



Business Immigration Weekly

September 20, 2010

DOS Releases October 2010 Visa Bulletin – Little Movement in Most Employment-Based Immigrant Visa Categories at the Beginning of the Government’s Next Fiscal Year

The U.S. Department of State (DOS) recently released its October 2010 Visa Bulletin. Although the past few Visa Bulletins have significantly advanced most of the employment-based immigrant visa categories, the October 2010 Visa Bulletin does not continue with the significant advancement due to the fact that the government’s new fiscal year commences on October 1, 2010. It is assumed that most of the employment-based immigrant visa categories will not rapidly advance during the first half of the government’s new fiscal year. However, the DOS did not retrogress any of the employment-based immigrant visa categories.

The following is a comparison of the movement of the employment based immigrant visa categories since the beginning of the current retrogression in October 2005:

| | Oct 2005 | Dec 2007 | Jun 2008 | July 2010 | Aug 2010 | Sep 2010 | Oct 2010 |
|--------------------|----------|----------|----------|-----------|----------|----------|----------|
| EB-3 World | 03/01/01 | 09/01/02 | 03/01/06 | 08/15/03 | 06/01/04 | 12/15/04 | 01/08/05 |
| EB-2 China | 05/01/00 | 01/01/03 | 04/01/04 | 11/22/05 | 03/01/06 | 05/08/06 | 05/22/06 |
| EB-3 China | 05/01/00 | 10/15/01 | 03/22/03 | 08/15/03 | 09/22/03 | 10/22/03 | 11/08/03 |
| EB-2 India | 11/01/99 | 01/01/02 | 04/01/04 | 10/01/05 | 03/01/06 | 05/08/06 | 05/08/06 |
| EB-3 India | 01/01/98 | 05/01/01 | 11/01/01 | 11/22/01 | 01/01/02 | 01/01/02 | 01/15/02 |
| EB-3 Other Workers | 10/01/00 | 10/01/01 | 01/01/03 | 06/01/01 | 05/15/02 | 03/22/03 | 03/22/03 |

Additional information about the employment-based immigrant visa retrogression will be contained in our firm’s future Immigration Updates when it becomes available.

Immigration and Customs Enforcement Commences Third Round of Form I-9 Audits

Immigration and Customs Enforcement (ICE) recently commenced a new round of Form I-9 Employment Eligibility Verification audits of more than 500 employers across the United States. This is the Obama Administration’s third round of significant Form I-9 audits since January 2009. Although ICE publicized the other two rounds of audits which targeted between 700 and 1,000 employers in each audit, the current round of audits of approximately 500 employers was not as publicized. However, after employers contacted our firm and other law firms regarding the audits, ICE was contacted to confirm whether it was commencing a new round of audits. ICE did confirm the new round of audits of approximately 500 employers. The audits appear



to be nationwide. The audits may be in response to criticism that the Obama Administration has been receiving regarding its immigration policies. Because it is assumed that ICE will continue to aggressively audit employers across the United States in the Form I-9 program, our firm is strongly encouraging our clients and other employers to proactively audit their Form I-9 programs at this time because ICE only gives three business days after issuing a Notice of Inspection for employers to provide extensive documentation about its Form I-9 program.

Additional information about current and future Form I-9 audits by ICE will be contained in our firm's future Immigration Updates when it becomes available.

ICE Provides Special Relief for Certain F-1 Haitian Students

ICE recently announced that it will be providing special relief for certain F-1 Haitian students who have suffered severe economic hardship as a result of the January 12, 2010 earthquake in Haiti. This relief applies only to students who are lawfully present in the United States in F-1 status on January 12, 2010 and who were enrolled in a college or university participating in the ICE's Student and Exchange Visitor Program (SEVP).

The special relief provides suspension of certain regulatory requirements for Haitian F-1 students to obtain employment authorization, work more than 20 hours a week during the school term and, if necessary, reduce their course load while continuing to maintain their F-1 status. Eligible F-1 students granted employment authorization through the special relief will be deemed to be engaged in the full course of study if they meet the minimum course load requirements, which for undergraduate students is a minimum of six semester/quarter hours of instruction per academic year and for graduate students is a minimum of three semester/quarter hours of instruction per academic year. Additionally, eligible Haitian F-1 students granted on-campus or off-campus employment authorization pursuant to the special relief may count up to the equivalent of one class (or three credits) per term of online or distance education towards satisfying the minimum course load requirement.

