

IMMIGRATION LAW UPDATE

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MAIONA & MAIONA, P.C.
**IMMIGRATION ATTORNEYS REPRESENTING
EMPLOYERS, EMPLOYEES AND FAMILIES
AROUND THE WORLD**

FY 2009 H-1B SEASON JUST AROUND THE CORNER

Special points of interest:

- *Happy New Year to all of our clients!*
- *Department of State raises nonimmigrant visa fees*
- *FY 2008 H-1B filing date fast approaching*
- *India 2nd Preference retrogresses to "unavailable"*

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As April 1, 2008 rapidly approaches, it is time to think of the H-1B visa filing period again. Each year according to visa numbers established by Congress, college educated specialized workers begin to line up for a chance to obtain an H-1B visa. Many of us remember a time when an H-1B visa was a certainty. However, last year has shown us that the H-1B visa program is now a lottery program. Last year US Citizenship & Immigration Services (USCIS) received approximately 150,000 applications for 65,000 available standard H-1B visas. Applications which were not received by the second day of filing, April 3, 2007 (because April 1 was a Sunday) were ultimately rejected and returned to the appli-

cant. As for the applications which were received, they were subject to a random lottery with the unselected applications returned.

In addition to the random lottery there were anecdotal stories of UPS and Fed Ex trucks being turned away and told to return to the USCIS Service Center later when there was space at the loading dock. These stories carried some credence as in some cases UPS tracking information showed that the package was "attempted" but turned away only to return later in the day and be accepted.

So the question that is common this time of year is: will I get an H-1B visa? Companies wish to



The hopes of H-1B applicants are riding with UPS and Fed Ex delivery trucks.

sponsor skilled employees and the employees themselves are all asking this question. No one can guarantee that the applicant will receive a standard H-1B visa but there are some things that can be done to try and put the odds in the applicant's favor. First and (continued on page three)

UNAVAILABILITY RETURNS TO THE VISA BULLETIN

The February visa bulletin is showing the hangover from the July 2007 mass filing of immigrant visas and adjustment of status applications when most employment-based categories went current causing an exhaustion of available visa numbers. While this move forward was a

welcome development for the applicants, because not only did it bring employment authorization cards and advance parole documents, but also porting possibilities to new "same or similar" employment, it also has resulted in a long green card queue. It is impossible to say

when the July 2007 EB-2 or EB-3 class might receive their legal permanent residency. This is not good news for the beneficiaries, however, the porting possibilities give them more options than they would have had if not for the July 2007 bulletin.

NEWS FROM US CONSULAR POSTS

The US Department of State (DOS) announced that as of January 1, 2008 nonimmigrant visa application fees will increase from \$100.00 (USD) to \$131.00 (USD) and that immigrant visa fees will increase from \$335.00 (USD) to \$355.00 (USD). This increase applies to all United States consulates and embassies around the world.

DOS has stated that the cost increase is necessary to reduce

the ever increasing cost of background and security checks. Specifically, DOS has stated that the increase will assist them in recouping costs associated with obtaining Federal Bureau of Inspection (FBI) fingerprint clearances as well as offsetting other systems at DOS.

The fee increase announced by DOS was somewhat unexpected. DOS has stated that it is necessary to increase the fees

because the FBI has begun charging DOS \$20.00 (USD) per fingerprint clearance request. This cost could not apparently be absorbed by DOS under the current fee structure and therefore it is being passed on to the user.

Other fees such as reciprocity fees for certain foreign nationals will remain the same for now and are not affected by this increase.



Nonimmigrant visa fees are rising to \$131 (USD) and immigrant visa fees to \$355 (USD) as of January 1, 2008.

NOTES OF INTEREST

Here are some items that came in over the past 30 days...

- The Department of State has issued a final rule that effective February 1, 2008, all travelers entering the US, including US citizens, must present a valid passport or approved document that establishes citizenship & identity.
- US citizens may apply for the new "US Passport Card" as of February 1, 2008 for entry to the US at land borders and sea ports when returning from Canada, Mexico, the Caribbean and Bermuda. It cannot be used for air travel.
- The United States and Vietnam signed an agreement authorizing the repatriation of Vietnamese nationals who have been ordered removed from the USA.
- DHS is now collecting 10 fingerprints from international visitors at Logan in Boston, joining Dulles and Atlanta.

"Effective February 1, 2008, all travelers entering the US, including US citizens, must present a valid passport...."

FEBRUARY 2008: BAD NEWS FOR EB-2 INDIA

The February 2008 Visa Bulletin brought more bad news.

DOS left the visa numbers the same in some categories, EB-1 and EB-2 remained "current." EB-3 is at November 1, 2002. China, India and Mexico EB-1 remained at "current." China EB-2 remained at January 1, 2003 and China EB-3 is at November 15, 2001. India EB-2

retrogressed to unavailable and India EB-3 is at May 8, 2001. Mexico EB-2 remained "current" and Mexico EB-3 remained at April 22, 2001.

