

# 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 2005

***Our thoughts are with our clients, their families and friends who have been affected by the devastation brought by Hurricane Katrina and its aftermath.***



*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.*



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### ***Immigration Issues Related to Hurricane Katrina***

#### ***I-9 Documentation for Hurricane Victims***

On September 6, 2005, the Department of Homeland Security issued a press release stating that they will not initiate employer sanction enforcement actions for the next 45 days for civil violations under Section 274A of the Immigration and Nationality Act for individuals who are currently unable to provide identity and eligibility documents due to Hurricane Katrina. Employers should complete the Form I-9 as completely as possible, but note in the I-9 file that required documentation is not

available due to the hurricane. DHS will review this policy at the end of 45 days.

#### ***New Orleans Office of USCIS***

US Citizenship and Immigration Services has announced that it is temporarily relocating its New Orleans District office to the Memphis, Tennessee sub-office. All files in New Orleans are reportedly undamaged, and will be transported to Memphis. The New Orleans office will remain closed until further notice. Individuals affected by Hurricane Katrina who require assistance from USCIS may go to any USCIS District Office. For additional information, please contact us or go to <http://uscis.gov>.

#### ***New Orleans Passport Agency Closed***

The Department of State has announced that the New Orleans Passport Agency is closed until further notice. US citizens in the following states submit their passport applications to the New Orleans Passport Agency for processing: Alabama, Arkansas, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Ohio, Tennessee, Virginia (except DC suburbs), Wisconsin and the Commonwealth of Puerto Rico. If you applied for a U.S. passport from any of these states BEFORE August 25, 2005 AND are traveling within the next 6 weeks, the Department of State is instructing you to contact the National Passport Information Center (NPIC) at 1-877-487-2778 (TTD/TTY 1-888-874-7793) for specific information on how to proceed.

The Department of State reports that all materials, including personal documents and applications, have been removed from the New Orleans Passport Agency and are on their way to another location.

If you applied for a U.S. passport from any of the affected areas AFTER August 25, 2005, your passport application will be re-routed to another Passport Agency for issuance.

No existing or new appointments with the New Orleans Passport Agency are being honored. If you need to travel urgently, you should make an appointment to appear at one of the agencies listed at the following link: [http://travel.state.gov/passport/about/agencies/agencies\\_913.html](http://travel.state.gov/passport/about/agencies/agencies_913.html)



#### ***Immigrant Visa Quotas – Bad News and More Bad News***

Last month in this newsletter, we advised you that we expected that visas in the third preference employment-based immigrant classification (skilled workers and professionals, known as EB-3) would likely become available for most nationalities in FY2006, which begins on October 1, 2005. Unfortunately, this has not come to pass. Although the EB-3 classification goes from being completely unavailable to backlogged, the backlogs continue to exist for nationals of every country. Thanks to legislation passed by Congress this summer, immigrant visas for Schedule A workers (nurses, most notably) are available at the present time.

Not only does the next fiscal year bring backlogs in the EB-3 classification, but expected backlogs have developed in the EB-2 classification (advanced degree professionals) for nationals of China and India. Unexpectedly, however, backlogs have emerged in the EB-1 classification (multinational managers and executives, outstanding researchers/professors, and individuals of extraordinary ability) for nationals of China and India. When you keep in mind that “nationals” refers to country of birth, and not necessarily country of citizenship, these backlogs are very bad news for many employers. A copy of the Department of State’s October Visa Bulletin may be viewed at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_2631.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_2631.html).

As a practical matter, what this means is that adjustment applications may not be filed, or if pending prior to September 30,

2005, may not be adjudicated for nationals of the affected countries until the priority date – the date a labor certification application or, if no labor certification is required, the immigrant petition, is filed – is reached. Under current law, if you are or you employ a foreign national who was born in China or India, you can expect to wait five to eight years to complete the green card process. If the foreign national is running out of time in nonimmigrant status, it may not be possible to extend his or her nonimmigrant status long enough to wait for this lengthy period. The extent of the disruption that this development can be expected to make in the lives of foreign national employees, their families, and their employers cannot be understated. We urge all of you to consider contacting your Congressional representatives to inform them about the problems that you may face if immigrant visa quotas are not raised.

While we are endeavoring to contact our clients who may be affected by the visa retrogression, please contact us as soon as possible if you are or you have an employee who may be affected. Please also don't hesitate to contact us if you are interested in learning more about the visa retrogression, and what you can do to help change existing immigration policy.



### ***US-VISIT: Travel Issues***

As you may know, the Department of Homeland Security has implemented a program called US-VISIT to track entries into the U.S. This program requires biometric data to be taken from almost all visitors to the United States, first when their visas are issued at a U.S. consular office and later at U.S. ports of entry.

In addition, DHS is currently testing US-VISIT exit procedures at certain U.S.

airports, seaports, and land border ports. Visitors leaving from these ports will be required to confirm their departures from the U.S. by scanning their visas or passports and repeating the digital finger scans. Eventually, most visitors will be required to check out upon their departures.

Some recent cases have demonstrated to us the ability of DHS to track the comings and goings of foreign nationals and the impact undisclosed departures may have on a particular application. Because a departure from the U.S. can have serious negative consequences on an application for immigration benefits, and because DHS now has the capability to track departures, it is imperative that all plans for foreign travel be discussed with counsel before any travel is made by a foreign national who has filed or plans to file an application for immigration benefits, particularly an application to change from one nonimmigrant status to another.



***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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