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# Immigration Law Update

## Current Developments in Employment-Based Immigration

By Rosner & Associates. L.L.C.

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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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**September 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.*



### **Rosner & Associates Implements Online Case Management System**

Rosner & Associates, LLC, is pleased to announce the implementation of a new, online case management system. The new system has several features that should improve our clients' ability to access necessary documents and to keep abreast of developments in specific cases.

Although the system is fully operational, it will take several months for us to completely update the data fields and work out any kinks in the program. We are introducing the system to our clients on a case-by-case basis. We expect the fully integrated system will provide individual clients and corporate contacts with tools that will enhance the application process for all immigration-related applications and petitions.

If you are a primary corporate contact or individual client and you have not yet received your username and password, please contact Rosner & Associates and we will provide you with the necessary tools to log in to our system. All active clients will ultimately receive this information, as new cases are commenced and old applications and petitions are renewed.

We also realize that some of our clients may not be interested in using the system. If you prefer not to access case information online, we are happy to accommodate your preferences.



### **Labor Certification Will Not Be Implemented Before the End of the Year**

Despite initial, optimistic predictions of Summer or Fall 2004 implementation, the new labor certification program, known as PERM (Program Electronic Review Management System), will not be implemented until 2005, at the earliest. The regulation remains under review at the Office of Management and Budget, where it has lingered since February 23, 2004. The regulation will take effect 120 days following OMB approval and publication.

As a reminder, the implementation of PERM will cause significant changes in the processing, and possibly the eligibility, of Labor Certification applicants. If you or a foreign employee plans to apply for labor certification in the future, now is the time to determine whether it is more advantageous to file before or after the implementation of PERM. Please contact Rosner & Associates for details.



### **H-1B Cap Will Soon Be Reached**

U.S. Citizenship & Immigration Services (USCIS) has reported receiving 45,900 applications that will count against the FY 2005 cap of 65,000. The agency has indicated that the cap will be reached in "several weeks." The new fiscal year begins on October 1. Unless Congress raises the cap, this shortage will have the practical effect of making H-1B visas unavailable for new H-1B workers for almost the entire fiscal year, until October 1, 2005.

It is unlikely that Congress will consider legislation regarding the H-1B cap before the November election. However, we urge all of our clients who rely on H-1B visas for foreign national employees to communicate their concerns to Congress. The American Immigration Lawyers Association provides a quick and easy way to do so. To send a letter to Congress urging

members to support increased visa availability of H-1B status for foreign professionals, go to: [http://capwiz.com/aila2/mail/oneclick\\_compose/?alertid=5183421](http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5183421) and follow the appropriate links. You can also telephone your Members of Congress at 202-224-3121 in support of this important issue.



### **Reminders for Companies Seeking to Procure Visitors' Visas for Foreign Business Invitees**

As all of our clients are aware, in the wake of 9/11, U.S. consuls have employed increasing scrutiny in the review of visa applications at U.S. consulates worldwide. Visitor visas in particular have borne the brunt of heightened security measures and an environment of "zero tolerance." The reality that obtaining visas no longer resembles a streamlined process is worth repeating and certainly should not be far from one's mind when organizing seminars, conferences and training programs that anticipate international invitees. In our experience, applicants from China, India, West Africa, Mexico, the Philippines and some parts of Latin America have been subject to the longest wait times and some of the most inflexible procedures for visa issuance. (The Visa Waiver program still allows applicants from many countries to enter the United States without first obtaining visitor visas.)

One of the most significant changes in recent years has been the requirement that all visa applicants be interviewed. The wait time for interview appointments is frequently so lengthy that applicants are well advised to contact the consulate to schedule an appointment several months in advance of anticipated travel. Expediting scheduled appointments is difficult, and in some cases, impossible. Moreover, at certain consulates, the effort itself might prejudice the application.

Many consulates no longer issue visas the

same day as the appointment. Although the waiting period to have a passport and visa returned is generally not long, applicants should not rely on last minute appointments to adequately accommodate travel plans.

All of this is to revive the old adage that preparation is everything. In the case of visitor visa applications, this means providing as much lead time as possible in terms of seminar scheduling and distribution of invitations. It also means that invitees should schedule their visa appointments immediately upon receiving the invitation.

Since 9/11, the Department of State has demonstrated that accommodating international commerce will take a back seat to the slow moving wheels of bureaucracy in every case. Do not make

the mistake of thinking that these problems will not arise when the corporate host is a well-known, multi-billion dollar company. Experience has taught us that the consular process will be slow, suspicious and inflexible. Our only defense is preparation.



***New Online Appointment System  
Implemented at USCIS Offices  
Nationwide***

InfoPass, the internet-based system that enables the public to schedule appointments online with USCIS information officers, is now operational in all USCIS District offices. Accordingly, if you or your foreign employee needs to visit a USCIS local office to obtain an Employment Authorization Document, to receive a passport stamp, or speak with an immigration officer, it is now possible to

avoid a lengthy wait by making an appointment online. In fact, we have heard that some USCIS offices may not allow you to conduct business there unless you have made an appointment in advance using InfoPass. You can learn more about InfoPass and make appointments at <http://infopass.uscis.gov/>. Please note that InfoPass does not override the existing system for interview appointments with USCIS adjudicating officers, at least at this time.



***Firm News***

We are pleased to announce that one of our partners, Brad Ortman, has been appointed to the Board of the American Civil Liberties Union of Ohio.



***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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