

IMMIGRATION LAW UPDATE

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Special points of interest:

- December 2006 Visa Bulletin Published: http://travel.state.gov/visa/frvi/bulletin/bulletin_3086.html
- Premium Processing Available for 1-140 Immigrant Visas in the EB-1 (outstand researchers/professors), EB-2 (except NIW) and EB-3 categories.
- US Department of Labor has created a Backlog Elimination Center case status cite at: <http://workforsecsecurity.doleta.gov/foreign/times.asp>

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Employment Based Backlog Continues

All eyes are now on Congress for any hope of relief from the current visa backlog. Many are hopeful that the TALENT Bill ("Through the Advancement of Legal and Educated New Talent"), which seeks to update and expand the categories for which EB visas can be granted, as well as exempting EB-2 visas from the quota system, removing country-based quotas and creating a market-based EB cap where unused visas would go forward into the next fiscal year cap, will now be acted upon. It has been languishing in Congress for some time.

Another bill, the Secure America and Orderly Immigration Act (S. 1033) seeks to exempt the immediate relatives of U.S. citizens from the quotas, as well as increase the number of EB visas to 290,000 annually

(currently 140,000), and allow the use of unused visa numbers from prior years, based partially on the market-demand for foreign employees for the present year. This is particularly important, considering that many student and nonimmigrant employment visa holders who are currently working and want to adjust status find that the quota for that year has been met. As a result, they are put on a waiting list as long as seven years to get their green cards and placing them in limbo as far as their legal status in the United States is concerned.

The *Washington Times* has reported that the new Congress which takes over next month will pass comprehensive immigration reform. While this type of reform is certain to help

those who are illegally in the



US employers and employees eagerly await much needed action from the new Congress.

United States, it is yet to be seen what, if anything, it will do for those who are currently waiting in EB visa backlogs of several years. However, the new Congress and the President seem to be on the same page when it comes to the need to overhaul the immigration system.

New Citizenship Test Coming Soon

On November 30, 2006, USCIS released 144 questions and answers for the pilot test of the new naturalization exam. The USCIS Director, Emilio Gonzalez, stated that the goal of the new test "is to inspire immigrants to learn about the civic values of this nation" and the

test therefore focuses on the concepts of democracy and the rights and responsibilities of citizenship.

In early 2007 the test will be administered on a volunteer basis to 5,000 applicants in ten cities. Test cities include, Al-

bany, NY; Boston, MA; Charleston, SC; Denver, CO; El Paso, TX; Kansas City, MO; Miami, FL; San Antonio, TX; Tucson, AZ; and Yakima, WA. During this time volunteer applicants who take the pilot exam can take the current exam if they incorrectly answer a pilot question.

US Department of Labor Announces Glitch at Backlog Elimination Centers

On November 15, 2006, the Office of Foreign Labor Certification announced that, due to a technical issue, a number of cases were inadvertently identified as pending PERM re-file applications and were withdrawn from the backlog at the Backlog Elimination Centers (BEC).

The OFLC is working to rectify this situation immediately by identifying the affected cases and reinstating them back to the appropriate processing status in proper order.

The OFLC states that this effort will be completed by November 30, 2006.

We are told that affected employers and their attorneys will not be receiving an additional notice of reinstatement. Rather, employers and employees (or their attorneys) can verify that their case has been reinstated using the online US Department of Labor (DOL) website case status page starting December 1, 2006.

As verification will be avail-

able on the DOL case status page, attorney, employer and employees are being asked not to contact the backlog elimination centers regarding status.

We will monitor this situation and hopefully have a positive update next month. In the meantime, employers and employees who have cases pending at the BEC should not assume their case has been affected by this glitch. If a client is directly affected, that client will hear from us.



Indian Citizens no longer have to pay Visa Reciprocity Fees

On November 9, 2006, the State Department announced that it has eliminated the USD \$50.00 visa reciprocity issuance fee for all nonimmigrant visas for Indian citizens.

A nonimmigrant visa for Indian citizens coming to the United States will now only be USD \$100.00. Indian nonimmigrant visa applicants will still be required to pay an application fee of USD \$100

at a Housing Development Finance Corporation bank branch prior to scheduling a visa interview.

In addition to this welcome change, the State Department also advised that the U.S. Embassy and Consulates General have implemented procedures eliminating the visa appointment backlog for Indian Citizens who are traveling to the United States. As

a direct result of this change, the U.S. Embassy states that appointments are currently available for nonimmigrant visa applications at all United States consular offices in India.

To learn more about the US Embassy and Consulate Generals in India, go to: <http://newdelhi.usembassy.gov/>.

Indian Citizens will no longer have to pay the USD \$50.00 Visa Reciprocity fee for nonimmigrant visa issuance.

December Visa Bulletin Moves Slowly Ahead

As mentioned in the cover story, the employment-based visa backlog continues to frustrate employers and employees alike. The December 2006 Visa Bulletin did little to ease this frustration. The Department of State moved the EB visa numbers ahead slightly in all categories. While EB-1 and EB-2 thankfully remained current, EB-3 only

moved ahead to August 1, 2002 (an increase of only 30 days from November). Meanwhile, China, India, Mexico and the Philippines remained current in the EB-1 category but varied in EB-2 and EB-3. China EB-2 moved ahead one week to April 22, 2005 and China EB-3 moved ahead one month to August 1, 2002. India EB-2

moved ahead one week to January 8, 2003 and remained at April 22, 2001 for EB-3.

As always, the visa bulletins can be found online at http://travel.state.gov/visa/frvi/bulletin/bulletin_3086.html. You can also subscribe to automatic monthly emails and the bulletin will be emailed to you when it is available.



