

WOLFSDORF IMMIGRATION NEWSLETTER MARCH 2008

1. Fines, Prosecutions for Hiring Undocumented Workers To Increase

Secretary of Homeland Security Michael Chertoff and Attorney General Michael Mukasey announced on February 22, 2008, that the fines for hiring undocumented workers will increase and that the Departments of Homeland Security and Justice are also working "to increase criminal prosecutions against the most egregious employer offenders." The increased fines are expected to take effect March 27, 2008, and will be assessed on a per-worker basis. For example, if an employer knowingly employs five undocumented workers, the employer could incur five fines. The minimum penalty for knowingly hiring an undocumented worker will increase from \$275 to \$375. The maximum fine for a first-time offender will increase from \$2,200 to \$3,200, and the maximum fine for repeated violations will increase from \$11,000 to \$16,000.

Secretary Chertoff's and Attorney General Mukasey's statements are available at http://www.dhs.gov/xnews/releases/pr_1203722713615.shtm. A related Department of Justice (Executive Office for Immigration Review) final rule was published in the Federal Register and is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/E8-3320.pdf>.

2. E-Verify Participants Increasing by 1,000 Per Week

U.S. Citizenship and Immigration Services (USCIS) announced that the E-Verify employment status verification program now has more than 52,000 employer participants, and that the program has been growing by approximately 1,000 participants per week since October. USCIS is recruiting new personnel for the first regional verification center in Buffalo, New York.

USCIS noted that participation in E-Verify remains voluntary, but that some states have begun requiring their employers to comply with a federal work authorization verification program. Arizona, for example, increased participation of its employers in E-Verify from 325 a year ago to more than 18,000 today.

Meanwhile, Illinois has delayed until April 15, 2008, implementation of a new law that would prohibit employers from participating in E-Verify until federal agency databases are able to resolve 99 percent of discrepancies within three days. The Illinois legislature is considering several bills that would amend the law.

USCIS's announcement is available at <http://www.uscis.gov/files/pressrelease/everify12022008.pdf>.

3. Many Employment Visa Number Cut-Off Dates Advance in March

The Department of State's Visa Office announced that visa number cut-off date movement for March in several employment categories is significant. Advancement of the priority cut-off dates now, the Department said, "should prevent a situation later in the fiscal year where there are large amounts of numbers available but not enough time to use them." If an expected increase in number use materializes from U.S. Citizenship and Immigration Service processing, future cut-off date movements could slow or stop, the Department warned. The India employment-based second preference category remains unavailable in March.

The March 2008 Visa Bulletin, which includes a chart showing the cut-off dates in each category, is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3953.html.

4. Filing Tips for H-1B Applications

For fiscal year 2009, the first H-1B filing date is Tuesday, April 1, 2008. Petitions are to be filed at U.S. Citizenship and Immigration Services (USCIS) Vermont and California Service Centers, depending on jurisdiction. We recommend the following tips for employers planning to file H-1B applications:

- Check filing fee amounts and submit fees in separate checks to avoid inadvertent errors.
- Answer all questions in the application and check answers for consistency. Original signatures are required. Blue ink makes it easy for USCIS to confirm an original.
- Send only one petition per envelope.
- USCIS uses the information in Part C of the H-1B Data Collection and Filing Fee Exemption Supplement (Form I-129, page 11) to determine whether a petition is subject to the 65,000 and 20,000 (U.S. master's degree or higher) H-1B numerical limitation caps.
- Part C, #4 of the Supplement does not refer to all J exchange visitor nonimmigrants with a waiver of the two-year foreign residency rule. Do not check "yes" unless the worker is a doctor who has been granted a Conrad 30 waiver to work in a medically underserved area.
- Clearly label all H-1B cap cases in red ink in the top margin of the I-129 petition. Use the following codes:
 - Reg. Cap (65,000 regular cap cases minus the Chile/Singapore (C/S) cap cases received)
 - C/S Cap (Chile/Singapore H-1B1s)

- U.S. Masters (20,000 cap exemption for beneficiaries with U.S. Masters or higher degrees)
- Exempt (for petitions filed by certain institutions of higher education; nonprofit organizations; and nonprofit research organizations or governmental research organizations, as defined in USCIS regulations)

Contact Wolfsdorf Immigration Attorneys for details. For more filing tips from USCIS, see <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=d758ea468d6c7110VgnVCM1000004718190aRCRD&vgnnextchannel=91919c7755cb9010VgnVCM10000045f3d6a1RCRD> and http://www.uscis.gov/files/pressrelease/H1B_I129Info_032707.pdf.

5. USCIS Announces Centralized Filing Location for H-1B Cap Exempt Petitioners

U.S. Citizenship and Immigration Services (USCIS) announced a centralized filing location for H-1B "cap exempt" petitioners, which includes petitions filed by institutions of higher education and nonprofit organizations or entities related to or affiliated with such institutions, and nonprofit research organizations or governmental research organizations. The mailing addresses are:

For direct mail:

U.S. Citizenship and Immigration Services
California Service Center
Attn: CAP EXEMPT H-1B Processing Unit
P.O. BOX 30040
Laguna Niguel, CA 92607-3004

For non-U.S. Postal Service deliveries (e.g., private couriers):

U.S. Citizenship and Immigration Services
California Service Center
Attn: CAP EXEMPT H-1B Processing Unit
24000 Avila Road, Room 2312
Laguna Niguel, CA 92677

USCIS asks H-1B petitioners to mark the outside of the envelope and the top margin of the I-129 form with "EXEMPT." The agency said this will ensure quick identification of the H-1B filing throughout the petition's processing at the California Service Center.

