

Business Immigration Weekly for January 30, 2013

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Fiscal Year 2014 H-1B Quota Opens in Approximately Two Months – Employers Should Now Be Preparing Their H-1B Quota Petitions

The fiscal year 2014 H-1B quota opens on April 1, 2013 for petitions with an H-1B employment start date of at least October 1, 2013. Similar to previous years, the H-1B quota for fiscal year 2014 will be limited to 65,000. An additional 20,000 numbers will be available for individuals who have earned a U.S. Master's or higher degree. Due to the improving economy and the fact that the quota has been met more quickly in the past few years, our firm is anticipating that this year's H-1B quota will be met during the initial filing period from April 1, 2013 to April 7, 2013. Additionally, if the U.S. Citizenship & Immigration Services (USCIS) receives petitions in excess of the available numbers, the USCIS may have to conduct a random selection process to determine which petitions will be accepted under the H-1B quota. The last time that the USCIS had to run a random selection process in the H-1B quota was in fiscal year 2009 when the USCIS received more than 165,000 petitions. If employers fail to file their H-1B quota petitions during the initial filing period of April 1, 2013 through April 7, 2013 and the H-1B quota is met during this initial filing period, the earliest date upon which employers will be able to file H-1B quota petitions will be April 1, 2014 for an H-1B employment start date of October 1, 2014. Because our firm is anticipating that the H-1B quota will be met during the initial filing period, we are encouraging employers to begin the H-1B process at this time so that the employers are ready to file their H-1B quota petitions when the quota opens on April 1, 2013.

USCIS Introduces New Immigrant Visa Processing Fee

The USCIS recently reminded foreign nationals that a new Immigrant Visa fee becomes effective on February 1, 2013. On or after February 1, 2013, applicants for Immigrant Visas at the U.S. Consulates abroad will be required to pay two Immigrant Visa fees, one to the U.S. Department of State (DOS) and one to the USCIS. The new USCIS fee will be \$165.00. Applicants for Immigrant Visas through the U.S. Consulates abroad will be required to pay the new USCIS fee through the USCIS website. The USCIS warned that if an applicant fails to pay this new USCIS fee, the applicant will not receive a Permanent Resident Card until the fee is paid. The USCIS stated that failure to pay the fee will not affect the applicant's lawful status when he/she enters the United States. The applicant will still have his/her passport stamped showing their lawful admission and permanent resident status when he/she enters the United States as an immigrant. However, the admission stamp is only valid for one year. The USCIS "strongly" advised that applicants pay the immigrant fee as soon as possible (preferably prior to completing the Immigrant Visa process through the U.S. Consulate abroad, to avoid any delays in receiving the Permanent Resident Card.

USCIS Reminds the Public of a New E-Verify Tool

The USCIS recently reminded the public that it has launched a new E-Verify Employers Search Tool which allows individuals to find employers currently enrolled in E-Verify. The new tool lets individuals filter, sort and export results found during a search. The information includes names of employer businesses, whether the employer is a federal contractor, and the city and state where the employer is located. The USCIS noted that the new tool will in particular benefit F-1 students in STEM programs who would like to apply for a 17-month Optional Practical Training (OPT) STEM extension because the students may only work for employers enrolled in the E-Verify system. This tool will assist the students in finding and confirming whether a current or potential employer is enrolled in the E-Verify system and thus if the student is eligible for the 17-month OPT STEM extension while working for this employer.

