

# Immigration Law Update

## Current Developments in Employment-Based Immigration

By Rosner & Associates, L.L.C.

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*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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### ***USCIS Introduces Revised Form I-9 for Immediate Use***

U.S. Citizenship & Immigration Services (USCIS) has issued a revised Form I-9. USCIS encourages employers to start using the new form as soon as possible; however, fines and penalties will not accrue for failure to use the new form until notice is published in the Federal Register. Note that employers need only complete the 2007 Form I-9 for new employees, not for existing employees. However, employers must use the 2007 Form I-9 when their employees require re-verification.

#### ***WHAT'S CHANGED?***

The updated form should be completed in exactly the same way as the old one. The only difference between the forms is the types of documents accepted as evidence of employment eligibility. The new form removes the following five documents that were previously acceptable as evidence of eligibility under List A:

1. Certificate of U.S. Citizenship (Form N-560 or N-561);
2. Certificate of Naturalization (Form

N-550 or N-570);

3. Alien Registration Receipt Card (I-151);
4. Unexpired Reentry Permit (Form I-327) ;
5. Unexpired Refugee Travel Document (Form I-571).

In addition, the new I-9 adds an unexpired Employment Authorization Document to the acceptable documents that appear under List A.

As it is not clear how soon the notice will be published in the Federal Register, the best practice for employers is to begin using the new form immediately. Human Resources personnel with I-9 responsibilities should familiarize themselves with the updated list of documents accepted as evidence of employment eligibility and should contact us with any questions or concerns.



### ***PERM Updates***

Since the new permanent labor certification program took effect on March 28, 2005, the application process has been refined and clarified. In May 2007, the Department of Labor (DOL) amended its regulations with several key consequences for the labor certification process. Of special note, the DOL's Final Rule provides a 180-day validity period for approved labor certifications. This means that employers have only 180 calendar days within which to file a Form I-140, Immigrant Petition for Alien Worker, based on an approved labor certification. This represents a marked change from previous practice, in which a certified labor certification application was valid indefinitely.

In addition, the DOL's new rule requires the employer to pay the entire cost of preparing, filing and obtaining labor certification, including recruiting costs and attorney fees. While the DOL reserves the right of foreign nationals to pay for their own legal representation during the process, this right is distinct from

the employer's obligation to pay for all costs incurred during the process. In the Rule, DOL states that "to the extent that any attorney is preparing or filing a labor certification application and thus engaged by the employer as well as by the alien, the costs attributable to work for the employer must be paid by the employer." Nevertheless, given the framework of the rule, it is difficult to envision a situation where the employee will be responsible for any portion of a legal bill where the attorney is also representing the employer.

In short, the employer is responsible for bearing the costs and legal fees of the labor certification process. Foreign nationals who desire legal representation are advised to seek separate legal counsel. Employers are prohibited from seeking any reimbursement whatsoever from employees being sponsored for labor certification. Please note that employees may pay for costs associated with permanent residence AFTER the labor certification process is concluded.



### ***Planning Ahead for the FY2009 H-1B Cap***

As a reminder, USCIS allocates only 65,000 per fiscal year (which runs from October 1 to September 30). April 1 is the first date that employers can petition for H-1B status for the following fiscal year. In April, 2007, the H-1B numbers available for FY2008 were exhausted on the first day that they were available. Indeed, USCIS reported that it received 150,000 petitions on April 2 - 85,000 more than the annual limit imposed under the immigration laws.

The absurdity of the current H-1B situation was highlighted by the April fiasco, demonstrating that Congress simply must raise the H-1B cap to meet the legitimate business needs of U.S. employers.

#### ***THINK AHEAD***

To the extent that it is possible, U.S. employers simply must think ahead in terms

of hiring needs. Now is the appropriate time to consider whether your company may be interested in offering a position to a foreign national currently working pursuant to temporary employment authorization (as in the case of a recent graduate working pursuant to Optional Practical Training). Now is the time to identify foreign candidates for professional positions that will need to be filled by fall of next year. These decisions must be made within the next several months, because if last year is anything to go by, March 31, 2008 could mark both the first and last chance to file for H-1B status for FY2009.

#### *CONSIDER COSTS*

Effective July 30, 2007, USCIS filing fees increased.\* The filing fee for Form I-129, included in all H-1B filings, increased from \$190 to \$320. This fee is in addition to the \$500 fraud fee that accompanies new H-1B petitions, and the \$1500 fee that must be paid by most H-1B employers who employ more than 25 workers. Employers who plan to hire an H-1B worker who is subject to the H-1B cap can expect to pay \$2,320, in addition to legal fees and the optional fee for expedited processing.

\* Filing fees increased across the board, please visit [www.uscis.gov](http://www.uscis.gov) for a complete list of current fees.



#### ***USCIS Publishes Revised Instructions on Reentry Permit Procedures***

Permanent residents be aware! In an unadvertised change to previous policy, USCIS has published revised instructions on reentry permit procedures that restrict the time frame in which permanent

residents can leave the United States after filing for a reentry permit. Under previous directions, while permanent residents were required to be physically present at the time that the reentry permit was filed, applicants were free to leave the country immediately after filing.

Under the new directions, applicants must have their biometrics captured prior to departing the United States. This means that after filing for the permit, applicants must wait an indeterminable period for USCIS to issue a biometrics appointment notice, and must subsequently appear at the appointment prior to departing the country.

As a reminder, reentry permits are required when a permanent resident expects to be absent from the United States the country for at least one year. If a permanent resident does not have a reentry permit and is absent from the U.S. for over one year, he or she will most likely be deemed to have abandoned permanent residence when next seeking to enter the U.S.



#### ***Comings and Goings: What's New at Rosner Partners***

As the year begins to come to a close, it is worth noting that the last year has been an eventful one for us, punctuated by several organizational changes which give good cause for comment. First and foremost, Rosner & Associates, LLC became Rosner Partners, LLC on July 1, 2007. The new name reflects the evolution of our firm and the advanced level of experience we offer in the area of immigration law.

This change happily anticipated the promotion of the firm's most recent partner, Brian Halliday, who has joined Bill Rosner, Marin Ritter, Brad Ortman and Karen Moss at the helm of the Firm's practice.

Dane Macaskill has also changed her role with the Firm. After serving as a Paralegal for more than three years, Dane has successfully passed the Ohio Bar Exam and become an Associate Attorney with Rosner Partners.

Rosner Partners has regretfully bid a recent adieu to two valued employees, Attorney Caitlin Magner and Paralegal Lisa Etling. Caitlin continues to be a resource and presently lends her services on a consulting basis. Lisa has relocated to St. Thomas to pursue opportunities there.

There have also been some key additions to the Firm's staff. Veronica Sanchez, Jessica Domingo, and Kate Schantz have joined the firm as Paralegals, each adding a unique asset to our operations. Veronica, a native Venezuelan and Spanish speaker, holds an MBA from Cleveland State University and shares an intimate understanding of the immigrant experience. Jessica is a graduate of Saint Mary's College in Notre Dame, Indiana. She earned a post-baccalaureate paralegal degree from Columbus State Community College in 2006. Kate is a graduate of Wooster College and joins us from a career in the nonprofit sector. In addition, Craig Byrnes has joined us as an intern while he completes his paralegal certification.

We are delighted to have these valuable additions to the Firm.

***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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