Eligible Haitian F-1 students should contact their school's international office if they would like to take advantage of this special relief. The special relief will remain in effect only until July 22, 2011.

H-1B Quota for Fiscal Year 2011 Remains Available

The U.S. Citizenship and Immigration Services (USCIS) recently provided an update about the fiscal year 2011 (October 1, 2010 through September 30, 2011) H-1B Quota. The regular H-1B quota for fiscal year 2011 is 65,000. An additional 20,000 numbers are available in fiscal year 2011 to individuals who have earned U.S. Master's or higher degrees. As of September 10, 2010, the USCIS indicated that it has received approximately 37,400 petitions filed under the regular H-1B quota. It has also received approximately 13,700 petitions filed under the U.S. Master's or higher degree exemption. The USCIS appears to be receiving approximately 1,000 petitions each week filed against the regular H-1B quota and approximately 300 petitions each week filed against the U.S. Master's or higher degree exemption. The USCIS will continue to accept petitions filed towards the H-1B regular cap and U.S. Master's or higher degree exemption until the quota is met. During fiscal year 2010, the U.S. Master's degree or higher degree exemption was met first in September 2009. However, the regular H-1B quota was not exhausted for fiscal year 2010 until December 23, 2009.

Additional information about the status of the fiscal year 2011 H-1B quota will be contained in our firm's future Immigration Updates when it becomes available.



Effects of Invalid Puerto Rico Birth Certificates on the Form I-9 Process

On July 1, 2010, Puerto Rico began issuing new, more secure certified birth certificates to U.S. citizens born in Puerto Rico. The U.S. Citizenship and Immigration Services (USCIS) has indicated that after September 30, 2010 all certified copies of birth certificates issued prior to July 1, 2010 will become invalid. The USCIS confirmed that this change does not affect the U.S. citizenship status of individuals born in Puerto Rico. However, it does affect the validity of the Puerto Rican birth certificates.

As part of the Form I-9 Employment Eligibility Verification process, employers are required to verify the employment eligibility of their workers within three days of hire. The USCIS confirmed that all certified copies of Puerto Rican birth certificates are acceptable for Form I-9 purposes through September 30, 2010. However, beginning on October 1, 2010, employers may only accept Puerto Rican birth certificates dated on or after July 1, 2010 and that employers must look at the date on the birth certificate to ensure that it is still valid. The USCIS warned that employers must not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rican birth certificate for Form I-9 purposes and whose employment eligibility was verified on Form I-9 prior to October 1, 2010 (unless the employer is required to re-verify employment eligibility as part of the E-Verify FAR requirements).

DOS Amends Reciprocity Schedule for China

The DOS recently amended its reciprocity schedule for China. Previously, Chinese nationals only received H-1B visas valid for three months and two entries. However, the now amended reciprocity schedule with China will allow for a 12-month multiple entry visa for H visa applicants. If a Chinese national is issued an H-1B visa valid for only three months and two entries the Chinese national should contact the U.S. Consulate through which it obtained the H-1B visa to receive a corrected visa pursuant to the new reciprocity schedule.

For more information about this or any other immigration law topic, please contact Bob White at 847.734.8811 or via email at rwhite@masudafunai.com. Weekly Immigration Updates are provided in the Immigration Group Section of our Firm's website at www.masudafunai.com.



About the Immigration Group

The Immigration Group of Masuda Funai provides immigration representations to publicly traded companies, privately held corporations, educational institutions, not-for-profit organizations and foreign nationals in business immigration matters. As one of the larger immigration groups in the United States, we annually file more than 2,500 petitions on behalf of approximately 275 different corporate employers from such diverse industries as automotive-related, computer consulting, machine tool manufacturing, electronics, construction and equipment, banking and financial, health care and high tech.

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About Masuda Funai

Masuda Funai is a full-service law firm representing international and domestic companies operating and investing in the United States. Our 45 attorneys located in Chicago, Schaumburg and Los Angeles counsel clients in every aspect of business, including establishing, acquiring, and financing operations; ownership, development and leasing of real estate; transfer of overseas employees to the U.S.; employment, labor, and benefits counseling and dispute resolution; intellectual property, copyright and trademark; business litigation; creditors' rights and business risk management; structuring the distribution and sale of products and services throughout the U.S.; and estate planning and administration.

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