U.S. Consulates in Mexico Expand Business Facilitation Program

The U.S. Embassy in Mexico City recently announced the expansion of its Business Facilitation Program (BFP) that allows access to expedited visa processing for employees of qualifying firms traveling to the United States on company business. The BFP is available at all of the U.S. Consulates in Mexico. Participating companies benefit from access to a special visa appointment system, allowing a company representative to schedule online visa application appointments for a reserved appointment block. Additionally, employees of participating companies may receive expedited processing and visa delivery for their approved applications. All U.S. companies with a Mexican branch/affiliate/subsidiary may participate in the BFP. Mexican and non-U.S. companies with at least 100 employees are eligible to participate, as well as those with less than 100 employees who obtain a recommendation from the U.S. Chamber of Commerce, Camara de Comercio de Mexico or the Asociacion Nacional de Importadores y Exportadores de La Republica Mexicana (ANIERM) certifying that the company has been a dues paying member of the respective organization for at least three years. Additional information is contained on the U.S. Embassy in Mexico City's website.

DOJ Reaches Settlement Resolving Immigration-Related Unfair Employment Practices

The U.S. Department of Justice (DOJ) recently announced that it reached an agreement with Centerplate, Inc. resolving allegations that the company violated the anti-discrimination provisions of the Immigration Nationality Act (INA). Centerplate is one of the largest hospitality companies in the world with over 10,000 employees in the United States alone. The DOJ's investigation was initiated based upon a referral from the USCIS. The DOJ's investigation concluded that Centerplate engaged in a pattern or practice of treating work-eligible non-U.S. citizens differently from U.S. citizens during the employment eligibility verification processes, including E-Verify, by requiring specific documents issued by the U.S. Department of Homeland Security (DHS) from non-U.S. citizens, while not making similar requests of U.S. citizens. Under the terms of the agreement, Centerplate agreed to pay \$250,000.00 in civil penalties, which is the third highest amount paid through settlement since the enactment of the anti-discrimination provisions in 1986. Centerplate also agreed to fully compensate any victims who lost wages as a result of the discrimination. Centerplate's employment eligibility verification practices will also be monitored by the DOJ for a period of three years.

U.S. Visa Fee Receipts in China Will Expire in March 2013

The U.S. Embassy in Beijing, China recently indicated that it will be transitioning to a new visa fee collection system for Chinese applicants in mid-March 2013. Therefore, as a result of this new system, U.S. visa fee receipts that applicants currently purchase will be phased out and will not be valid after March 14, 2013. Therefore, the U.S. Embassy strongly advises all visa applicants to use all current fee receipts before they expire on March 14, 2013. The U.S. Embassy has indicated that it will not be able to refund any fee receipts not used before they expire. The U.S. Embassy did confirm, however, that fees will not be increasing in the new fee collection system.

SEVP to Propose Modifications to Limitations on the Number of DSOs and Study by F-2 and M-2 Nonimmigrants

On December 21, 2012, Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) submitted a proposed regulation to the Office of Management and Budget (OMB) which would modify the limitations on the number of Designated School Officials (DSO) that colleges and universities may have. The proposed regulation would also permit F-2 and M-2 spouses and children accompanying academic and vocational nonimmigrant students in F-1 or M-1 status to enroll in study at an SEVP-certified school so long as any study remains less than a full course of study without having to change status to F-1 or M-1 status. The exact language of the proposed regulation has not yet been released to the public. Only an abstract of the proposed regulation is available on the OMB's website. After OMB reviews and approves the regulation, the proposed regulation will then be published in the Federal Register for comment. After the comment period, SEVP would then have to issue a final regulation before any modifications to the F-1 and M-1 regulations would become effective.

Additional information about the implementation of this rule will be contained in our firm's future Immigration Update when it becomes available.

Legislative Update: Eight Senators Introduce Bi-partisan Framework for Comprehensive Immigration Reform While Four Senators Introduce Bi-Partisan Employment-Based Visa Improvements

On January 28, 2013, eight senators introduced a bi-partisan framework for Comprehensive Immigration Reform (CIR). Many of the items of the framework are similar to the CIR provisions which were introduced in 2007 that ultimately did not pass Congress. However, after the 2012 presidential elections, many advocates believe that the chances of passage of CIR are now greatly increased. According to the eight senators, the four basic legislative pillars of CIR are:

1. Create a tough but fair path to citizenship for unauthorized immigrants currently living in the United States that is contingent upon securing U.S. borders and tracking whether legal immigrants have left the country when required;
2. Reform the U.S. legal immigration system to better recognize the importance of characteristics that will help build the American economy and strengthen American families;
3. Create an effective employment verification system that will prevent identity theft and end the hiring of future unauthorized workers; and

4. Establish an improved process for admitting future workers to serve our nation's workforce needs while simultaneously protecting all workers.

