

WOLFSDORF IMMIGRATION NEWSLETTER FEBRUARY 2008

1. Naturalization Processing Times Increase Drastically

Because of a surge in applications over the summer and resulting massive backlogs, partly in anticipation of fee increases, the average processing time for naturalization applications has increased for applications filed after June 1, 2007, from the current average of seven months or less to approximately 18 months, U.S. Citizenship and Immigration Services ("USCIS") said. Family-based adjustment of status applications increased from the current average of six months or less to 12 months.

Specifically, USCIS noted that in July and August of 2007, the agency received nearly 2.5 million applications and petitions, which was double the number typically received in a two-month period. In fiscal year (FY) 2007, USCIS received 1.4 million applications for naturalization, more than the totals from FYs 2006 and 2005 combined. Forty percent of those, or 562,000, were filed in the fourth quarter. Applications for employment- and family-based adjustment of status increased by 76 percent, from 497,000 in FY 2006 to 875,000 in FY 2007.

USCIS said it plans to reduce processing times to six months by the third quarter of fiscal year 2010. USCIS Director Emilio Gonzalez noted that up to several thousand new employees are being hired and trained to deal with the "deluge." This is in addition to about 700 retired federal government employees who are being hired back without having to sacrifice their pensions, under a plan proposed by Sen. Charles Schumer (D-N.Y.).

A sign-on letter expressing deep concern about the delays notes, among other things, that "[m]any of the undersigned organizations opposed fee increases of the magnitude that USCIS proposed and warned that if USCIS were to proceed with the fee increases, it must prepare for a surge in applications from immigrants wishing to avoid the fee increases. In fact, USCIS did move forward with the fee increases, but did not adequately prepare to handle such a surge." The sign-on letter is available at <http://www.aila.org/content/default.aspx?docid=24331>.

An announcement about processing times and case status is available on page 5 of USCIS's December 2007 newsletter at http://www.uscis.gov/files/nativedocuments/USCIS_Monthly_Dec07.pdf. Related testimony from Mr. Gonzalez on January 17, 2008, before the House of

Representatives' immigration subcommittee is available at http://www.uscis.gov/files/testimony/testimony_ETG_17jan08.pdf.

2. Department of State Observations Regarding India EB-2 Unavailability

Despite two retrogressions of the India employment second preference cut-off date recently, demand for numbers by U.S. Citizenship and Immigration Service offices for adjustment of status cases has remained extremely high in recent months, the Department of State reported in the February 2008 Visa Bulletin. As a result, the annual limit for the India employment second preference category has been reached, and the category has become "unavailable."

On January 10, 2007, AILA Liaison contacted Charlie Oppenheim, Chief of Immigrant Visa Control and Reporting at the Department of State, to speak about the announcement of India EB-2 visa unavailability in the February 2008 Visa Bulletin. By early November 2007, there were indications that USCIS demand for India EB-2 visa numbers would place significant pressure on the overall annual limitation, leading to the decision to roll back the priority date for India EB-2 for December 2007 to 01JAN02, and for January 2008 to 01JAN00. Even with those significant retrogressions, USCIS requested almost 300 India EB-2 for December. (As an indication of the rate of demand and how close to the quarterly and annual limits usage is, the USCIS requested three India EB-2 numbers for January, all with dates prior to 01JAN00.) There is some possibility that India EB-2 could again become available if it appears that the demand for India EB-1 will not exceed the annual limit, but that determination will not be made until the second half of the fiscal year.

For China-mainland born EB-2, if the demand remains as it has been over the last couple of months, it is expected that the 01JAN03 cut-off date will hold. It is also likely that all numbers will be used within the current cut-off date.

As is always the case, Mr. Oppenheim is looking for mechanisms to maximize number usage so that no visa numbers remain unallocated. Also, he is looking for ways to make additional India and China-mainland born numbers available, such as by making sure that unused numbers that had been sent to consular posts are promptly returned.

The February 2008 Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.html.

3. H-1B Filing Alert

The USCIS will begin to accept H-1B visa petitions for FY 2009 on Tuesday, April 1, 2008, for an October 1, 2008 start date. There is an annual quota of 65,000, with an additional 20,000 H-1Bs for graduates with a Master's or higher degree from a U.S. university. All petitions must be received by the USCIS no later than Tuesday, April 1, 2008, to ensure that they capture one of the limited visa numbers.

We expect the USCIS to reach the cap quickly, most likely on April 1, 2008. Last year, USCIS reached the 65,000 cap on the first day petitions were received (Monday, April 2, 2007). It reached the 20,000 Master's degree cap on May 4, 2007. If this quota is missed, professional workers will have to wait almost 18 months until October 1, 2009 to obtain H-1B work authorization.

We encourage all interested employers and foreign nationals to contact us now to help identify potential H-1B candidates and prepare H-1B paperwork for timely filing before the quota is reached.

