

OBAMA MOVES TO IMPLEMENT CHANGES BY POLICY SHIFT

On August 18th President Obama ordered the Department of Homeland Security (DHS) to review approximately 300,000 files of aliens currently in deportation proceedings before the Immigration Court. In response, DHS Secretary Janet Napolitano announced a new process for implementation of the June 17, 2011, prosecutorial discretion memorandum. The letter included a background two-pager.

From the background two-pager – “the new inter-agency process is designed to ensure that resources are focused on the Administration’s highest enforcement priorities. As part of this process, an interagency team of DHS

and Department of Justice (DOJ) officers and attorneys, including representatives from throughout DHS and from the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation at DOJ, will identify low-priority removal cases that should be considered for an exercise of discretion. This review will be conducted on a case-by-case basis and will consider cases that are at the various stages of enforcement proceedings, including charging, hearing, and after a final order of removal. The inter-agency working group will also issue guidance to prevent low priority cases from entering the system on a case-by-case basis.

Resources that are saved as a result of this process will be used to accelerate the removal of high priority cases.”

While this news will be welcome to those facing removal, it is yet to be seen if the administration will show similar favor to the patient and long-waiting immigrants in employment-based and family queues that have been backlogged for years.



CHANGES AT MAIONA & MAIONA

As many of you know, on June 1st the Immigration Department at Maiona & Maiona, PC became Maiona Ward Immigration Law and relocated to 31 Milk Street in Boston, MA in the heart of the financial

district. Matthew Maiona remains as managing partner of the new office and former associate Sara Ward has become a partner. Maiona Ward will be implementing a number of positive changes to im-

prove our service to you including client login capabilities, interactive web site and additional professional staffing. We hope you enjoy these positive changes and that they enhance our service to our

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SPECIAL POINTS OF INTEREST:

- H-1B regular cap count at approximately 32,200 and 16,700 H-1B petitions for aliens with advanced degrees.
- According to the New York Times, 1,600 people have been arrested and deported over the past several months who were leaving the United States when encountered.

News from the US Department of Labor

Here are some recent updates regarding the US Department of Labor (DOL):

- The PERM processing times can be found under the tab “Performance Information” on the iCERT portal at <http://icert.doleta.gov/>. As of August 22, 2011, DOL is working on applications filed prior to the following dates: non-audited - May 2011; audited - December 2010; and appealed - January 2009.
- The Board of Alien Labor Certification Appeals (BALCA) held that where the employer failed to check the box in Section J-23 indicating

that the beneficiary was employed with the employer, but the answer was provided in Sections K-6 and L-7, the error was harmless. (*Matter of Nathan Littauer Hospital*, 8/16/11).

- BALCA found that where a page of the employee referral program was included in the documents provided to Employer’s counsel and was clearly intended to be included in the audit response, denial of certification was not warranted. (*Matter of Core Solutions*, 8/22/11).
- DOL announced that iCERT will be down on Monday, September 19,

2011, between 7am and 11am EDT for scheduled maintenance. All FLC systems will also be unavailable on September 29, 2011, between 4pm and 8pm EDT. These systems are responsible for PERM and prevailing wage determinations.

- DOL has updated the existing guidance on the use of an electronic or web-based national professional journal instead of a print journal when conducting recruitment for college and university teachers as specified under 20 CFR 656.18. An electronic journal is now acceptable.

Notes of Interest

Some recent developments of note:

- DOS informed U.S. Citizenship and Immigration Services (USCIS) that all employment-based immigrant visas have been distributed for fiscal year (FY) 2011. Every FY (Oct. 1st – Sept. 30th), at least 140,000 employment-based immigrant visas are

made available to applicants who seek to immigrate based on an offer of employment to the principal applicant. USCIS will continue accepting adjustment of status applications based on the September visa bulletin through the

“...ALL EMPLOYMENT-BASED IMMIGRANT VISAS HAVE BEEN DISTRIBUTED FOR FISCAL YEAR (FY) 2011.”

entire month of September.

