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Advance Degree H-1B Cap Hit for FY 2007, Immigrant Visa Categories for India Retrogress in August, DHS Proposes Expanding US-VISIT to Additional Non-U.S. Citizens, and USCIS Issues Final Rule on Affidavits of Support

Immigration Update – August 8, 2006

Trow & Rahal, P.C. is pleased to provide this Immigration Update as a service to our clients and friends.

Advanced Degree H-1B Cap Hit for FY 2007

U.S. Citizenship and Immigration Services (USCIS) announced on July 28, 2006 that it has received enough H-1B visa petitions to meet the annual limit of 20,000 for Fiscal Year 2007 for foreign workers who have earned a master's or higher degree from a U.S. institution of higher education. Petitions received on July 26, 2006 are subject to a random selection process to allocate the last few H-1B numbers. USCIS will reject petitions received after July 26 unless the petition is eligible for a separate cap exemption.

Petitions for current H-1B workers do not count toward the H-1B cap. Accordingly, USCIS will continue to process petitions filed to extend the amount of time a current H-1B worker may remain in the U.S., change the terms of employment for current H-1B workers, allow current H-1B workers to change employers, or allow current H-1B workers to work concurrently in a second H-1B position.

Petitions for new H-1B employment are exempt from the annual cap if the worker will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or governmental research organization.

The earliest date an employer may file a FY 2008 petition requesting an employment start date of October 1, 2007, is April 1, 2007.

The USCIS announcement is available at

<http://www.uscis.gov/graphics/publicaffairs/newsrels/H1BMasters072806PR.pdf>

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Immigrant Visa Categories for India Retrogress in August

The State Department's Visa Bulletin for August 2006 shows retrogression (backward movement) in the cut-off dates for several employment-based visa categories for applicants born in India. This was done to hold visa issuance within the annual limits for these categories. The employment-based second preference for India has become "Unavailable," and the employment-based third preference for India has retrogressed to April 1, 2001.

The Visa Bulletin notes that immigrant visa issuance is approaching the annual limits in many other categories, and that additional retrogression of cut-off dates may occur in September. Categories that could experience retrogressions include the Worldwide employment-based fourth preference category; the China employment-based second and third preference categories; the

India employment-based first preference category; and the Mexico employment-based third preference category.

Also, the Schedule A visa category is approaching its limit and may become subject to a cut-off date as early as October. Once the 50,000 visas allocated to the Schedule A category are used up, processing under this category will end.

The full text of the August 2006 Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_2978.html

DHS Proposes Expanding US-VISIT to Additional Non-U.S. Citizens

The Department of Homeland Security (DHS) issued a proposed rule on July 27, 2006 that would expand processing under the US-VISIT program to an additional number of non-U.S. citizens, including:

- lawful permanent residents of the U.S.;
- individuals entering the U.S. who seek admission on immigrant visas;
- individuals entering the U.S. who seek admission as refugees and asylees;
- certain Canadian citizens entering the U.S. for specific business or employment reasons (Form I-94 holders) (excluding most Canadian citizens entering the U.S. as visitors to shop, visit friends and family, vacation, or take a short business trip);
- individuals paroled into the U.S.; and
- individuals applying for admission to Guam under the Guam Visa Waiver Program.

Those subject to US-VISIT may be required upon entry or departure to provide fingerprints, photographs, or other biometric identifiers.

USCIS Issues Final Rule on Affidavits of Support

USCIS issued a final rule on affidavits of support (Form I-864), effective July 21, 2006, that applies to any immigrant visa or adjustment of status application decided on or after that date even if the case was filed earlier. Among other things, the final rule eliminates the affidavit of support requirement in cases where the sponsored immigrant establishes, on the basis of Social Security

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Administration records, that he or she has already worked, or can be credited with working, 40 quarters of covered employment.

Affidavits of support are required in family-based immigration applications, and in employment-based applications if a relative of the immigrant either filed the visa petition or has a "significant ownership interest" in the entity that did so. The interim affidavit of support regulation defined "significant ownership interest" as an ownership interest of five percent or more in a for-profit entity. The final rule retains this five percent threshold.

The final rule also clarifies that the sponsor's income in the year in which the intending immigrant filed the application, rather than the earnings last reported to the Internal Revenue Service, generally bears the greatest evidentiary weight in determining whether the affidavit of support is sufficient, although USCIS may request updated evidence.

The final rule, published in 71 Fed. Reg. 35732–35757 (June 21, 2006), is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-5522.pdf>. A related Department of State cable is available at http://travel.state.gov/visa/laws/telegrams/telegrams_2863.html.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor:

USCIS Service Center processing times and case status online:

<https://egov.immigration.gov/cris/jsps/index.jsp>

Department of Labor processing times and information on backlogs:

<http://www.ows.doleta.gov/foreign/times.asp>

If you have any questions about the information in this newsletter, please contact one of the Trow & Rahal attorneys listed below.

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