

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.

June 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.



Border Entry Issues

US-VISIT

The Department of Homeland Security has recently confirmed that the "United States Visitor and Immigrant Status Indicator" (US-VISIT), which implements scanning procedures to collect biometric data at U.S. Ports of Entry into the United States, will be extended to visitors who enter the United States on the Visa Waiver Program on or after September 30, 2004. This will result in an increase of 13 million people subject to US-VISIT each year.

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business for 90 days or less without obtaining a visa stamp in their passports. VWP countries are predominately European countries whose citizens are statistically unlikely to remain in the United States after the expiration of their authorized stay. Although citizens of VWP countries will still be able to travel to the U.S. without a visa after September 30, they will be required to have their biometric data collected before gaining admission to the United States.

US-VISIT, which became operational on January 5, 2004 at 115 airports and 14 seaports across the country, is expected to be in place at the 50 largest U.S. land Ports of Entry by December 31, 2004. It is not clear at this time how much the program will affect travel to the U.S. once the program is fully operational. Currently, travelers affected by the program are reporting some delays.

For additional information, please consult the US-VISIT website at:

http://www.dhs.gov/dhspublic/interapp/content_multi_image/content_multi_image_0006.xml



Biometric Passports

Biometric passport requirements are expected to go into effect on October 26, 2004 for all countries which participate in the VWP. All foreign nationals seeking to enter the U.S. pursuant to the VWP after that date must possess a biometric passport. If they do not possess such a passport, they are not eligible to enter the U.S. pursuant to the VWP, and must apply for a visa stamp at a U.S. consulate abroad before seeking admission to the United States. At the present time, various legislation is pending in Congress which would extend the biometric passport deadline; it remains to be seen whether this legislation will become law.



State Department to Cease Visa Revalidations after July 16

As most of you know, a grant of extension of nonimmigrant status from U.S. Citizenship & Immigration Services does not automatically renew the validity of a U.S. visa. Generally, visa renewals are required for foreign visitors, including temporary workers and students, presently in the U.S. who wish to travel outside of the United States.

Nonimmigrants have traditionally had two options for renewing a visa. He or she may apply at a U.S. consular post in his or her home country, or, in some circumstances, at a U.S. Embassy or Consulate in a third country. The drawback to this option is that it can take weeks, or even months, in some cases, to schedule a visa appointment at many U.S. Embassies and Consulates around the world. Alternately, a

nonimmigrant may apply for a new visa from within the United States by applying by mail with the Department of State. Although this process, known as visa revalidation, can leave an applicant without a passport for several months, it enables an applicant to apply for a new visa without leaving the United States. This option, however, will soon be eliminated.

On June 23, the Department of State issued a public notice announcing its discontinuance of revalidation of C, E, H, I, L, O and P visas. Citing the Department's inability to adequately handle increased security screenings as the impetus behind the decision, the Department will not process applications received after July 16, 2004. After that date, applicants will need to apply for visas through a U.S. consular post abroad. The Department of State has indicated that it will direct all visa adjudicating posts to accommodate on a priority basis applicants who would have been eligible to apply for visa revalidation from within the U.S.; however, it remains to be seen what effect, if any, this directive will have on the speed with which a nonimmigrant can renew a visa.

If you require further information on visa revalidation or visa application procedures, please contact Rosner & Associates.



Drop-box Procedures to Cease at U.S. Consulates in India

The U.S. Embassy in New Delhi, India has indicated that all U.S. consular posts in that country will stop accepting applications via the drop-box procedure on various dates within the next month. All visa applicants in India will soon require personal interviews and will be subject to fingerprinting, with some exceptions. Delays in obtaining appointments may be significant — weeks or even months. Other posts around the world have already implemented this procedure, or will do so soon. If you or one of your employees will

require a visa to return to the U.S. after foreign travel, you are strongly advised to check on existing procedures before travel. All visa applicants should be aware of the need for flexibility in travel schedules due to the inability to predict visa processing times at U.S. consulates. If a traveler cannot be flexible due to job, family or other considerations, foreign travel may be ill-advised at this time.

To learn more about visa processing in India, please consult the Embassy's website at:

<http://newdelhi.usembassy.gov/wwwhpr62204.html>

For up-to-date procedures at other U.S. consular posts, please consult the Department of State's website for links to individual posts:

<http://travel.state.gov/links.html>



Rule Proposed to Help F Visa Holders Seeking H Status

With the dramatic decrease in the numerical cap on H visas that became effective at the start of Fiscal Year 2004, many prospective H-1 nonimmigrants were unable to obtain status before the cap was met. In particular, some students holding F status have been unable to change to H-1 status prior to October 1, 2005, the start of the next fiscal year. As the F-1 status of many students will expire well before October 1, these students are faced with the prospect of going abroad until October 1, or be subject to various penalties for remaining in the United States without authorization.

The Department of Homeland Security has proposed a rule that, if published, would protect the status of F nonimmigrants whose status will expire, and who are

applying for H visas which will become available October 1.

We have not yet seen the proposed rule, and can only speculate as to its contents. It is not clear if the rule will protect nonimmigrants other than those in F status, such as J-1 nonimmigrants. We will keep you apprised as new developments arise.



Availability of H Visas for Fiscal Year 2005

U.S. Citizenship & Immigration Services' Service Center Operations Director, Fujie Ohata, has announced that, as of the end of May, a total of approximately 16,100 H-1Bs countable against the fiscal 2005 cap have been either approved or remain pending out of the available 65,000. 5,000 of the remaining visas have been set aside for workers from Singapore and Chile.

Despite the current availability of visas for the next fiscal year, employers should still plan far ahead in hiring new employees pursuant to H-1B status. With such a limited number of visas available, the cap could be reached shortly after, or even prior to, October 1.



PERM Update

In our April newsletter, we informed you of a proposed regulation that, when published, will substantially alter the Labor Certification process. As of today, the Program Electronic Review Management System, or PERM, remains under review by the Office of Management and Budget (OMB). Projections as to when the rule will be published are speculative, and vary from as early as August to as late as December. The rule is expected to become effective 120 days after the date of its publication.

We will update you regarding significant PERM developments as they arise.



L-1 Legislation

In recent months, the L-1 nonimmigrant classification (intracompany transferee) has come under attack. Various bills are currently pending in Congress which would eliminate the L-1 classification, impose a numerical cap, impose a prevailing wage requirement, require Bachelor's degrees for L-1 nonimmigrants, eliminate the Blanket L program, and/or impose other modifications which could render the L-1 moot as a viable visa option for many companies. If your organization relies on the L-1 classification to bring valued employees to the United States, we strongly urge you to contact your Representatives and Senators. This may be done quickly and easily through the American Immigration Lawyers Association website's "Contact Congress" feature, accessible at

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=3137656.

Thank you for your attention to this important issue.



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. Please consider us for your immigration law needs.



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