The framework acknowledges that the United States must do a better job of attracting and keeping the world's best and brightest. Therefore, the proposal will "award" a green card to immigrants who have received a Ph.D. or Master's Degree in a science, technology, engineering or mathematics (STEM) major from a U.S. university. Unfortunately, the proposal does not mention potential modifications and improvements for immigrant and nonimmigrant visas for other high-skilled workers. The proposal does indicate that CIR should provide businesses with the ability to hire lower-skilled workers in a timely manner when Americans are unavailable or unwilling to fill those jobs. The proposal would allow more lower-skilled immigrants to enter the United States when the U.S. economy is creating jobs and fewer when the U.S. economy is not creating jobs.

On January 29, 2013, a group of four senators introduced the first bi-partisan piece of business immigration legislation this year and this legislation would expand the number of skilled workers that U.S. employers may hire. After introducing the bill, another eight senators agreed to co-sponsor the legislation. This bill contains a detailed plan to recalibrate the high-skilled visa system. The bill includes the following:

1. Increase the H-1B cap immediately from 65,000 to 115,000.
2. Establish a market-based H-1B escalator so that the cap can adjust up or down to the demands of the economy (including a 300,000 ceiling on the ability of the escalator to move up).
3. Uncap the existing U.S. Master's or higher degree exemption (which is currently limited to 20,000 per year).
4. Authorize employment for dependent spouses of H-1B visa holders.
5. Increase portability of high-skilled foreign workers by removing impediments and costs of changing employers and establishing a clear grace period for foreign workers to change jobs.
6. Restoring visa revalidation for E, H, L, O and P nonimmigrant visa categories.
7. Allow dual intent for foreign students (but not J and M foreign students) at U.S. colleges.
8. Recapture employment-based immigrant visa numbers that were previously approved by Congress but were not used. (However, although indirectly increasing the employment-based immigrant visa quota, the legislation would not directly increase the annual employment-based immigrant visa quote from the current level of 140,000.)
9. Exempt the following individuals from the employment-based "green card" cap –
 - Dependents of employment-based immigrant visa recipients;
 - U.S. advanced degree holders in the STEM field;
 - Persons with extraordinary abilities and outstanding professors and researchers. (The legislation would not create an exemption for Schedule A occupations, such as nursing and physical therapy.)
10. Provide for the roll-over of unused employment-based immigrant visa numbers year to year.

11. Eliminating annual per-country limits on employment-based immigrant visas and adjusting per-country caps for family-based immigrant visas.

12. "Reforming" fees (which translates into increasing fees) on H-1B visas and employment-based green cards to fund grant programs to promote STEM education and worker retraining.

This legislation is strongly supported by many high tech companies and the U.S. Chamber of Commerce. The sponsoring senators stated that they expect their bill will become part of the broader CIR overhaul. One senator, Marco Rubio (R-Fla) and Jeff Flake (R-Arz) are members of both groups. Many believe that this proposal may be used as a bargaining chip to obtain concessions from legislators who want to support a path to citizenship for the estimated eleven million undocumented individuals in the United States but who do not support changing and improving the legal immigration system for high-skilled workers.

DOS Proposes Fee Increase in the J-1 Program

The DOS recently issued a proposed regulation to revise two fees in the J-1 exchange visitor program. The two fees are as follows:

1. The Application Fee for Sponsor Designation or Redesignation is being proposed to be increased from \$2,700.00 to \$3,982.00.
2. Administrative Fee for an Exchange Visitor Benefits seeking an administrative benefit (such as extension beyond a maximum duration, change of category, reinstatement and ECFMG sponsorship authorization) is being proposed to be increased from \$233.00 to \$367.00.

