

Immigration News and Updates

September 24, 2004

H-1B Visas

Current reports from the U.S. Citizenship & Immigration Services (U.S. CIS) indicate that fiscal year 2005 H-1B visas will still be available for "several" more weeks. This means that we may not reach the H-1B cap until the second week of October. Once we reach the cap, all cap-subject H-1B petitions will be cut off for fiscal 2005. Cap-subject H-1B visas are any new H-1B petitions for first-time employment. Petitions for new H-1B employment are not subject to the annual cap if the foreign national will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization.

The American Immigration Lawyers Association has learned that the reason that H-1B visas will not be cut off sooner, despite the upsurge in H-1B filings, is the recapture of unused Singapore/Chile free trade numbers.

Labor Certification Applications and Department of Labor

The new regulations for electronic filing of Labor Certification Applications named "Program Electronic Review Management", better known as "PERM", remain pending at the Office of Management and Budget. It is widely believed that, if the PERM moves at all, the regulations about the new program for filing of Labor Certifications will not be published until after the presidential elections. However, in preparation for PERM, the Department of Labor has appointed Gene Caso and Charlene Giles to run the PERM National Processing Centers in Atlanta and Chicago, respectively. Certifying Officers also will be appointed for the PERM centers. Once the proposed legislation for the new program is published, we will provide information on any changes in the Labor Certification process.

Department of Labor (DOL) officials stated recently that labor certification applications pending at the Dallas and Philadelphia regional DOL offices are being transferred to the backlog reduction centers in those cities. These offices will be sending letters to employers to request updated information, and the files will be closed if responses are not received within 45 days or are incomplete.

U.S. Visit Program

The Department of Homeland Security is expanding the United States Visitor and Immigrant Status Locator Technology Program (US-VISIT). This program authorizes the Department of Homeland Security to collect biometric data from travelers entering and exiting the United States. Although the program was implemented in January 5, 2004, the Department of Homeland Security is now moving to the second phase of its program by requiring visa holders to have their passports and visas scanned and fingerprints and photo taken before boarding planes at Detroit Metropolitan Airport. Detroit Metro Airport is one of 11 airports to start screening departures by November 2004. The departure procedures are already in place at Baltimore/Washington International Airport and O'Hare International Airport in Chicago. Eventually, US-Visit's arrival and departure procedures will be required for visa holders at all border crossings in the United States.

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.