

## Immigration News and Updates

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December 14, 2004

### **Visa Numbers Retrogress**

As of January 1, 2005, the number of available immigrant visas for employment-based third preference applications for nationals of China, India and the Philippines will not be sufficient. The U.S. Department of State has announced that as of January 1, 2005, visa numbers will retrogress to January 1, 2002 for foreign nationals of those three countries. This means that nationals of China, India and the Philippines who are the beneficiaries of a Labor Certification or of an immigrant visa (if Labor Certification was not required) filed on or after January 1, 2002, will not be permitted to apply for I-485, Adjustment of Status (i.e., the "Green Card") or for an immigrant visa through the U.S. Consulates abroad until the Department of State announces that visa numbers have moved beyond that date. The Department of State publishes a Visa Bulletin to report on the availability of immigrant visas each month.

As background: The Immigration Act of 1990 allocated 140,000 visas to employment-sponsored immigrants. The U.S. Department of State allocates those visas according to designations of employment-based preferences. 28.6% of those visas are allocated to "Priority Workers" (i.e., extraordinary ability, outstanding researchers, Executives/Managers), these are employment-based first preference. Employment-based second preference are professionals with advanced degrees and persons of exceptional ability, this group is allocated 28.6% of those visas. Employment-based third preference skilled workers, professionals or other workers, are allocated 28.6% of those visas. Employment-based fourth preference are allocated 7.1%, and are those considered "Special Immigrants" (i.e., Religious workers, U.S. government-employed foreign nationals, certain investors and physicians who have invested in the U.S.). The remainder are allocated to those who participate in the "Investor Program". In effect, there are approximately 40,000 visas available to skilled workers, professionals or other workers every year unless there are any unused visas from the Employment-based first or second preference categories (i.e., Priority Workers or professionals with advanced degrees.) Professionals with advanced degrees, skilled workers, professionals or other workers, are all required to obtain an employer-sponsored Labor Certification before proceeding with an Immigrant Visa Petition with the U.S. Citizenship and Immigration Service ("CIS"). The Department of State has been forecasting that the rise in I-140, Immigrant Visa Petitions for foreign nationals would lead to a retrogression in the number of available immigrant visas for all employment-based third preference applicants from India, China and the Philippines. The Department of State is also forecasting possibly further retrogressions towards the end of 2005.

### **U.S. VISIT, U.S. Arrival**

Starting this week, all U.S. Ports of Entry implemented the "U.S. Arrival" component to the U.S.Visit program. Nonimmigrants will no longer complete their own I-94, Arrival/Departure documents. Instead, the U.S. Customs and Border Protection ("CBP") will issue all new I-94, Arrival/Departure cards with validity dates as well as with a date showing the last time the foreign national entered through U.S. VISIT and the date the foreign national will be required to go through U.S. VISIT again -- unless that foreign national travels abroad and re-enters the U.S. before that date. All foreign nationals who are issued the new I-94, Arrival/Departure document will be subject to U.S. VISIT every six or

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eight months. However, the I-94, Arrival/Departure document remains valid for the duration of the nonimmigrant visa category of the foreign national while the person remains in the U.S.

The Windsor/Detroit Tunnel is taking fingerprints and photos in accordance with the U.S. VISIT program. Canadian nationals are exempt from U.S. VISIT, but CBP is now generating each TN, L, H or other Canadian applicant's I-94, Arrival/Departure Document with the corresponding validity dates. The CBP computer system also enters the occupation for each applicant. This change in border procedure took effect on Monday, December 13, 2004.

Visa Waiver participants will be required to continue to complete the I-94, Arrival/Departure document, as it contains ten additional questions on the back of the form.

U.S. Immigration and Customs Enforcement ("ICE") will now work with U.S. VISIT to obtain reports of those foreign nationals who have overstayed.

### **I-485, Application to Adjust Status, I-89, Photos for Children Under Age 14**

Children under age 14, whose I-485 applications to adjust status (or "Green Card" applications) are approved by a Service Center, have not typically been required to appear at a local office to be processed for fingerprints or signature. However, many "A" files for recently adjusted under-age-14 permanent residents contain ¾ view photos, not the now required full-frontal view. U.S. CIS is now recommending that children, under age 14, who are old enough to sign their own name also appear at a local U.S. CIS office to be processed. At that time, all applicants should also provide the local office with two passport style (full-frontal view) color photos.

Remember to contact your Congressional representative to inform how these changes and new regulations are affecting your business.

For more information about this, or other U.S. immigration issues, please contact our Miller Canfield Immigration Practice. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.