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IMMIGRATION LAW UPDATE

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Special points of interest:

- July 2007 Visa Bulletin Published—EB-1, 2 & 3 move to current: www.state.gov
- CIR fails to pass cloture vote and is pulled from the Senate floor temporarily
- Department of Labor unveils additional rule changes to PERM process
- The new USCIS filing fees begin on July 30, 2007

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Comprehensive Immigration Reform Dies in Senate...and Then Rises

The Senate failed twice to pass a cloture vote on June 7th on the Comprehensive Immigration Reform ("CIR") bill that was on the floor. As a result, Senate Majority Leader Harry Reid (D-NV) pulled the bill from the floor ending all debate on the CIR bill. This seemed like the death knell for CIR. However, Senator Edward Kennedy (D-MA) indicated that the bill would return soon. Senator Reid urged the White House to work with members of the Republican party to obtain the necessary votes prior to any reintroduction of CIR on the Senate floor.

On June 18, 2007, Senator Kennedy introduced a new CIR bill which is said to be the result of a compromise agreement reached by Senators after the first round of CIR debate in May. The CIR bill even has changed names to the Secure Borders, Economic Opportunity

and Immigration Reform Act of 2007 ("new bill"). The new bill not only changes its name to promote border security, it also authorizes \$4.4 billion for the Department of Homeland Security ("DHS") to perform the enforcement requirements contained in the bill.

The new bill seems to have a major trigger component which could hold up the reform for years: the new guest worker bill and the adjustment of undocumented immigrants proposed under CIR and the new bill will not be put into effect until DHS is able to meet seven requirements. Those requirements in brief are: (1) 100% control of the Mexico-US border; (2) 20,000 full-time border patrol agents on duty; (3) utilization of unmanned aerial support along the border; (4) detention of all aliens along Mexico-US border; (5) creating methods to stop unauthorized workers from



Comprehensive Immigration Reform is back on the Senate floor with a new name and potentially unrealistic goals.

working in the US; (6) installing barriers along Mexico-US border; and (7) timely processing of background checks.

Employment-Based Visa Categories Become "Current" Unexpectedly

On June 14, 2007 the Department of State surprised everyone, including US Citizenship & Immigration Services ("USCIS"), and announced that most of the employment-based visa categories were moving to "current" status. This means that all priority dates are current and I-485 adjustment of status applications can be filed as of July 1st.

This news comes at an important time for applicants. On July 30, 2007 USCIS filing fees will increase dramatically. Therefore, this radical progression to current status also gives all qualified applicants the ability to file under the current fee structure. This should save applicants a significant amount of money as the fees are set to

raise dramatically. This move forward allows all EB-2 and EB-3 (not including "other workers" - positions requiring less than two years of experience and no college degree) workers, including Mexico, India, China and Philippines to file a green card application. Since it is unclear what will happen for August, it is best to plan on filing in July.

USCIS Filing Fees Set to Raise Dramatically

US Citizenship & Immigration Service (“USCIS”) has announced that filing fees will be raised as of July 30, 2007. USCIS has stated that the need for higher fees is because USCIS is funded only by filing fees (fee based agency) and cannot request appropriated funding from the US Government. While this statement is suspect, the reality is that fees are on the way up. The new filing fees are in some cases 50% - 100% higher than the current fees. For example, some of the common application forms in-

creased are as follows: I-131 Travel Document will increase from \$170.00 to \$305.00; I-140 Immigrant Visa will increase from \$195.00 to \$475.00; I-485 Adjustment of Status will increase from \$395.00 to \$1,010; I-765 Employment Authorization will increase from \$180.00 to \$340.00; and lastly the naturalization application will increase from \$400.00 to \$675.00.

USCIS believes that this new fee structure will allow them to cover the actual costs of adju-

dication.

In order for applicants to insure that they will not have to pay these new fees, any applicants who can file prior to July 30, 2007, should do so. However, the down side is that even if the applicant does file prior to July 30, 2007, should the applicant require extensions of documents, the applicant will have to pay the new higher fees. Therefore, the new filing fees will likely impact most applicants over time.



USCIS has announced that fees are going up by 100% in some cases for adjudication of applications.

Passport Requirement Temporarily Suspended by DOS

On January 23, 2007 the Western Hemisphere Travel Initiative (WHTI) mandated that all US Citizens traveling to Canada, Mexico, the Caribbean and Bermuda must have a US passport for entry into the United States upon return from travel abroad. Until this time, US citizens could re-enter the United States with a birth certificate and photo identification. On June 8, 2007, the Department of State (DOS) and the Department of Homeland Se-

curity (DHS) announced that US Citizens who have applied for but not yet received their US passports may still exit and re-enter the United States with photo identification and proof of a pending application for a passport with DOS.

This temporary suspension of WHTI is due to the long waiting times for passports as a result of the new regulation. DOS has called the number of applications for US passports as

“record-breaking” and it seems the delay is currently at 10-12 weeks for routine service and 2-3 weeks for expedited service.

Travelers should keep in mind this delay and obtain passports early. Those who are traveling in 14 days and do not have a passport can call 1-877-4US-APPT to make an appointment at the local regional passport office. The lines are open 24 hours a day.

“DOS has called the number of applications for US passports as ‘record-breaking’... .”

July 2007: EB-1, EB-2 & EB-3 All “Current”

The July 2007 Visa Bulletin provided the unimaginable as it continued the move forward that we saw in the last few months. The Department of State moved the EB-2 and EB-3 (except for other workers) visa numbers ahead to current. EB-1 and EB-2 continued to remain current as well. China, India, Mexico and the Philippines remained current in EB-1 and went current in EB-2 and EB-3.

