration of nonimmigrants applying for admission to the United States who are citizens of Iran, Iraq, Libya, Sudan and Syria. Effective October 1, 2002, INS reportedly plans to implement "Phase II" of this project, which will require the registration of male nonimmigrants applying for admission, aged 16 to 45, who are citizens of Pakistan, Saudi Arabia, and Yemen. (Note that registration is required for dual nationals who are citizens of one of these eight countries.) In addition, INS inspecting officers will have discretion to require registration of arriving nonimmigrants who made unexplained trips to Iran, Iraq, Libya, Sudan, Syria, North Korea, Cuba, Saudi Arabia, Afghanistan, Yemen, Egypt, Somalia, Pakistan, Indonesia or Malaysia. Officers will also have discretion to require registration of arriving nonimmigrants who have engaged in other travel "not well explained by the alien's job or other legitimate circumstances," had previously overstayed their visa, have "characteristics established by current intelligence updates and advisories," are identified by a law enforcement agency as requiring monitoring, or whose "behavior, demeanor, or answers indicate" that the nonimmigrant should be monitored.

Although INS has provided detailed information concerning the registration of citizens of the first five countries, INS has been silent on the requirement to register nationals of the remaining three countries. Detailed information on the registration process may be obtained from the INS website at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp>. Information on Phase II, as leaked to the media, may be obtained at http://209.17.95.115/news/article.asp?ARTICLE_ID=29014.

If you are, or if you know, a nonimmigrant

from any of the above-mentioned eight countries, we urge you to carefully review the information on Special Registration from the INS website. If you have any questions regarding these procedures, please do not hesitate to contact us.



Increases in INS and Consular Processing Times

As you may know, INS processing times have increased in recent months, due primarily to newly mandated background checks of all applicants. INS has been delivering on its promise to adjudicate premium processing cases in 15 days, however, Requests for Evidence in such cases are not uncommon. Please keep these considerations in mind when planning to file petitions or applications

for employment authorization or advance parole.

Delays are also occurring at U.S. Embassies and Consulates overseas. Many consular posts no longer allow application by mail or travel agent, but are requiring applicants to schedule appointments, and consular officers are conducting longer interviews. In addition, consular posts are continuing to run names of applicants through computerized "lookout" systems provided by government and law enforcement agencies. If an applicant's name is similar to a name in a database, additional delays can be caused by mandatory processing of the applicant's fingerprints by the FBI, and consultation with the Visa Office in Washington, DC. Unfortunately, delays of this nature cannot be predicted, nor can processing be expedited. Please consider the possibility

of delays when applying for visas outside the United States.



Increased Scrutiny of L-1B and Certain H-1B petitions

In recent months many petitions for L-1B and H-1B status have generated Requests for Evidence (RFEs) from INS. The L-1B RFEs are requesting evidence that the beneficiary possesses, and the job requires, specialized knowledge. We have also seen a marked increase in RFEs in H-1B petitions involving beneficiaries who do not have a Bachelor's degree. Although we are doing everything possible to address INS concerns when filing these types of petitions, please be advised that RFEs are not unusual, which can result in increased processing times and higher legal fees.

Rosner and Associates helps corporations to bring foreign nationals to the U.S., and to obtain employment visas for U.S. citizens transferred abroad. We can also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation. Please consider us for your immigration law needs.



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