It is possible that, for some students, there will be a gap between the start date of an H-1B and the end date of their OPT employment authorization. The 60-day grace period at the end of F-1 student OPT allows the student to remain in the United States, but does not permit employment during that time. Employers are encouraged to contact their assigned Wolfsdorf professional now for advice on case-specific questions.

The H-1B cap does not apply to institutions of higher education, non-profit organizations affiliated with institutions of higher education, non-profit research organizations and government research organizations. For these cap-exempt organizations, it is still possible to obtain H-1B status with an immediate start date for new employees. Other individuals who are not affected by the H-1B cap include those who currently maintain H-1B status with another employer or have been in H-1B status in the past six years and subsequently have been absent from the U.S. for less than one year.

Other categories not impacted by the April 2008 deadline include H-1B petitions filed to: (1) extend the period of time a current H-1B worker may remain in the U.S.; (2) change the terms of employment for current H-1B workers; (3) allow current H-1B workers to change employers; or (4) allow current H-1B workers to work concurrently in a second H-1B position.

Please contact your Wolfsdorf Immigration Law Group professional if you have any questions or CALL US AT 1-800-VISALAW or EMAIL us at visalaw@wolfsdorf.com.

The USCIS has also posted helpful hints about H-1B filing, which can be found at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ddc8288c5c1d7110VgnVCM1000004718190aRCRD&vgnnextchannel=1958b0aaa86fa010VgnVCM10000045f3d6a1RCRD>

4. The Department of State Issues Travel Documentation Reminder

The Department of State issued a reminder that, effective January 23, 2007, all persons traveling by air between the U.S. and Canada, Mexico, Bermuda, and the Caribbean region are required to present a passport or other valid travel document to enter or re-enter the U.S. Beginning January 31, 2008, U.S. and Canadian citizens need to present either a Western Hemisphere Travel Initiative (WHTI)-compliant document, or a government-issued photo ID, such as a driver's license, plus proof of

citizenship, such as a birth certificate. At a later date, to be determined, the Departments of State and Homeland Security will implement the full requirements of the land and sea phase of WHTI. Proposed rules require most U.S. citizens entering the U.S. at sea or land ports of entry to have either a U.S. passport; a U.S. passport card; a trusted traveler card such as NEXUS, FAST, or SENTRI; a valid Merchant Mariner Document (MMD) when traveling in conjunction with official maritime business; or a valid U.S. Military identification card when traveling on official orders. Members of the U.S. Armed Forces on active duty traveling on orders are exempt from the passport requirement. The passport requirement does not apply to U.S. citizens traveling to or returning directly from a U.S. territory.

U.S. citizens may begin applying in advance for the new, limited-use, wallet-size passport card beginning February 1, 2008. The Department said it expects that the cards will be available and mailed to applicants in spring 2008. When available, it will only be valid for land and sea travel between the U.S. and Canada, Mexico, the Caribbean region, and Bermuda.

A related 23-page letter on the WHTI from Richard Stana, Director of Homeland Security and Justice Issues for the Government Accountability Office, to the House of Representatives' Subcommittee on Border, Maritime and Global Counterterrorism, is available at <http://www.aila.org/content/default.aspx?docid=24355>. Among other things, Mr. Stana noted that the GAO "acknowledge[s] that DHS has taken a number of actions to prepare for testing and deploying technologies and managing the implementation of other WHTI activities. However, as key elements of planning for program management and execution remain uncertain, we continue to believe that DHS faces challenges deploying technology, and staffing and training officers to use it."

More information on the WHTI is available at http://travel.state.gov/travel/cbpmc/cbpmc_2223.html.

5. The Department of Homeland Security Begins Collecting 10 Fingerprints at Logan Airport

The Department of Homeland Security (DHS) announced on January 22, 2008, that it has begun collecting additional fingerprints from international visitors arriving at Boston Logan International Airport (Logan). The change is part of the DHS's upgrade from two- to 10-fingerprint collection.

For more than four years, U.S. Department of State (DOS) consular officers and U.S. Customs and Border Protection (CBP) officers have been collecting biometrics—digital fingerprints and a photograph—from all non-U.S. citizens between the ages of 14 and 79, with some exceptions, when they apply for visas or arrive at U.S. ports of entry.

The department's US-VISIT program includes checks of a visitor's fingerprints against DHS records of immigration violators and Federal Bureau of Investigation (FBI) records of criminals and known or suspected terrorists. The DHS said that collecting 10 fingerprints improves fingerprint matching accuracy and the agency's

ability to compare a visitor's fingerprints against latent fingerprints collected by Department of Defense (DOD) and the FBI from "known and unknown" terrorists. Additionally, visitors' fingerprints are checked against the FBI's Criminal Master File.

On an average day at Logan, almost 2,000 international visitors complete US-VISIT biometric procedures. Visitors from the United Kingdom, Ireland, Germany, and France comprise the largest numbers of international visitors arriving at Logan.

