



ATTORNEYS AT LAW

Stephen C. Trow (DC)
Linda A. Rahal (DC/MD)
Cynthia B. Hemphill (DC/NY)
Norma Briscoe Hoffpauir (DC/MD/PA)

H-1B Filing Season Starts April 1, Immigrant Visa Backlogs Decline for China & India, Employees Can Work Without SSNs, CIS Issues Guidelines on Rescheduling Interviews and Failure to Appear and Guidance on E-3 Visas for Australians

Immigration Update – February 28, 2006

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

H-1B Filing Season Starts on April 1

April 1, 2006 is the earliest date that employers can file H-1B visa petitions that are subject to the H-1B cap for the fiscal year that starts on October 1, 2006. Last year the limited annual supply of H-1B visas ran out in August. This year it may run out even sooner. Employers that are subject to the cap may have only 3 or 4 months, from April until June or July, to file H-1B visa petitions with employment start dates of October 1, 2006. This brief filing window is critical for foreign students who graduate from U.S. universities this Winter or Spring and get practical training authorization that expires before October 1, 2007 when the next fiscal year starts. It is also critical for existing employees in J-1 or other visa status that expires before October 1, 2007.

The H-1B cap does not apply to applications for extension of stay or change of employer by workers who already hold H-1B visa status, except those transitioning from a cap-exempt employer to a cap-subject employer, and those who have been absent from the U.S. for more than one year. The H-1B cap also does not apply to cap-exempt employers, which are: (1) institutions of higher education; (2) nonprofit organizations affiliated with an institution of higher education; and (3) nonprofit research organizations or governmental research organizations. Not all nonprofit organizations are exempt; only those described above. In addition, there are limited exemptions for citizens of Chile and Singapore (pursuant to treaties) and for people who hold graduate degrees from U.S. universities.

Immigrant Visa Backlogs Continue to Decline for China and India

The State Department's Visa Bulletin for March 2006 shows continued reductions in the long backlogs for employment-based immigrants from China and India, but little progress for other nationalities. The new cut-off dates and the forward movement in each category since last month are:

EB-1	China	July 1, 2003 (6 months forward movement)
EB-1	India	July 1, 2004 (5 months)

EB-1	All Other Countries	Current (no backlog)
EB-2	China	July 1, 2002 (3 months)
EB-2	India	January 1, 2002 (5 months)
EB-2	All Other Countries	Current (no backlog)
EB-3	China	May 1, 2001 (9 days)
EB-3	India	January 1, 2001 (12 months)
EB-3	Mexico	March 22, 2001 (7 days)
EB-3	Philippines	May 1, 2001 (9 days)
EB-3	All Other Countries	May 1, 2001 (9 days)
Unskilled Workers	All Countries	October 1, 2001 (no change)

For a detailed explanation of immigrant visa backlogs, priority dates and cut-off dates please refer to our September 2005 Immigration Update, which is available on our website at <http://www.TrowLaw.com/Newsletters/Newsletters.htm>. The Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

Employees Can Start Work Without Social Security Numbers

Foreign nationals who obtain U.S. work authorization often experience delays of several weeks or months in obtaining a Social Security Number (SSN) while the Social Security Administration (SSA) verifies their work authorization. Employers are often reluctant to allow an employee to start work without a SSN. However, neither immigration law nor federal tax law requires an individual to possess an SSN to begin working. The I-9 form that is used to verify a new employee's work authorization does not require an employee to present an SSN card but instead simply lists the card as one of several acceptable "List C" documents demonstrating work authorization. Similarly, the Internal Revenue Code does not require an employee to possess an SSN to begin working. It requires only that an application for an SSN be made within seven days of commencing employment for taxable wages. See 26 USC § 6011 and 26 CFR § 31.6011(b)-2.

Usually, the real obstacle to commencing employment is the software of a third-party payroll preparer, which cannot generate a paycheck without an SSN. Under these circumstances, if permitted by its system, the preparer can use a "dummy" SSN solely to generate a paycheck, provided the actual SSN or other required information is provided on the information returns at the time of filing. Further instructions can be found on the SSA website at <http://www.ssa.gov/employer/hiring.htm>.

USCIS Issues Strict Guidelines on Rescheduling Interviews and Failure to Appear

U.S. Citizenship and Immigration Services (USCIS) recently issued strict new guidelines to its field offices on handling requests for rescheduling interviews and the failure of an applicant to appear for a scheduled interview. Under the new guidelines, an individual who seeks to reschedule an interview must demonstrate that he is “unable to appear at the scheduled date and time because of circumstances beyond the individual's control.” Failure to appear for a scheduled interview will generally result in denial of the application unless the applicant has submitted a request for rescheduling prior to date of the interview, or has submitted a change of address prior to the denial of the application. There are special procedures for naturalization application that provide a 30 day grace period after the interview to submit an explanation for failure to appear, and a one-year grace period for reopening a denied application. These special procedures do not apply to other applications, including those for adjustment of status.

Under these new guidelines, it is risky to attempt to reschedule an interview to avoid a conflict with a business meeting, doctor’s appointment, business travel or vacation travel, as the USCIS examiner may conclude that it was not “beyond the individual’s control” to reschedule the conflicting activity. Any request for rescheduling should be well documented and must be submitted to USCIS before the interview occurs.

USCIS Issues Guidance on E-3 Visas Status for Australian Citizens

USCIS has recently issued guidance on the eligibility requirements and documentation needed for Australian citizens seeking to obtain or extend E-3 visa status. The new E-3 nonimmigrant category is similar to the H-1B category but is available only to Australian citizens. Australian citizens who wish to enter the U.S. in E-3 status must first obtain an E-3 visa from a U.S. consular post outside the United States. Australians who are lawfully present in the U.S. in some other nonimmigrant visa status may apply to change their status to E-3 without leaving the U.S. to obtain an E-3 visa.

To qualify for E-3 status, an applicant must be an Australian citizen seeking employment in a specialty occupation that normally requires a bachelor's degree or higher (or its equivalent) in a specific field of study, and must possess the appropriate degree (or equivalent work experience) in that field. The applicant’s employer must file with the U.S. Department of Labor a Labor Condition Application (LCA) similar to that required for H-1B visa status. E-3 status is valid initially for two years and can be extended indefinitely in increments of two years.

Congress has established a yearly cap of 10,500 new E-3 workers. For purposes of this cap new E-3 workers are those who are admitted initially in E-3 status or change to E-3 status or change employers while in E-3 status. At present the demand for E-3 visas does not appear likely to exceed the annual cap, so E-3 visas are readily available. The dependent spouse of an E-3 worker is eligible for work authorization but must apply and wait for an Employment Authorization Document before commencing employment.

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

Steve Trow	strow@TrowLaw.com
Linda Rahal	lrahal@TrowLaw.com
Cynthia Hemphill	chemphill@TrowLaw.com
Norma Hoffpauir	nhoffpauir@TrowLaw.com

Subscribe

If you would like to subscribe to Immigration Updates from Trow & Rahal, please send an email to info@TrowLaw.com with SUBSCRIBE in the subject line. There is no charge to subscribe, and we will not release your email address to others.