This move was unexpected by everyone in the immigration arena. This move means that all applicants, regardless of country and classification, aside from EB-3 other workers (no college degree and less than two years experience) can now file an adjustment of status application with the US Citizenship & Immigration Service (USCIS). This is very good timing with the USCIS filing fees scheduled to increase on July 30, 2007.

On the Family-Sponsored side the news was not as cheerful. The entire world, as well as China and India had the same visa numbers with some progress: F-1 is July 1, 2001; F-2A is June 1, 2002; F-2B is February 8, 1998; and F-3 July 15, 1999. F-4 varied with 1996 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: www.state.gov.



The Visa Bulletin made another surprising gain by moving to current in all EB-1, EB-2 and EB-3 categories.

Notes of Interest

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

- From March 23 to June 5, 2007 US Citizenship & Immigration Services (USCIS) issued receipt notices listing the wrong number for the National Customer Service Center, the correct number is 1-800-375-5283.
- Immigration & Customs Enforcement (ICE) conducted a sweep of criminal aliens on Nantucket June 20th, netting 18 aliens.
- The 4th Circuit Court of Appeals ordered an alien, who entered the US as a nonimmigrant student on September 10, 2001, freed from indefinite military detention who had been held in a Navy military jail in South Carolina since June of 2003 as an enemy combatant and sleeper agent.
- On June 7, 2007, the Board of Immigration Appeals (BIA) issued two decisions addressing the availability of asylum in cases where Chinese citizens violated China's "one child" policy. Both cases were before the BIA on remand from the U.S. Court of Appeals for the Second Circuit, and in both cases, the BIA again denied asylum.
- America's Job Bank a popular PERM recruitment tool will change to America's Job Exchange .



The National Customer Service Center number for USCIS is 1-800-375-5283.

Adjustment of Status Evidence & Processing

With the advent of the EB-2 and EB-3 categories becoming current, many applicants are scrambling to prepare documentary evidence for their adjustment of status/residency applications. Most applicants will be preparing the same or similar evidence.

The evidence for an EB-2/EB-3 adjustment application tends to include passport photos (6); a medical exam from a USCIS approved civil surgeon (<https://>

egov.uscis.gov/crisgwi/go?ation=offices.type&OfficeLocation=office_type=CIV); a copy of the most recent personal federal tax return with W-2 **and** a certified transcript (<http://www.irs.gov/taxtopics/tc156.html?portlet=1> or call 1-800-829-1040); four recent pay stubs; copy of a birth certificate; copy of the info page of the passport; copy of all visas and most recent I-94 card; and if ever arrested, married or divorced copies of all court

dispositions, marriage certificate and divorce decree. This documentary evidence can vary but in general this is the necessary evidence along with a completed information sheet from our office. The applicant should complete the info sheet in detail to avoid error and delay in processing the forms. As time is of the essence, it is important to follow the instructions completely to avoid delay.

“As time is of the essence, it is important to follow the instructions completely to avoid delay.”

Selective Service Registration & Naturalization

In recent months naturalization applications have been filed with great frequency. Unfortunately for some applicants, those applications to become United States citizens cannot be approved because of the applicants failure to register for Selective Service System. Many applicants did not register for Selective Service because they were not aware of the requirement. The Selective Service is a federal agency whose mission is to serve the emergency man-

power needs of the Military by drafting untrained manpower if directed by Congress and the President.

Males living in the United States who are between the ages of 18 and 25 must register for Selective Service at www.sss.gov or at any US Post Office. This also includes certain aliens and illegal aliens. For example, permanent resident aliens (green card holders), illegal aliens, asylees, refugees,

parolees and seasonal agricultural workers who are living in the United States between the ages of 18 and 25 must register for Selective Service before they turn 26 or else they may be ineligible to apply for naturalization if they knowingly and willfully failed to register.

However, once the applicant reaches the age of 31, this deficiency is cured because 5 years have passed since the date of required registration.



Males between the ages of 18 and 25 who are living in the US must register for Selective Service in order to naturalize.

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Links of Interest:

www.state.gov
www.uscis.gov
www.foreignlaborcert.doleta.gov
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<http://pds.pbils.doleta.gov>

<http://.maiona.lawoffice.com>


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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 American Immigration Lawyers Association and on the Executive Board for the New England Chapter of the American Immigration Lawyers Association. Attorney Maiona can be reached at 617-695-2220 x103 or by email at mjm2@gis.net.

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American Immigration Lawyers Association Annual Meeting

Having just returned from the American Immigration Lawyers Association annual meeting, there is some news to discuss. The Department of Labor ("DOL") stated that they do intend on eliminating their labor certification backlog by September 2007. This has been their goal since the establishment of the Backlog Elimination Centers and it seems this goal will be met. DOL also discussed their fraud prevention initiative which includes a new regulation requiring that the employee may not pay the attorney fees when the attorney represents both the company and the employee. The DOL rule does not prevent the employee from paying the attorney fees for the I-140 and I-485 applications; only the PERM labor certification. This rule goes into effect on July 16,



The annual AILA conference included discussions with the heads of the Department of Labor, USCIS, DHS and others

2007. It will likely be subject to federal litigation shortly which could delay implementation.

US Citizenship & Immigration Service ("USCIS") announced that the new increased fees will help them adjudicate applications closer to cost. However, it was also mentioned that the new "current" status of the EB-2 and EB-3 applications was a bit unexpected and that a flood of applications could create a dramatic backlog in adjudication of adjustment of status applications. The warning here should be that just because the applicant filed the adjustment application in July, do not expect that this will translate into an immediate green card approval in the mail. Moreover, if there is a visa retrogression, those who filed adjustment of status applications in July could be waiting several months or more for actual adjudication of their applications.