Washington Dulles International Airport began 10-fingerprint collection on November 29, 2007, and Hartsfield Jackson Atlanta International Airport began 10-fingerprint collection on January 6, 2008. Seven other ports of entry will soon begin collecting additional fingerprints: Chicago O'Hare International Airport, San Francisco International Airport, George Bush Houston Intercontinental Airport, Miami International Airport, Detroit Metropolitan Wayne County Airport, Orlando International Airport, and John F. Kennedy International Airport in New York. The remaining air, sea, and land ports will transition to collecting 10 fingerprints by the end of 2008, the DHS said.

The announcement is available at

<http://netmail.verizon.net/webmail/servlet/HttpNimletDriver?nimlet=ManageEmailDefaultNimlet&requestAction=showEmail&folderName=INBOX&messageID=1006>.

6. New ICE System Analyzes Suspicious Relationships, Patterns

U.S. Immigration and Customs Enforcement (ICE) is implementing, effective February 29, 2008, the "ICE Pattern Analysis and Information Collection System" (ICEPIC). The system is intended to assist investigators by "identifying suspect identities and discovering possible non-obvious relationships among individuals and organizations" to discover violations of customs and immigration laws as well as possible terrorist threats or plots, according to a DHS report. The databases, which ICE declined to identify specifically, include those that track foreign students and visitors, immigrants, criminals and suspected terrorists. "All ICEPIC activity is associated with ongoing and valid law enforcement investigations," the report noted.

The system reportedly includes the terrorist watch list, from which an estimated 15,000 people have appealed to have their names removed because of incomplete information or inaccuracies. According to the agency, ICEPIC builds on earlier ICE initiatives to verify the identity of Special Interest Aliens (SIAs), as designated by the Department of State. In 2003, ICE implemented the National Security Entry Exit Registration System (NSEERS) to manage the growing collection of over 500,000 SIA records. National and international terrorist threats during 2004 and 2005 resulted in ICE reviewing not only the SIA records in NSEERS, but also the records of those registered with the Student and Exchange Visitor Information System (SEVIS) and entered into the United States Visitor and Immigrant Status Indicator Technology (US VISIT) system.

ICEPIC reveals relationships to an identified target, but it is not used to reveal a "predictive pattern," the report said. From the relationships identified, ICE agents will

develop specific leads and intelligence for active and new investigations. ICE is claiming certain exemptions from the Privacy Act.

A proposed rule announcing the system is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/E8-1556.pdf>. A related proposed rule claiming exemptions from the Privacy Act is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/E8-1554.pdf>. The report is available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_rpt_datamining_2007.pdf

7. Recent Firm News

On January 18, 2008, Attorney Bernard P. Wolfsdorf presented on Trends and Forecasts in Visa Issuance at AILA national's Midyear Conference in Hawaii. Mr. Wolfsdorf also spoke about E investor visas.

On January 19, 2008, Attorneys Rita Sostrin, Naveen Rahman Bhora and Avi Friedman led an Immigration Seminar for Physicians in New York City at the Roosevelt Hospital.

On January 22, 2008, Attorney Tien-Li Loke Walsh conducted an immigration workshop at the UCLA Anderson School of Management for international students in the MBA program regarding post-graduate visa immigrant and non-immigrant options.

On January 29, 2008, Attorneys Bernard P. Wolfsdorf, Rita Sostrin, and Tien-Li Loke Walsh spoke to the UCLA Society of Postdoctoral Scholars regarding green cards and other visa alternatives.

On February 4, 2008, Attorney Bernard P. Wolfsdorf spoke to international students and attorneys in the Masters of Law Program at UCLA regarding transitioning to lawful permanent residence.

On February 7, 2008,- Attorney Bernard P. Wolfsdorf made a presentation on investor immigration options, including EB-5s and Es, to the Nevada Chapter of AILA.

Events still to come...

February 8, 2008, Attorney Lisa Yu will be speaking about advanced issues in H-1B processing at the American Immigration Lawyers of America's Northwest Immigration Law Conference in Seattle, Washington.

February 9, 2008, Attorney Bernard P. Wolfsdorf will be speaking to the Los Angeles County Bar (LACBA) Immigration Law Section on the H-1B Specialty Occupation Visas and Alternatives.

February 16, 2008, Attorneys Rita Sostrin, Naveen Rahman Bhora and Avi Friedman will be conducting an Immigration Seminar for at the Fairmont Hotel in Santa Monica, CA.

February 21, 2008, Bernard P. Wolfsdorf will be speaking to the Southern California Chapter of AILA on Investor Visas.

TBA- Spring 2008, Stay tuned for more information regarding an essential conference on worksite enforcement and compliance planned for some time in May 2008...

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The Wolfsdorf Immigration Law Group is one of the largest immigration boutique firms in the United States. With offices on both the east and west coasts, the firm serves an extensive and diverse client base, ranging from Fortune 500 corporations to entertainers and leading academic institutions. Our large and dedicated staff of 50 employees ensures prompt and expert attention to your immigration law matters. For more information about any of the above-mentioned issues, or any immigration-related questions or concerns, please contact our team of professionals or your assigned Wolfsdorf professional at (310) 570-4088 or contact us via email at visalaw@wolfsdorf.com

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