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Immigration Update: USCIS Announces Good News For Green Card Applicants; President Bush Adds E-Verify to Federal Contractor Requirements

By Nancy-Jo Merritt and Matthew J. Martinez

FINALLY: Two-Year Employment Authorization Documents!

Beginning June 30, 2008, USCIS will begin to issue employment authorization documents (EADs) for two-year validity periods. The two-year EADs are available only in the following situations:

- The applicant has filed an application for adjustment of status (the I-485);
- The Department of State Visa Bulletin indicates that there is not an available visa number for the applicant; and
- The applicant's current EAD will expire within the following 120-day period.

Because adjustment of status applications can be filed only when the applicant is in a current visa category, initial EADs will be issued only for one year. If, as often happens, the applicant's visa availability retrogresses, the second EAD will be issued for two years. Obviously, given the recent volatility of visa numbers published on the Department of State's Visa Bulletin, this extension of the EAD validity date represents a leap forward in procedural convenience.

USCIS has had authority to issue longer-term EADs since July of 2004, but has elected not to do so until now. It is likely that the chaos caused by last summer's Visa Bulletin unexpectedly showing all employment-based categories as "current," followed the next month by nearly across-the-board retrogression, has led the government to agree that it is time for an extended period of EAD validity.

Premium Processing for I-140s

U.S. Citizenship and Immigration Services (USCIS) has announced that effective June 16, 2008, it will again accept "premium processing" requests for certain employment-based immigrant visa petitions (Form I-140) filed on behalf of foreign national workers nearing the end of their sixth year in H-1B work authorization status. [The premium processing service offers 15 calendar-day processing for designated employment-based petitions and applications upon payment of a non-refundable additional filing fee of \$1,000.]

The I-140 petitions eligible for premium processing include only those in which the beneficiary is an H-1B worker:

- Who is currently in H-1B nonimmigrant status;
- Whose sixth year will end within 60 days;

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- Who would be eligible for a further extension of H-1B nonimmigrant status only under §104(c) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21); and
- Who is ineligible to extend his or her H-1B status under section 106(a) of AC21.

Section 104(c) of AC21 permits extensions of H-1B status in increments of up to three years, provided the foreign national worker is the beneficiary of an approved Form I-140, and an immigrant visa ("green card") is not immediately available. Section 106(a) of AC21 permits extensions of H-1B status in increments of up to one year, if the underlying labor certification has been pending for at least 365 days.

If you are filing I-140 petitions or have petitions currently pending, contact our office to determine if I-140 petitions for your H-1B employees are eligible for premium processing.

Federal Contractors Must Use E-Verify

On June 6, 2008, President Bush issued an Executive Order amending Executive Order 12989, directing all Federal departments and agencies to require contractors, as a condition of each future federal contract, to agree to use an electronic employment eligibility verification system (designated by the Secretary of Homeland Security) to verify the employment eligibility of:

- (1) all persons hired during the contract term by the contractor to perform employment duties within the United States; and
- (2) all persons assigned by the contractor to perform work within the United States on the federal contract.

The Department of Homeland Security recently designated E-Verify as the electronic employment eligibility verification system to be used pursuant to Executive Order 12989. E-Verify, administered by U.S. Citizenship and Immigration Services with the Social Security Administration, provides access to federal databases to help employers determine employment eligibility of new hires as well as the validity of their Social Security numbers.

The Executive Order directs relevant agencies to implement the new policy by amending the Federal Acquisition Regulations (FAR), the formal rules governing federal government contracts for purchases of goods and services. Agencies responsible for the FAR have already sent a Notice of Proposed Rulemaking (NPRM) to the Federal Register soliciting public comment on proposed changes to these regulations. Comments will be accepted for 60 days. The Executive Order does not yet specify when the new requirement will take effect, but we will monitor this closely and keep you informed of any new developments.

E-VERIFY Q&A

For a wide-ranging Q&A covering operational aspects of E-Verify between the Department of Homeland Security and the American Immigration Lawyers Association, go to <http://www.fclaw.com/immigration-law/materials/everifyq&a.pdf>. In this interesting document, DHS indicates that most difficult verification issues can be resolved within 24 hours, and that ICE does not have direct access to the E-Verify databases.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A. (1974) J.D. (1978) from Arizona State University.

Matthew J. Martinez focuses his practice in the area of immigration and nationality law, with an emphasis on corporate transfers, professionals, entrepreneurs, investors, entertainers and athletes. Mr. Martinez has extensive experience representing employers and athletes in the equine industry, and in obtaining visas for temporary and seasonal workers. He earned his B.S. (1995) and his J.D. (1999) from Brigham Young University.



Nancy-Jo Merritt
Director
602.916.5411
nmerritt@fclaw.com



Matthew J. Martinez
Associate
602.916.5446
mmartinez@fclaw.com