With Family-Sponsored the news was less than good with slow progression. The entire world, as well as China and India had little or no progress: F-1 is February 8, 2002; F-2A is

March 15, 2003; F-2B is January 1, 1999; and F-3 May 8, 2000. F-4 varied with 1996 & 1997 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: www.state.gov.



Unavailability comes to the EB-2 India category.

NEWS FROM US CUSTOMS AND BORDER PROTECTION

US Customs and Border Protection (CBP) is reminding travelers that it is their responsibility to register their departure correctly upon exiting the United States. If a traveler fails to turn in their I-94 card prior to departure from the US, the traveler must notify CBP. CBP states that the traveler can record their departure from the US even after exiting the US with the I-94 departure card, and thereby avoiding future admission problems, by submit-

ting to CBP the original I-94 (white) or I-94W (green) by mail to: ACS—CBP SBU, 1084 South Laurel Road, London, KY 40744.

In addition to the I-94 card the traveler should include evidence and or documentation that proves they actually left the United States as required. Such evidence may include their original boarding passes used to depart the US; photocopies of entry or departure stamps in

their passport including entry to another country after they departed the United States; and/or dated pay slips, credit card receipts or bank records in their country showing dates after their departure. They should also write a short statement telling CBP what happened. Lastly, they should keep copies of everything sent to CBP and take it with them on their next trip to the US.



It is the traveler's responsibility to properly file the I-94 or I-94W with US Customs and

MORE NOTES OF INTEREST

Here are some more items that came in over the past 30 days...

- The US District Court in Ohio ruled that the I-130 Immigrant Visa petition survives the death of the petitioning spouse or family member. This ruling is contrary to the current USCIS position outside of

the 9th Circuit.

- DHS has issued a final rule implementing the REAL ID act requirements for state issued driver's licenses.
- The DC Court of Appeals has upheld the right of undocumented immigrants

to vote in union elections.

- CNN reported that the US Conference of Mayors has called on Congress to not only beef up boarder security and turn over more federal funds but also draft a path to residency and citizenship for illegal aliens currently in the United

"The US District Court in Ohio ruled that the I-130 Immigrant Visa petition survives the death of the petitioning spouse or family member."

FY 2009 H-1B SEASON JUST AROUND THE CORNER

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foremost is prepare the H-1B application as early as possible in February or March so that it is ready to be sent to the USCIS Service Center for delivery on April 1, 2008. Second, is to be thorough in the review and preparation of the application; make certain all the supporting document is attached, all the

forms are signed and all the filing fees are attached: a rejection for improper filing cannot be rectified. Third, spend the money to have the application delivered by next day mail and if possible, file under Premium Processing.

Finally, do not forget that applicants who possess an advanced US degree (US-earned masters

or doctorate degrees) have a separate quota of 20,000 additional H-1B visas. While these H-1B visas will quickly disappear as well, they may last longer than the expected 48 hours or less that the standard H-1B visas are expected to last. Good luck!



Barring an increase from Congress, 65000 standard H-1B visas will be available on April 1, 2008.

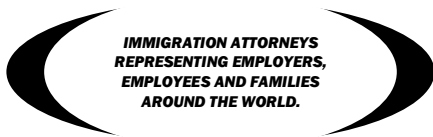


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BALANCING LIBERTY AND SECURITY

As the REAL ID Act of 2005 brings uniform changes to state driver's licenses and identification cards in the hopes of making them more secure, many Americans are asking at what point enough will be enough. Since 9-11 when the United States was attacked and thousands of innocent civilians were killed, the federal government has undergone a dramatic transformation. Dozens of new agencies have been formed, policies have changed, laws enacted and regulations formulated to combat terrorism and protect the homeland from attack. The unfortunate side-effect of this security build-up is

the feeling of freedoms lost. Many Americans are used to the pre-9-11 way of life where little was asked or required of citizens by the federal government. There was no concern that someone might be listening to your phone calls, reading your email or the like. Compared to today, security was non-existent. Now with REAL ID and the new uniform license and accompanying database, a national identification card has been created. A national ID card was something that before 9-11 was considered a non-starter in Congress because it was a vehicle for the federal government to be able to track

citizens.

However, in light of all these changes people continue to come to America to be free. While the federal government continues to increase the number of removals from the US and hungrily captures data on citizens and residents alike, people risk everything daily to come to the US for freedom. The New York Times reported that the US Venezuelan-born population has doubled to over 177,000 since Hugo Chavez took power. The report stated that many did not want to leave their homes but they wanted to be free so they came to the US.



America, despite the increased security, still draws those who want freedom.