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Immigration Update – June 28, 2007

Backlogged Immigrant Visa Categories Will Be “Current” in July

The Department of State (DOS) has announced that all employment-based immigration visa categories will be “current” as of July 1, other than the unskilled worker category. We recommend that all clients with approved labor certifications in the EB-2 or EB-3 categories should complete their adjustment of status applications for filing during July. There are two reasons to file during July. First, CIS filing fees for immigrant visa petitions will increase substantially on July 30, as described below. Second, it is likely that the EB-2 and EB-3 cutoff dates will retrogress later this year as a deluge of adjustment applications are filed in previously backlogged cases.

There is less urgency for clients in the EB-1 (extraordinary ability, outstanding professionals, and multinational managers), EB-4 (special immigrant) and EB-5 (immigrant investor) categories, as these categories have historically not experienced backlogs. It is therefore not likely that the EB-1, EB-4 or EB-5 categories will retrogress even if EB-2 and EB-3 do. Clients who have an application for labor certification pending at Department of Labor (DOL) are not eligible to file adjustment of status applications until their labor certification is approved.

It is unfortunately not possible to expedite a labor certification. However, we can prepare an immigrant visa petition and adjustment of status application with all supporting documents while waiting for the labor certification to be approved. We recommend that all clients with pending labor certification applications should do so.

USCIS Filing Fees to Increase on July 30

U.S. Citizenship and Immigration Services (USCIS) has issued a final rule, effective July 30, 2007, that substantially increases fees for many immigration benefits.

Selected fee increases include:

- Petition for a Nonimmigrant Worker (Form I-129): Base fee for H-1, L-1 and other petitions for temporary work authorization increased from \$190 to \$320. There is no increase in the additional fees of \$500 for L-1 visa petitions and \$1,250 to \$2,000 for H-1 visa petitions, or the optional \$1,000 fee for Premium Processing of these petitions
- Application to Extend/Change Nonimmigrant Status (Form I-539): Fee increased from \$200 to \$300

- Immigrant Petition for Alien Worker (Form I-140): Fee for employment-based green card petition increased from \$195 to \$475
- Application to Adjust Status (Form I-485): Fee for final stage of green card increased from \$325 to \$930
- Application for Travel Document (Form I-131): Fee for advance paroles and reentry permits increased from \$170 to \$305
- Application for Employment Authorization (Form I-765): Fee for interim work authorization while application to adjust status is pending increased from \$180 to \$340
- Biometric Services: Fee for fingerprints increased from \$70 to \$80
- Immigrant Petition by Alien Entrepreneur: Fee for EB-5 (Immigrant Investor) petition (Form I-526) increased from \$480 to \$1,435
- Petition by Entrepreneur to Remove Conditions: Fee for EB-5 (Immigrant Investor) to convert from conditional resident status to permanent resident status (Form I-829) increased from \$475 to \$2,850

The final rule is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-10371.pdf>. USCIS's press release is available at

<http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf>. Questions and answers from USCIS are available at

<http://www.uscis.gov/files/pressrelease/FinalFeeRuleQsAs052907.pdf>.

DOL Prohibits Labor Certification Substitutions and Payment of Fees and Costs by Employees; USCIS Terminates Premium Processing for Substitutions

The Department of Labor (DOL) published a final rule, effective July 16, 2007, that prohibits the substitution of beneficiaries on approved labor certifications and prohibits employees from paying legal fees and other costs for labor certifications. These provisions apply to labor certification applications under the current PERM program and previous programs for traditional and Reduction in Recruitment (RIR) applications.

The DOL rule's major provisions include:

Prohibition on the substitution of beneficiaries. This prohibition will apply to all pending and approved applications for permanent labor certification. The prohibition does not affect substitutions approved by the DOL or USCIS before the effective date. It also does not affect substitution requests in progress as of the rule's effective date. The final rule also prohibits the sale, barter, and purchase of labor certification applications and approvals.

Requirement that employers pay the costs of labor certification, including preparing, filing, and obtaining certification. The beneficiary may pay attorneys' fees for representation of the beneficiary or other "legitimate" costs incurred by him or her, but an employer's transfer to the

beneficiary of the employer's costs incurred is strictly prohibited. Prohibited payments include, but are not limited to, employer fees for hiring the beneficiary; receipt of part of the beneficiary's pay, whether through a payroll deduction or otherwise, as reimbursement; reducing the beneficiary's pay for purposes of reimbursement or pre-payment; goods and services or other wage or employment concessions; kickbacks, bribes or tributes; receipt of payment from beneficiaries, attorneys, or agents for allowing a permanent labor certification application to be filed on behalf of the employer; or the payment by the beneficiary of the employer's attorneys' fees.

180-day validity period for approved labor certifications. Employers will have only 180 calendar days to file an approved labor certification in support of an immigrant visa petition (Form I-140). All labor certifications approved on or after the effective date will expire 180 calendar days after certification, unless filed before expiration in support of a Form I-140 petition with USCIS. Likewise, all certifications approved before the final rule's effective date will expire 180 calendar days after the effective date unless filed in support of a Form I-140 petition with USCIS before the expiration date.

New procedures for debarment from the permanent labor certification program. The DOL may debar an employer, attorney or agent for up to three years based on certain enumerated actions such as fraud, willful false statements, or a pattern or practice of noncompliance with DOL requirements, regardless of whether the labor certification application involved was filed under the current or previous regulations. The rule extends from 90 to 180 days the period during which the DOL may suspend processing of applications under criminal investigation. The rule adds an intent requirement ("willful") to the false information section; to be actionable, the employer must willfully provide false or inaccurate information to the DOL. The rule expands the existing provision for a right to review the DOL's denial of an application or revocation of a certification, to encompass a right to review of a debarment action.

Clarification of the DOL's "no modifications" policy for applications filed on or after March 28, 2005, under the PERM process. The rule prohibits modifications to permanent labor certification applications once such applications are filed with the DOL.

The DOL final rule is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-9250.pdf>.

In a related action, USCIS announced that Premium Processing is no longer available for immigrant visa petitions (Form I-140) that request labor certification substitution. USCIS anticipates a substantial increase in the number of employers that will file I-140 petitions seeking labor certification substitution before July 16, 2007. The volume of such petitions is expected to exceed USCIS' capacity to provide the Premium Processing service. USCIS's press release announcing termination of Premium Processing for labor certification substitutions is at <http://www.uscis.gov/files/pressrelease/PPSPermRule051707.pdf>.

CIS Permits Earlier Filing of O and P Visa Petitions

The USCIS has issued a final rule to permit petitioners to file O and P nonimmigrant petitions for performers and athletes up to one year before the petitioner's need for the worker's services, instead of the previous limit of six months before the services are needed. This rule will allow petitioners to file well in advance of a scheduled event, competition, or performance under normal processing procedures instead of hiring to pay an extra \$1,000 filing fee for Premium Processing. The final rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-7134.pdf>.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the DOL, and the DOS's latest Visa Bulletin with cut-off dates for visa numbers:

USCIS Service Center processing times: <https://egov.uscis.gov/cris/jsps/ptimes.jsp>

DOL processing times and information on backlogs:

<http://www.foreignlaborcert.doleta.gov/times.cfm>

DOS Visa Bulletin: http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

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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