

Immigration Update – August 31, 2007

Visa Bulletin for September 2007

The Department of State (DOS) has released the September 2007 Visa Bulletin. In contrast to the August Visa Bulletin where all employment-based categories were unavailable, there is some limited visa availability in several of the employment-based categories. Visas are available in the EB-1 category for all countries for cases with priority dates before January 1, 2007; EB-2 cases for all countries, including Mexico and the Philippines, with priority dates before January 1, 2007, for China with priority dates before January 1, 2006, and for India with priority dates before April 1, 2004; and in the EB-3 category, for all countries except China, India and Mexico, which are unavailable, with priority dates before August 1, 2002. The “other worker” category continues to be unavailable. Visas are available in the EB-4 and EB-5 categories for all countries for cases with priority dates before January 1, 2007. Foreign nationals with approved labor certifications or who are exempt from labor certification, and whose priority dates are earlier than those listed above, will be eligible to file adjustment of status application during the month of September 2007. The September Visa Bulletin can be found at http://travel.state.gov/visa/frvi/bulletin/bulletin_3761.html.

Nexus Program Expedites Border Clearance Process for Low-Risk, Pre-Approved Travelers Into Canada and U.S.

The U.S. Customs and Border Protection (CBP) announced its new, online NEXUS application system on August 16, 2007. The NEXUS program allows pre-screened, low risk travelers to be processed with little or no delay by United States and Canadian officials at designated highway lanes at high volume border crossing locations, at a NEXUS kiosk at Canadian Preclearance airports, and at certain marine reporting locations in the Great Lakes and Seattle, Washington regions. Approved applicants are issued a photo identification/proximity card which they can use for entry into either country using any of the three modes of passage.

Individuals may qualify to participate in NEXUS if they are a citizen or permanent resident of Canada or the United States, residing in either country, or if they are a citizen of a country other than Canada or the United States who plans to temporarily reside lawfully in Canada or the United States for the term of their NEXUS membership and who pass criminal history and law enforcement checks.

Individuals may not qualify if they:

- 1) are inadmissible to Canada or the United States under applicable immigration laws;
- 2) provide false or incomplete information on their application;
- 3) have been convicted of a criminal offense, in any country, for which they have not received a pardon;



- 4) have been found in violation of customs or immigration law; or
- 5) fail to meet other requirements of the NEXUS program.

Individuals may apply online using the Global Online Enrollment System (GOES) that is operated by the CBP or through the Canadian Customs Processing Center (CPC). Payment must be made at the time of application. Application forms are available at

http://www.customs.ustras.gov/xp/cgov/travel/trusted_traveler/goes/. A listing of border locations where NEXUS is operational can be found at http://www.customs.ustras.gov/xp/cgov/travel/trusted_traveler/nexus_prog/nexus.xml.

Passport Measures Relaxed in Response to Massive Backlogs

Over the past several months, many U.S. travelers have encountered substantial delays in obtaining passports as a result of new rules imposing passport requirements for North American travel, for national security reasons. Many travelers who applied for a passport did not receive it in time and missed important trips as a result. In response, the DOS has temporarily relaxed the passport rules for North American travel. U.S. citizens traveling to Canada, Mexico, the Caribbean and Bermuda who have applied for but not yet received passports can temporarily enter and depart from the U.S. by air with a government-issued photo identification and DOS official proof of application for a passport through September 30, 2007. U.S. citizens who take advantage of this accommodation will need to present proof of passport application to air carriers and to Customs and Border Protection (CBP) officers at air ports of entry. However, such individuals may be subject to secondary inspection which could cause delays at entry beyond those experienced by travelers with passports. According to the State Department, travelers who have not yet applied for passports should plan 10 to 12 weeks for standard passport processing and 2 to 3 weeks for expedited processing. For more details, please go to the following website: http://travel.state.gov/travel/cbpmc/cbpmc_3254.html.

Changes to J-1 (Exchange Visitor) Regulations Now in Effect

The Department of State (DOS) has issued new regulations for the J-1 Exchange Visitor visa which apply to all J-1 visa applications with a Form DS-2019 dated July 19, 2007 or later. These regulations contain a number of changes that affect both eligibility criteria and the J-1 visa application process. Major changes under the new regulations include:

- There are now **two classifications** under the practical training category of J-1 visa:
 - 1) **Trainee**: This applies to a foreign national who has (1) a degree or professional certificate from a foreign post-secondary academic institution *and* at least one year of prior, related work experience in his or her occupational field which was acquired outside the U.S. OR five years of work experience outside the U.S. in his or her occupational field and (2) who enters the U.S. to participate in a structured and guided work-based training program in his or her occupational field. **The maximum length of stay for trainees is 18 months.**



- 2) **Intern:** This applies to a foreign national who (1) is either currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary institution outside the U.S. OR graduated from such an institution no more than 12 months prior to his or her exchange visitor program start date and (2) who enters the U.S. to participate in a structured and guided work-based internship program in his or her specific academic area. **The maximum length of stay for interns is 12 months.**
- **English language competency:** All J-1 applicants must have verifiable English language skills. English language competency is defined as “language skills sufficient to function on a day-to-day basis in the training environment.” It is unclear how English language competency will be verified, however the following have been mentioned by program sponsors: a recognized English language test, signed documentation from an academic institution or English language school, or via an interview conducted by the program sponsor or a third party (video conference or webcam may be accepted).
 - **Dunn & Bradstreet identification number:** This will be required from all host organizations with the exception of academic institutions, government entities, and family farms.
 - **Site visits:** These will be required for any host organization with annual revenues of less than \$3 million OR fewer than 25 employees. Site visits are not required for placements at academic institutions or federal, state or local government offices. Site visits are also not required for host organizations that have previously hosted a successful J-1 exchange program.
 - **Written agreement between the program sponsor and host organization:** The agreement must fully outline the relationship between the parties on all matters related to the administration of the training/internship program.
 - **Unskilled labor positions, child/elder care, positions requiring patient contact or care, and positions involving more than 20% clerical work** are not permitted.
 - **Training/Internship Placement Plan (Form DS-7002):** Sponsors are not allowed to issue a Form DS-2019 until Form DS-7002 has been completed and signed for each intern/trainee. Trainees/interns must bring a completed and signed Form DS-7002 to their visa interview at the U.S. consulate in the event that it is requested by the consular official conducting the interview.
 - **Subsequent J-1 visas:** Trainees are eligible for additional training programs after a two-year residency period outside the U.S. following their initial training program. Interns may participate in additional internship programs after the initial internship has ended as long as they continue to maintain student status or begin a new internship program within 12 months of graduation.



Questions

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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