- Revised version of H.R. 2885 Legal Workforce Act, a mandatory employment verification legislation from Rep. Smith (R-TX), was introduced on September 12, 2011.

US Customs & Border Protection Update

Here is what’s going on at Customs & Border Protection (CBP):

- Some of the vehicle lanes at the San Ysidro, CA port of entry have re-opened as of midnight on September 15th after a scaffolding collapse temporarily closed this busy port of entry. Thirteen lanes are now open

for traffic. CBP reminds travelers they can also use the near by Otay Mesa or Tecate ports of entry as well.

- Reports continue to flow in regarding non-immigrant visa (NIV)



Entry to the USA requires preparation.

holders having difficulty entering the United States. NIV travellers should be prepared to inform the CBP Inspector as to home address and job location, job title, job duties, salary and length of time working with the company. In short, knowing basic info is helpful.

Department of State/Consulate Update



SANA'A The U.S. Embassy in Yemen began rescheduling IV interviews for immediate relatives of US citizens. Non-immigrant visa processing continues to be suspended until further notice. The Department of State (DOS) hopes to resume normal processes soon.

MUMBAI The U.S. Consulate in Mum-

bai resumed issuing H and L interviews on August 26, 2011, with the first appointments available on September 6, 2011. The consulate stopped issuing H and L interview appointments in March 2011 due to aging infrastructure

TRIPOLI The U.S. Embassy in Tripoli has suspended all operations until further notice. American citizens and foreign nationals seeking visa and consular services should address all requests to the U.S. Embassy in Cairo or Tunis.

WASHINGTON, DC DOS has issued instructions for the 2013 Diversity Immigrant Visa Program (DV-2013). En-

tries for the DV-2013 program must be submitted electronically between 10/4/11 and 11/5/11.

WASHINGTON, DC DOS has issued new Travel Warnings (long term conditions) in September for Syria, Yemen and Iraq and Travel Alerts (short-term conditions) for the month of September regarding the 9-11 Anniversary. These travel warnings and alerts generally advise against non-essential travel to the listed countries due to conflicts, terrorist activities, public disturbances or natural disasters. All travel warnings can be found at www.state.gov/travel.

October Visa Bulletin News

The October 2011 Visa Bulletin has been released by the Department of State (DOS). Employment-Based (EB): Worldwide EB-1 and EB-2 remained “current” and EB-3 is at December 5, 2005. China, India and Mexico EB-1 remained “current.” China EB-2 is at July 15, 2007 and China EB-3 is at August 8, 2004. India EB-2 is at July 15,

2007 and India EB-3 is at July 15, 2002. Mexico EB-2 remained “current” and Mexico EB-3 is at December 8, 2005. Family-Sponsored (F): The entire world, as well as China and India had little progress: F-1 is June 15, 2004; F-2A is Janu-



ary 8, 2009; F-2B is July 15, 2003; and F-3 is September 8, 2001. F-4 varied with 1996 and 2000 dates. Mexico and the Philippines lagged well behind the above dates.

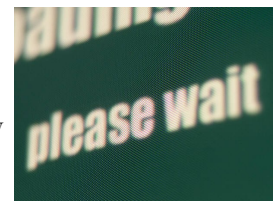
The visa bulletin can be located online: www.travel.state.gov.

Prevailing Wage Determinations Held Up at DOL

The US Department of Labor’s (DOL) National Prevailing Wage Center (NPWC) currently is not issuing Prevailing Wage Determinations (PWDs), nor are they reviewing requests for reconsideration or appeals to the Center Director. These processes are on hold as the NPWC is required to reissue approximately 4,000 H-2B wage determinations,

to reflect the new wage rates that will apply for employment on or after September 30, 2011. DOL has not indicated when they will begin issuing PWDs again and have left many companies and employees to wait and see when they can commence their recruitment processes. The delay is the result of a June 15, 2011 court order in *CATA v. Solis*, where the

district court ordered DOL to promulgate new H-2B prevailing wage regulations. In order to comply with the court, DOL stopped issuing PWDs for all others.



