

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.

February 2004

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.



H-1B Cap Reached

U.S. Citizenship and Immigration Services (USCIS) reported yesterday that the H-1B cap of 65,000 visas has been reached for Fiscal Year 2004. Effective February 18, 2004, USCIS will no longer accept petitions seeking H-1B status for workers subject to the cap. USCIS will, however, continue to process all H-1B petitions for cap-subject workers received by USCIS before the close of business on February 17, 2004. H-1B petitions for cap-subject workers may be submitted under the FY2005 H-1B count on or after April 1, 2004. The soonest those individuals could begin working in H-1B status would be October 1, 2004.

Petitions for individuals currently working in H-1B status are not subject to the cap. Therefore, USCIS will continue to process petitions filed to:

Extend the amount of time a current H-1B worker may remain in the United States;

Change the terms of employment for current H-1B workers;

Allow current H-1B workers to change employers;

Allow current H-1B workers to work concurrently in a second H-1B position.

USCIS also notes that petitions for new H-1B employment are not subject to the annual cap if the H-1B worker will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. USCIS will also continue to process H-1B petitions for workers from Singapore and Chile pursuant to the Free Trade Acts with those countries. Reaching the cap early can result in some

employees facing a gap in employment authorization. New university graduates employed pursuant to F-1 Optional Practical Training often find themselves in this situation. If you have any such employees, we urge you to contact us as soon as possible to discuss what must be done to ensure compliance with U.S. immigration law.



USCIS Proposes Filing Fee Increase

On February 3, USCIS proposed an increase of its filing fees for most applications. The fee increase would average \$55 for most applications, and would raise the biometric fee from \$50 to \$70. For example, the filing fee for Form I-129, used for employment-based nonimmigrant petitions, would be raised to \$185; Form I-765, for employment authorization, would go up to \$175; Form I-485, for adjustment of status, would reach \$315; and Form N-400, for naturalization, would increase \$60, from \$260 to \$320.

The fee increase is still just a proposal. The public may comment on the rule until March 4. For additional information and a complete list of the proposed fees, please consult the USCIS website at <http://uscis.gov> <<http://uscis.gov>>. We will advise you when the fee increase becomes effective.



Reminders

In past newsletters we've mentioned the following items, and we thought that a reminder might be useful:

- The status of petitions filed with USCIS Service Centers may be checked online at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp>. That site also lists processing times for USCIS District Offices and Service Centers. We suggest that you take the posted processing times with a grain of salt, as recent experience has shown that they aren't always accurate.
- Processing times for labor certification applications pending with State Workforce Agencies or the U.S. Department of Labor may be checked online at <http://www.ows.doleta.gov/foreign/times.asp>. Based on our

experience, these processing time reports do tend to be accurate.

- Speaking of processing times, they continue to increase. Adjustment of Status applications at the Texas Service Center, for example, are now taking nearly three years to process, while Applications for Reentry Permits can take nearly 18 months. USCIS says that its proposed fee increase is intended to address this backlog.
- USCIS regulations require that all "aliens" in the United States, including nonimmigrants AND permanent residents, must notify USCIS of changes of residential address within 10 days of the move. This is done on Form AR-11, which may be accessed online at <http://uscis.gov/graphics/formsfee/forms/ar-11.htm>. Individuals who have applications pending at particular USCIS offices should also notify those offices of any address change.



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. Please consider us for your immigration law needs.



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