

Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner & 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.

September 2003

Changes for FY2004

September 30, 2003 marks the end of the fiscal year for U.S. Citizenship and Immigration Services and the Department of State. The start of fiscal year 2004 will introduce important changes in immigration procedure and policy, affecting foreign nationals and their employers nationwide.

Two issues in particular are likely to command attention from our corporate and professional clients. The first is the upcoming sunset on important H-1B provisions, and the second the possible waiver of the October 1, 2003 deadline for machine-readable passports.



Sunset of H-1B Provisions

September 30, 2003 marks the sunset of several important H-1B visa provisions. First, and ultimately of most concern to immigration advocates, is the dramatic decrease in the cap on H-1B visa petitions that can be approved in a fiscal year. Enacted on October 17, 2000, the American Competitiveness and Workforce Improvement Act (ACWIA) temporarily increased the cap of H-1B visas to 195,000; however, this provision remains in effect only until the end of fiscal year 2003. In the absence of legislation to raise the cap, the limit decreases to only 65,000 H-1B visas for fiscal year 2004. Given the state of the U.S. economy, the country has seen a decreased need for H-1B visas in the past two years. It remains to be seen whether 65,000 H-1B visas will be enough to satisfy that need in 2004.

Also sunsetting on October 1 is the \$1,000 "training fee." The \$1,000 H-1B filing fee was introduced with the enactment of The American Competitiveness in the Twenty-First Century Act (AC21). Like the increase in the H-1B visa cap, the filing fee increase was a temporary measure, to run only through September 30, 2003. Unless addressed by Congress, the \$1,000 H-1B filing fee will no longer be required after October 1, leaving only the \$130 fee for applicants who do not elect to pursue Premium Processing.

The end of fiscal year 2003 will also see the sunset of dependent attestations and the ability of the Labor Department to initiate an investigation without a complaint from an aggrieved party.

There is legislation currently pending which would make the \$1000 filing fee permanent and make other changes to the H-1B and L-1 nonimmigrant classifications (this bill was discussed in our August newsletter). It is extremely unlikely that this legislation will be passed and signed into law prior to October 1. For more information on the changing H-1B requirements, please contact Rosner & Associates.



Potential Waiver of the Machine Readable Passport Deadline

As you may remember from the August issue of our newsletter, the Department of State has announced that all nonimmigrants seeking to enter the United States pursuant to the Visa Waiver Program will be required to possess a machine-readable passport as of October 1, 2003. This new requirement impacts business visitors and tourists from 27 participating countries. This change includes all categories of passports (tourist, diplomatic and official) and requires that each person seeking entry to the U.S., including infants, have his or her own passport. The Department of State has cautioned that, subsequent to October 1, nonimmigrants without a machine-readable passport will require visas to enter the United States.

In a recent cable, the Department of State indicated that it is prepared to extend the deadline from October 1, 2003 to October 26, 2004, contingent on certain attestations from 26 of the visa waiver countries. The proposed extension will not apply to Belgium, which has been required to present machine-readable passports since May 15, 2003. The other 26 countries that participate in the Visa Waiver Program have been asked to address a diplomatic note to the Department of State, indicating their commitment to make machine readable passports generally available to their citizens, as well as their commitment to mitigate the misuse of non-machine readable passports. Waivers of the October 1, 2003 deadline will

not be extended past October 26, 2004.

For up-to-date information on which countries, if any, have received an extension, contact the appropriate country's embassy or consult the State Department's website at <http://www.travel.state.gov>.



Visa Lottery Reminder

Please remember that the registration period for the FY2005 Diversity Visa Lottery begins on November 1. For additional information, please see <http://www.travel.state.gov/dv2005.html>.



What's in a Name?

The Department of Homeland Security recently announced that its divisions which deal with immigration have dropped the word "Bureau" from their names. BCIS (Bureau of Citizenship and Immigration Services), BCBP (Bureau of Customs and Border Protection) and BICE (Bureau of Immigration & Customs Enforcement) are now known as USCIS, CBP and ICE.



For additional information about any of the topics presented here, please contact us.

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 also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation.



Rosner and Associates, L.L.C.
The Caxton Building, Suite 601
812 Huron Road
Cleveland, Ohio 44115
216-771-5588
216-771-5894 (Fax)
immigration@rosnerlaw.com

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