DOL’s inaction is hurting the economy.

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Matthew J. Maiona has practiced immigration law for over 15 years and is managing partner of Maiona Ward Immigration Law in Boston, MA. Attorney Maiona represents clients nation-wide ranging from hospitals, environmental, information technology, the hotel/hospitality industry, construction, architectural firms, retail, engineering and insurance companies to individuals seeking to work and live in the United States. Attorney Maiona represents both employers and employees before the US Citizenship & Immigration Services, Department of Labor, Department of Homeland Security, Department of State, U.S. Embassies, Consulates, state labor agencies and federal courts. He has appeared on television and been the keynote speaker at seminars for the American Immigration Lawyers Association of New England locally and nationally (AILA), the Employment Management Association of New England and Sterling Education Services, as well as private recruiting firms on the topic of business immigration law and removal defense. Attorney Maiona is a contributing author to the Massachusetts Continuing Legal Education's two volume treatise: *Immigration Practice Manual*. He received his B.A. cum laude from Boston College and his J.D. from Suffolk University Law School. Attorney Maiona has been peer review rated for legal ability and ethical standards by Martindale-Hubbell since 2007 and has been recognized as a Rising Star in the field of Immigration Law by the "Super Lawyer" publication of *Boston Magazine* twice. Attorney Maiona is a member of AILA and is the Immediate Past Chapter Chair of the Executive Board for the New England Chapter of AILA.

Sara K. Ward has practiced immigration law for over 8 years and is a partner at Maiona Ward Immigration Law in Boston, MA. Attorney Ward represents families and individuals worldwide with non-immigrant and immigrant visa processing at US Consulates, as well as legal permanent residency at USCIS offices across the United States. She has helped families in obtaining immigrant visas for their family members at Consular posts including but not limited to Amman, Bogotá, Bridgetown, Kingston, Guatemala City, Islamabad, San Salvador, Santiago, Lima, Montreal, Santo Domingo, Rio de Janeiro, Addis Ababa, Shanghai, Seoul, Manila, Istanbul, Tirana and Katmandu. Attorney Ward is fluent in Spanish. Attorney Ward was recognized as a Rising Star in the field of Immigration Law by the "Super Lawyer" publication of *Boston Magazine*. Attorney Ward received her B.A. from Assumption College and her J.D. from Suffolk University Law School. Attorney Ward is a member of the New England Chapter of AILA and is the AILA NE liaison to local Community Based Organizations.

TRENDS IN ICE NOTICES OF INSPECTION

The most recent batch of Immigration & Customs Enforcement (ICE) Notices of Inspection (NOI) came out on June 15, 2011. One thousand companies received NOIs from this mailing. Here is what we know about this round of NOIs. Some of the NOIs have requested the I-9s of current and terminated employees while some have only requested current employees with a note that terminated employees could be requested if the inspector wishes to see them before the end of the audit. Moreover some of the NOIs actually requested I-9s the employer was not required to retain under the law: IE employers must keep I-9s for one year from the date of termination, or three years from the date of hire,

whichever is later. Some of the NOIs requested I-9s for terminated employees more than one year post-termination or more than three years from the date of

hire. It is reported that most of the NOIs issued gave the employer three business days to open the I-9 files for inspection. The exceptions were 4-28 days in a few locations. The most common requested documents from this batch of NOIs were: copies of "no match" Social Security letters; list of employees with Social Security Numbers, dates of birth and hire dates; quarterly tax statements and business information like taxpayer identification; and whether or not the company was enrolled with E-Verify or the Social Security Verification System. Lesser requested documents included annual reports; electronic storage or I-9 system manual; and info about staffing agencies.



Is your company ready for an ICE I-9 audit?