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Immigration Update – June 22, 2004

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

Visa Revalidation Will End on July 16, 2004

This is the last chance to file a visa revalidation application with the U.S. Department of State (DOS) to renew a visa without leaving the United States. The DOS has announced that it will stop accepting applications to revalidate nonimmigrant visas (E, H, I, L, O and P visas) at its mail-in facility in St. Louis, Missouri on July 16, 2004. The reason for this is a requirement that each U.S. visa issued on or after October 26, 2004, must contain biometric identifiers (fingerprints and a digital photograph). This means that visa applicants must appear in person, which is not possible at the mail-in facility. After July 16, the DOS will not accept any new applications for visa revalidation, but it will continue to process applications filed by that date. The DOS expects that all visa revalidation applications filed by July 16 can be completed before October 26.

Please contact Trow & Rahal immediately if you wish to file a visa revalidation application in the U.S. by July 16, 2004. After this date, the only way to renew a visa will be to file a visa application at a U.S. consulate abroad, which will require an in-person appearance in most cases.

Update on H-1B Visa Cap

As reported in our last Update, the U.S. Citizenship and Immigration Services (CIS) announced on February 17, 2004 that it had received enough H-1B visa petitions to meet this fiscal year's cap of 65,000 new workers. The next allotment of H-1B numbers for fiscal year 2005 will become available on October 1, 2004.

On April 1, 2004, the CIS started to process H-1B visa petitions for employment commencing on or after October 1, 2004. This allows employers to file visa petitions now that request H-1B status effective October 1, 2004.

The Department of Homeland Security (DHS) has proposed but not yet adopted a policy that would allow students in F-1 visa status who graduated in Spring 2003 to overcome the “gap in the cap” that prevents them from obtaining change of status to H-1B. This problem affects graduates whose 12-month work authorization and 60-day grace period in F-1 status expires before October

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1, 2004. The DHS proposal would allow such graduates who have remained in the U.S. to obtain H-1B status effective October 1 without need to leave the U.S. to obtain an H-1B visa.

In order to avoid a flood of H-1B visa applications in early October, the DOS has announced that U.S. consulates abroad will accept H-1B visa applications now for people who have approved H-1B visa petitions with an employment start date of October 1 or later. These visas will be annotated “not valid until [10 days before petition validity date].” This means that a person who leaves the U.S. to obtain an H-1B visa with an October 1 start date will not be able to return here until September 20, and then must wait until October 1 before commencing or resuming employment.

Strategies to Avoid the H-1B Cap in 2005

As of May 31, the CIS had already received over 16,000 H-1B visa petitions for start dates on or after October 1, 2004. At this rate, the 65,000 cap for fiscal year 2005 (from October 1, 2004 to September 30, 2005) could be used up by the end of calendar 2004. To avoid next year’s H-1B cap, employers should identify any current or prospective employees who will need H-1B visa status before October 2005 and file H-1B petitions for them as soon as possible. Foreign students who graduated from U.S. universities this Spring will need H-1B visa status before October 2005, so H-1B petitions for them should be filed this Summer or Fall to avoid a gap in their work authorization.

Increase in CIS Filing Fees

As of April 30, the CIS increased its fees for immigration benefit applications by an average of \$55. Examples of increased fees are: Form I-129, nonimmigrant visa petitions (including L-1 and H-1B) increased from \$130 to \$185; Form I-140, employment based immigrant visa petition increased from \$135 to \$190; and Form I-485, application to adjust status increased from \$225 to \$315.

Machine-Readable Passports and Biometric Identifiers for Visa Waiver Travelers

As of October 26, 2004, any person who seeks to enter the United States under the visa waiver program must have a “machine-readable” passport. Some older foreign passports do not satisfy this requirement. This “machine-readable” requirement is separate and distinct from the requirement that all passports issued on or after October 26, 2004 by visa waiver countries must have “biometric” identifiers. The U.S. Congress is currently considering and likely to pass an extension of the biometric requirement, but there are no plans to extend the deadline for machine-readable passports.

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If you have questions about any of the issues outlined above, or any other immigration matter, please contact one of the Trow & Rahal attorneys listed below.

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