

Business Immigration Weekly for April 29, 2013

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By Robert S. White

USCIS Makes Accommodation in the Benefit Adjudication Process as CBP Implements Form I-94 Automation

As previously indicated in our Immigration Update dated April 1, 2013, Customs & Border Protection ("CBP") began implementing the automated version of the Form I-94 Arrival/Departure Record at air and seaports of entry on April 30, 2013. CBP will roll out the automated Form I-94 at air and seaports of entry over a four week period from April 30, 2013 through May 21, 2013. Nonimmigrants entering the United States at air and seaports of entry will not be provided with a paper Form I-94. Instead, the nonimmigrant will need to access their electronic Form I-94 record by visiting www.cbp.gov/I94. CBP has indicated that it will be providing nonimmigrants affected by Form I-94 automation with instructions on how to look up their electronic record on the CBP's website.

Nonimmigrants may need their Form I-94 when requesting certain benefits from the U.S. Citizenship & Immigration Services (USCIS) and when requesting for public benefits from other governmental agencies, including Social Security Number (SSN) from the Social Security Administration (SSA) and/or a driver's license from a state Department of Motor Vehicles. However, the USCIS has indicated that it will be making an accommodation in its adjudication process in order to not disrupt the adjudication of benefits requests. USCIS has stated that it has begun updating certain forms requesting applicant and petitioners to enter admission numbers from their Form I-94 and/or their: 1. Passport information, including passport number, country of issuance and expiration date; and 2. Travel document information, including travel document information, country of issuance and expiration date. USCIS has stated that in addition to accepting the electronic Form I-94 from the CBP's website, it will also accept photocopies of passport pages that contain the individual's biographical information, visa and admission stamp. The USCIS stated that this alternative will allow applicants and petitioners more ways to provide proof of lawful entry into the United States and to establish eligibility for certain immigration benefits.

Additional information about the implementation of Form I-94 automation will be contained in our firm's future Immigration Updates when it becomes available.

USCIS Reminds Employers that the New Form I-9 Employment Eligibility Verification Form is Required to Be Used Beginning on May 7

As previously discussed in our firm's Immigration Update dated April 1, 2013, the USCIS has introduced a new Form I-9 Employment Eligibility Verification form (with a revision date of "03/08/13N"). The new Form I-94 was released on March 8, 2013. Although employers were allowed to begin using the new Form upon its release, the mandatory use of the new Form I-9 begins on May 7, 2013. Employers that fail to use the new Form I-9 on or after May 7 may be subject to penalties.

DHS and DOL Issue a Joint H-2B Wage Rule and Resume Processing of H-2B Applications

The U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) issued a joint interim final rule establishing a new methodology for calculating prevailing wages in the H-2B program. As indicated in our firm's Immigration Update dated April 1, 2013, a district court enjoined the DOL from using its previous prevailing wage methodology in the H-2B program. As a result of the district court's injunction, both the DOL and the USCIS suspended adjudication of applications in the H-2B program. However, upon the release of the joint interim final rule, both the USCIS and DOL have indicated that they will resume adjudications of applications in the H-2B program.

Under the interim final rule, the DOL will not use its Occupational Employment Statistics (OES) wage survey four-level prevailing wage approach on the H-2B program. Instead, the DOL will use either the OES wage survey collective bargaining agreements, the Davis-Bacon Act, the Service Contract Act or employer-provided surveys. If the DOL uses the OES wage survey, the prevailing wage will be based on the arithmetic mean wage. Therefore, employers that rely upon the OES wage survey in the H-2B program will encounter a significant increase in the DOL's prevailing wage for their H-2B positions.

DOL has indicated that the new wage methodology is not only prospective in nature. The DOL will be issuing revised prevailing wage determinations to employers that currently employ H-2B workers. The DOL has indicated that even though the H-2B application may have already been approved based on the previous prevailing wage, the employer does have a responsibility to offer the new prevailing wage based on the revised prevailing wage methodology when it receives the revised prevailing wage determination from the DOL.

DOS Releases 2014 Diversity Visa Lottery Results

The U.S. Department of State (DOS) recently indicated that the fiscal year 2014 Diversity Visa Lottery results are now available. Applicants in the lottery can now check the status of their application online at the DOS' website. Applicants will need their confirmation number which was issued when they applied for the lottery in order to access whether they "won" the lottery. The DOS reminded applicants that it will not e-mail results to applicants. The DOS warned applicants to "be suspicious" of any e-mails that claim that you have won the lottery. Additional information about how to spot and report lottery scams is available on the DOS's website. 50,000 immigrant visas (a/k/a "green cards") are available each year through the Diversity Visa Lottery program. Applicants who are notified through the DOS system that they have "won" the lottery will then need to apply for the immigrant visa either through the DOS' consular processing procedure or through the USCIS' adjustment of status procedure.

ICE SEVP Issues Withdrawal on Notice to School

On April 10, 2013, Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) issued a Withdrawal on Notice (WON) to College Prep Academy. Upon issuance of the WON, SEVP indicated that the school is no longer certified to enroll nonimmigrant students and Designated School Officials (DSO) at the school no longer have access to the SEVIS system. SEVP indicated that College Prep Academy nonimmigrant students have 30 days from April 10, 2013 to either: 1. Seek transfer to another SEVP-certified school; or 2) If the student is unable or unwilling to transfer, the student must depart the United States. Initial students who have not yet entered the United States will not be admitted into the United States using the school's Form I-20. SEVP indicated that students currently attending the school must continue to attend their full course of studies at the school until their transfer release date to another SEVP-certified school in order to maintain their status.

This is the second school that has been issued a WON within the past year by SEVP. In August 2012, SEVP issued a WON to PC Tech Learning Center.

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 under the Legal Update link of the Immigration Group Section of our firm's website at www.masudafunai.com.