Visa Waiver Program May Expand

On November 28, 2006, President Bush stated that he would encourage Congress to modify and expand the Visa Waiver Program ("VWP") to include other friendly nations. The VWP currently allows nationals of 27 pre-approved countries to enter the United States for a period of up to 90 days without first obtaining a visa from a US Embassy or Consulate abroad. The 27 countries participating in the VWP include: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxem-

bourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

In addition to being a national of 1 of the 27 VWP countries, the person must also have a new e-passport which contains a contactless chip with the passport holder's biographic information and a biometric identifier, such as a digital photograph of the holder.

The reason for the current decision to change the VWP seems to be that the President is being pressured by the European Union because while US Citizens can visit all 25 European Union states without a visa, only 15 European Union states can enter the US without a visa. Some of these excluded countries, such as Poland and Estonia have asked to be included in the VWP because they have been allies of the United States in the war on terror.



Future Visa Waiver Program countries could include Poland, Hungary and Estonia.

Premium Processing Expands to Some EB-1 Petitions

US Citizenship & Immigration Services ("USCIS") announced on November 8, 2006 that EB-1 Aliens with Extraordinary Ability are now able to request Premium Processing as of November 13, 2006. Premium Processing allows a US employer to pay an additional USCIS fee of \$1,000.00 to receive adjudication of the application within 15 calendar days.

Currently, Premium Processing is available for E, H-1B, H-2B, H-3, L, O, P, Q, and R (temporarily suspended) visa applicants as well as NAFTA professionals. Moreover, earlier in the year USCIS instituted Premium Processing service for EB-1 outstanding professors and researchers, EB-2 members of professions with advanced degrees or exceptional ability not seeking a national interest

waiver, EB-3 professionals, EB-3 skilled workers and EB-3 workers other than skilled workers and professionals.

The Premium Processing program has shown itself to be a valuable tool in order to receive timely adjudication of applications which can remove some of the stress of employees and employers who are eagerly awaiting a decision.

"EB-1 Aliens with Extraordinary Ability are now able to request Premium Processing"

H-1B Blackout Continues to Frustrate US Businesses

US businesses continue to suffer through the longest H-1B visa blackout in years. Fiscal Year 2007 ("FY 2007") commenced on October 1, 2006. The cap for H-1B visas for FY 2007 was met on May 26, 2006, just six weeks after the filing period opened on April 1, 2006.

The result of this blackout

means that US businesses will be without access to new H-1B workers for approximately 16 months. While US businesses can continue to hire employees who currently have H-1B status, they cannot hire foreign nationals who have never held H-1B status until October 1, 2007.

In light of the above, employers should stand ready in 2007 to

immediately file H-1B petitions on April 1, 2007. Absent any additional cap numbers authorized by Congress, we can expect that the H-1B numbers for FY 2008 will also expire quickly and that a blackout will return for FY 2008 as quickly as it did in FY 2007. We will follow up on this topic in the coming months with any news.



US businesses continue to be denied access to the best and brightest by the H-1B cap.



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Links of interest:

www.uscis.gov
www.state.gov
<http://www.foreignlaborcert.doleta.gov/>
<http://pds.pbis.doleta.gov/>
<http://usembassy.state.gov/>
<http://www.sss.gov/>

Thank you for your referrals!

<http://maiona.lawoffice.com>

Matthew J. Maiona practices immigration law at Maiona & Maiona, P.C. in Boston, where he is a partner and head of the immigration law department. Attorney Maiona represents clients nation-wide ranging from hospitals, information technology companies, the hotel/hospitality industry, construction, architectural firms, retail, engineering and insurance companies to individuals seeking visas to work and live in the United States. Attorney Maiona represents both employers and employees before the United States Citizenship & Immigration Services, United States Department of Labor, The Department of Homeland Security, The Department of State, U.S. Embassies and state labor agencies.

Attorney Maiona has been the keynote speaker at seminars for the Employment Management Association of New England and Sterling Education Services, as well as private recruiting firms on the topic of business immigration law. Attorney Maiona is a contributing author to the Massachusetts Continuing Legal Education's two volume treatise: *Immigration Practice Manual*. Attorney Maiona received his B.A. cum laude from Boston College and his J.D. from Suffolk University Law School. Attorney Maiona is a member of the New England chapter of the American Immigration Lawyers Association.

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Department of Homeland Security Proposes New Regulations

On November 27, 2006 the Department of Homeland Security (DHS) released new regulations regarding "no-match" letters from the Social Security Administration ("SSA"). In the past the SSA would issue "no-match" letters to employers when the information received by the employer did not match the SSA database. For example, the employer would submit to the SSA a social security number and name given by an employee to the employer. If the name or number did not match the records of SSA, a "no-match" letter would go out to the employer and employee.

The new regulations, which are subject to a 60 day public com-

ment period, would instruct employers on how they are to deal with the issuance of "no-match" letters. Therefore, the new regulations are to be guidelines for employers to follow. DHS has stated that the purpose of the proposed regulations is to help businesses employ only legal workers. However, DHS Secretary Chertoff also stated that they can be used to "prosecute employers who are blatantly abusing our immigration system."

Naturally, employers should be fearful of this regulation. Should it pass into law, they may find themselves in situation where they have to

decide on asking questions which would assist in clearing up a "no-match" problem but also at the same time create a potential discrimination claim by a non-US worker. We will follow-up on this after the 60 day comment period passes.



Proposed DHS "no-match" regulations could spell trouble for employers who do not want to run afoul of anti-discrimination laws.