The DOS is currently only proposing the fee increases. Comments on the proposed fee increase are due by April 1, 2013. After the DOS reviews any comments, it will have to issue a final regulation before the fee increase becomes effective.

Additional information about the DOS fee increase will be contained in our firm's future Immigration Update when it becomes available.

February 2013 Visa Bulletin Update

The DOS recently released its February 2013 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of February. This month's Visa Bulletin features the following highlights:

1. There continues to be great advancement in the EB-2 China category. From January 2013 to February 2013, the category has advanced three months.
2. Due to high demand, the EB-2 India category has shown no movement since October 2012 when the new fiscal year's annual quota opened. The EB-2 and EB-3 India categories are severely backlogged with thousands of individuals waiting for immigrant visas since January 2007.
3. The EB-3 World category has also shown significant advancement in one to two month increments every month.

The following is a comparison of priority date movement since the inception of the current retrogression in 2007:

	Dec 2007	Jun 2008	Aug 2009	Mar 2010	Sept 2012	January 2013	Feb 2013
EB-3 World	09/01/02	03/01/06	U	12/15/02	10/01/06	02/01/07	03/15/07
EB-2 China	01/01/03	04/01/04	10/01/03	07/08/05	U	12/08/07	01/15/08
EB-3 China	10/15/01	03/22/03	U	12/15/02	12/15/05	09/22/06	11/15/06
EB-2 India	01/01/02	04/01/04	10/01/03	02/01/05	U	09/01/04	09/01/04
EB-3 India	05/01/01	11/01/01	U	07/01/01	10/08/02	11/08/02	11/15/02
EB-3 Other Workers	10/01/01	01/01/03	U	06/01/01	10/01/06	02/01/07	03/15/07

Additional information about the movement

of the employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

Illinois Enacts Legislation Authorizing Issuance of Temporary Driver's Licenses to Undocumented Immigrants

Illinois has enacted legislation that will allow undocumented immigrants who have resided in the state for one year to obtain a Temporary Visitor Driver's License (TVDL). Illinois joins New Mexico, California and Washington State in allowing undocumented immigrants to obtain a driver's license. Illinois already issues TVDLs to foreign nationals who are legally present in the United States, but who do not have social security cards, such as spouses of foreign workers and foreign students. To qualify, an applicant must have resided in Illinois for at least one year and present a valid foreign passport or consular identification. The Illinois TVD is mostly indistinguishable from normal driver's licenses with the exception that it is marked "not valid for identification." The law is set to be implemented in the fall of 2013 and applicants will be able to apply at most Illinois Department of Motor Vehicles facilities.

MFEM NEWS

MFEM to Host Annual Complimentary Immigration Law Update Seminar Next Wednesday

MFEM will be hosting its annual complimentary immigration law update seminar on Wednesday, February 6, 2013 at the Doubletree Hotel Arlington Heights in Arlington Heights, Illinois. Attorneys from MFEM's

Immigration Group will be discussing immigration issues and topics which are currently affecting companies around the United States. Some of the topics which will be discussed include: How soon the H-1B quota will be met this year, alternatives to the H-1B quota, the increase in PERM audits and options in the employment-based "Green Card" process. The seminar will also provide a Global Update on Worldwide Hot Spots. Finally, an attorney from the firm's Employment and Labor Group will be discussing U.S. Department of Labor's (DOL) Wage and Hour Overtime issues. Additional information about this year's complimentary seminar is available on the firm's website at www.masudafunai.com. Because of the popularity of the seminar each year and due to the limited seating at the seminar, we strongly recommend that individuals who would like to attend the seminar register for the seminar as soon as possible. Registration is currently available online on the firm's website at www.masudafunai.com/showevent.aspx?show=6880.

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.

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