

Immigration Update

Latest Immigration News

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Congress Tinkers With the H-1B

One of the last actions made by the 108th Congress included changes to the H-1B rules. Taking note that the 65,000 slots for new H-1B petitions had been used by October 1, 2004, the first day of the U.S. 2005 fiscal year, Congress created an exemption from the H-1B cap for graduates of U.S. college and university Masters and PhD programs, adding 20,000 slots for qualifying foreign professional workers. These spaces will be available on March 8, 2005. H-1B petitions for individuals who qualify under this new exemption will not be counted as part of the prior months of this year's exemption, leaving a full 20,000 spaces between now and October 1, 2005 for graduate degree holders from U.S. universities.

However, Congress also reinstated the H-1B filing fee surcharge and increased it to \$1,500, which took effect December 8. As before, this fee is set aside to fund training programs for U.S. workers.

In addition, Congress also decreed that petitions for H-1B and L-1 workers must be accompanied by an additional \$500 surcharge to fund the government's anti-fraud efforts. This new fee will be required for all H-1B and L-1 petitions filed beginning March 8, 2005 (increasing the total filing fee for H-1B petitions to \$2,185). It will also be required for L-1 "blanket" visa applications filed at U.S. consulates abroad.

Work Authorization Extended for TPS El Salvadorans

In early January, the Department of Homeland Security (DHS) announced an 18-month extension of Temporary Protected Status (TPS) for nationals of El Salvador. The El Salvadorian TPS period is part of the U.S. efforts to assist El Salvador in recovering from the earthquakes of 2001. Under this extension, effective March 9, 2005, any employees who have already been granted TPS are eligible to live and work in the United States for an additional 18 months in TPS status. They must re-register for the 18-month extension during the 60-day re-registration period, which began January 7, 2005. To ensure timely scheduling for collection of fingerprints, part of the work authorization application process, Salvadorian TPS beneficiaries are granted an automatic six-month extension of the validity of their current EADs, until September 9, 2005. After that time, TPS Salvadorian workers must have current work authorization.

New "Green Card"

CIS recently announced a new version of the permanent resident card (aka the "green card"). The changes are minor, made to bring the card in compliance with DHS branding guidelines. The new card now features the DHS seal on the front and prominently displays "Department of Homeland

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A HISTORY TO LEVERAGE

Security” on the back. The card also contains additional security features. USCIS began mailing the new permanent resident card last November, but the older cards in circulation will remain valid until the expiration date listed on the card.

New Storage Option for the I-9

Beginning in 1986, employers have been required to include the employment eligibility verification form, the I-9, in their new hire paperwork. Since then, employers throughout the country have stuffed millions of I-9s in filing cabinets, shelves, boxes and paper bags, or stacked them in a warehouse. The I-9 regulations require that employers not only keep the I-9s of all current employees, but retain the I-9s of former employees for three years after the date of hire or one year after termination, whichever is later. The only options allowed for storage are to keep the original I-9s or store them on microfiche, a method long-eclipsed by electronic storage technology, but until now the only approved replacement for paper originals. However, last fall the President signed PL 108-390, allowing employers to electronically complete and store I-9 forms. In addition to e-storage, the bill permits the use of handwritten or electronic signatures on the forms. The new regulations take effect no later than 180 days after enactment, on April 28, 2005. We understand that implementing regulations are nearly complete and should be published sometime around that date.

Please note that the bill does not change the requirement that a company representative or agent view original documents presented by the employee to demonstrate his or her employment authorization. Thus, it does not solve the difficult problem of completing the I-9 requirements for remotely-hired employees. In addition, while this is a welcome modernization of I-9 retention and completion procedures, it may require amendment of current company policies and routines. For example, employers will have to ask themselves: (1) Whether I-9s will be stored on a PC hard drive or on CDs? (2) Will the electronically stored I-9s of termed employees be moved, marked or left in place forever? (3) Should search functions be organized by employer number, the alphabet, date of hire, or social security number? We will provide additional information as it becomes available, but in the meantime, please call us if you have any questions.

Changes in H-2B

USCIS recently published a proposed rule that would significantly alter the H-2B temporary worker program, which allows U.S. employers to request foreign workers to fill a one-time peak-load, intermittent, or seasonal need for labor when no workers are available in the local job force. The new rule is a significant change, described by USCIS Director Eduardo Aguirre as “a continuation of the USCIS commitment to streamlining the manner in which we do business.” Under a new one-step process, most employers will not be required to obtain a temporary labor certification from the Department of Labor prior to filing a petition with DHS. Most employers will be able to file their petitions directly with DHS after conducting recruitment for U.S. workers.

These regulations are “proposed” to be made available to allow public consideration and comment. In the meantime, the existing H-2B regulations remain in force. The new regulations do not increase the statutory cap of 66,000 H-2B nonimmigrant visas available each fiscal year and which were completely used by employers by January 3rd of this year. Because the next U.S. fiscal year begins on October 1, 2005, there will be no H-2B slots available until that time.

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