

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.

July 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.



Notice Published to Protect the Status of Students in F and J Status Affected by the H-1B Cap

On Friday, July 23, 2004, the Department of Homeland Security published a notice in the Federal Register that extends the duration of status for foreign students in F and J status who are eligible to change status to H-1B, but whose status, including the grace period, expires before October 1. This notice will primarily affect students who have applied to change status to H-1B, but who are unable to do so prior to October 1, due to the FY2004 H-1B cap. The notice also affects students who have not yet had an H-1B petition filed on their behalf, but who have an employer willing to sponsor them and can have their petition filed with U.S. Citizenship & Immigration Services (USCIS) no later than July 30.

The notice does not address whether USCIS will reconsider change of status requests that have already been denied, but USCIS has informally indicated that it will allow employers to file new petitions or motions to reopen such cases under limited circumstances.

If you or your company would like to sponsor a worker for H-1B status who is currently employed pursuant to F or J optional practical training and whose status will expire prior to October 1, 2004, you must file an H-1B petition immediately to benefit from this provision.

If you or your company would like to sponsor for H-1B status an F or J student whose status will expire prior to October 1, or if you are unclear whether an H-1B

beneficiary for FY2005 is affected by this notice, please contact Rosner & Associates as soon as possible.



New Photograph Instructions

USCIS announced today, July 26, that it will begin requiring passport-style photographs, rather than the old 3/4-view photographs, perhaps as soon as August 1. However, we have evidence that CIS may be applying these new requirements prematurely; we have already received requests from CIS for new photographs for applications already filed. If you are or an employee is engaged in compiling documentation, including photographs, to support an application yet to be filed with CIS, we suggest that you contact us to find out what type of photograph is required. For your reference, the new photograph instructions may be found at <http://travel.state.gov/passport/pptphotos/index.html>.



USCIS Extends VisaScreen Nonimmigrant Waiver

On July 22, 2004, the Department of Homeland Security published an interim rule amending the agency's regulations to extend the deadline by which certain allied health care workers from Canada and Mexico must obtain a health care worker certification (known as "VisaScreen"). Under Section 212(a)(5)(C) of the Immigration & Nationality Act, "an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization, verifying that the alien meets certain education, training, licensure and competency requirements." This rule is independent of the licensing requirements of various U.S. jurisdictions.

The rule became effective on July 25, 2003 and provided for a one-year transition period. Under the transition period, eligible allied health care workers admitted to the United States before September 23, 2003 had until July 26, 2004 to obtain a VisaScreen certificate.

The July 22 rule extends until July 26, 2005 the deadline for certain allied health care workers to fulfill the VisaScreen requirement. It applies ONLY to Canadian and Mexican nationals seeking entry on a NEWLY-ISSUED TN visa. It does not apply to nationals of any other country, or Canadian or Mexican nationals seeking entry with another visa classification, nor does it apply to TN visa holders whose initial admission in TN status took place prior to September 23, 2003. PLEASE NOTE: All TN nonimmigrant allied health care workers who were initially admitted prior to September 23, 2003, MUST possess a valid VisaScreen certificate or they will be denied admission to the United States after foreign travel. All allied health care workers working in the U.S. pursuant to any other nonimmigrant classification will also be denied admission after July 26, 2004 unless they have obtained a VisaScreen certificate.

The seven occupations subject to the VisaScreen requirement include Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses; Physical Therapists; Occupational Therapists; Speech-language Pathologists and Audiologists; Medical Technologists (also known as clinical laboratory scientists); Medical Technicians (also known as clinical laboratory technicians); and Physician Assistants.

For additional information on whether you or your employees are now subject to the VisaScreen requirement, please contact Rosner and Associates. For additional information on VisaScreen, see www.cgfns.org.



DOL Attempts to Reduce Backlogs for Pending Labor Certifications

The Department of Labor (DOL) has issued an interim final rule describing its plan to reduce the backlog of pending labor certification applications, to be effective August 20, 2004. The rule establishes centralized processing centers to help DOL Regional Offices and State Workforce Agencies (SWAs) shorten processing times and increase adjudication of pending labor certifications.

Under the interim rule, the National Certifying Officer has the discretion to direct SWAs and DOL Regional Offices to transfer pending labor certification applications to centralized processing centers for completion of processing. Criteria for selecting which applications should be transferred will be available at a later date.

The interim final rule has no bearing on the implementation of PERM, the proposed DOL regulation which is expected to alter the labor certification application process and the role of SWAs in that process. PERM is expected to be published by the end of August, with an effective date 120 days later, although it is still possible the rule will be delayed beyond that date. The recently published interim final rule focuses on reduction of the backlog of labor certification applications currently pending at SWAs and at the DOL Regional Offices.

The rule has been published in interim final form, and is thus subject to revision. The coming months will show whether the new system is effective in reducing existing backlogs.



DV 2005 Lottery Winners Selected

The Department of State announced last week that it has selected and notified the FY2005 Diversity Visa Lottery winners. The agency selected approximately 100,000 winners for 50,000 available visas, so if you or someone you know has won the lottery, you are strongly urged to submit your application to adjust status (or immigrant visa application overseas) as soon as possible after September 30, 2004.

For additional information on applying for adjustment or an immigrant visa pursuant to the diversity visa lottery program, please contact Rosner and Associates.



USCIS Plans to Implement InfoPass Nationwide by September 2004

USCIS has announced its intention to implement an Internet-based system that enables the public to schedule appointments online with USCIS immigration officers across the country. Implementation of this internet system, known as InfoPass, is intended to reduce the volume of lines and the duration of wait times at District Offices. Currently available only at District Offices in New York and Miami, InfoPass is accessed by visiting the USCIS website at <http://uscis.gov> <<http://uscis.gov>> and following screen prompts. InfoPass generates an electronic appointment notice, enabling those in need of specific immigration information to obtain a date and time to speak with an immigration officer.

When implemented in its entirety, this

system is expected to improve significantly the process of speaking with an immigration officer at a District Office. However, District Offices are largely unable to respond to case status inquiries for applications and petitions filed at USCIS Regional Service Centers. Due to the operation of the National Benefits Center, which began accepting all family-based cases earlier this year, the number of cases actually filed with District Offices is at an all time low. Consequently, while successful implementation of InfoPass will assist in obtaining general immigration information and in reducing wait times when it is necessary to speak with an immigration officer, it will not assist in obtaining reliable case status updates or tackling case-specific issues for the overwhelming majority of pending applications and petitions.



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.



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