If a cap exempt H-1B petition is received at a different Service Center, USCIS said, that Service Center will "expeditiously forward the petition to the CSC for processing." In the near future, USCIS will post special filing instructions to Form I-129 requiring all qualifying H-1B cap exempt petitions to be filed at the CSC.

USCIS noted that the highest volume of H-1B filings occurs during the month of April. "This may result in longer than average receipting times or other interruptions in processing times," USCIS warned, adding that petitioners may file a qualifying H-1B cap exempt

petition at any time of the year depending on the petitioner's need, but no earlier than six months ahead of the intended start date.

For more information, see http://www.uscis.gov/files/pressrelease/H-B_Filing_30jan08.pdf.

6. USCIS, Labor Department Issues Proposed Rules on H-2A Visas

U.S. Citizenship and Immigration Services (USCIS) and the Department of Labor both issued proposed rules in February 2008 affecting the H-2A nonimmigrant visa program, which allows U.S. employers to bring foreign nationals to the U.S. for temporary or seasonal agricultural work.

USCIS said its proposed rule is designed to "remove unnecessary limitations on H-2A employers while preventing fraud and abuse, and protecting the rights of temporary workers." The rule proposes, among other things, to "relax the current limitations on the ability of U.S. employers to petition unnamed agricultural workers to come to the United States and include multiple beneficiaries who are outside the United States on one petition."

Some of the key modifications include:

- Extending from 10 to 30 days the time a temporary agricultural worker may remain in the U.S. following the expiration of the H-2A petition;
- Reducing from six months to three months the time an H-2A worker must wait outside the U.S. before becoming eligible to re-obtain H-2A status;
- Allowing H-2A workers who are changing from one H-2A employer to another to begin work with the new petitioning employer upon the filing of a new H-2A petition, provided the new employer participates in USCIS's E-Verify program;
- Requiring an employer attestation regarding the scope of the H-2A employment and the use of recruiters to locate H-2A workers;
- Cracking down on employers and recruiters who impose fees on prospective H-2A workers;
- Requiring an approved temporary labor certification in connection with all H-2A petitions;
- Prohibiting the approval of H-2A petitions for nationals of countries determined to be consistently refusing or unreasonably delaying repatriation of their nationals; and
- Establishing a land-border exit system pilot program, which ensures that foreign workers admitted through a port of entry participating in the H-2A program must depart through a similar port that also participates in the program. U.S. Customs and Border Protection will publish a Notice in the Federal Register designating which temporary workers must participate in the program, which ports of entry are

participating in the program, which biographical and/or biometric information would be required, and the format for submission.

Meanwhile, the Department of Labor issued a proposed rule on temporary labor certifications for H-2A workers. The proposed measures focus on an attestation-based application process after an employer conducts pre-filing recruitment and eliminating "duplicative activities" currently performed by State Workforce Agencies (SWAs). In concert with these changes, the Department proposes to amend the wage and hour regulations to provide for enhanced enforcement, including more rigorous penalties, under the H-2A program.

The Department noted that although increases in productivity have contributed to expanding agricultural productivity with a lower need for labor, a "sudden and dramatic decrease in the supply of workers cannot be entirely attributed to productivity, and poses severe economic consequences for growers, especially those of perishable crops."

The agricultural industry has many more jobs than available legal workers. Among other things, the Department noted that authorized workers appear to be leaving farm jobs because of age or opportunities for more stable and higher paying employment outside of agriculture, and are being replaced almost exclusively by unauthorized foreign-born workers. In addition, the Department said, enhanced enforcement efforts appear to have contributed to a reduction in the availability of agricultural workers, which has sparked agricultural crises across a number of states over the past year: "Numerous reports of shrinking or nonexistent farm seasonal labor, with attendant crop loss for lack of harvest help, have been prominent in recent months and reflect Department survey data." As a result, for example, Colorado has initiated the use of inmate labor on farms where migrant labor was previously used. In addition, an increasing number of farmers have been investigating alternatives such as raising crops in Mexico instead to secure needed workers that they cannot legally hire in the U.S. The Department said it expects that efficiencies in program administration resulting from the proposed rule "will significantly encourage increased program participation, resulting in an increased legal farm worker labor supply with the attendant legal rights and protections for workers."

USCIS and the Department of Labor will accept public comments until March 31. The full text of USCIS's notice of proposed rulemaking is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/E8-2532.pdf>. The Department of Labor's proposed rule is available at http://www.foreignlaborcert.doleta.gov/pdf/H2A_NPRM.pdf.

7. The Department of State Testifies on the Status of Visa Policy for Foreign Students, Scholars, Exchange Visitors

Stephen "Tony" Edson, Deputy Assistant Secretary of State for Visa Service, testified on February 7, 2008, before the House of Representatives' research and science education subcommittee. Among other things, he noted that foreign students contribute over \$13 billion annually to the U.S. economy. "Their work significantly boosts our academic and scientific research and their exposure to our culture and freedoms is a crucial public diplomacy success," he said. Mr. Edson noted that exchange visitor admissions have risen to

record highs; in fiscal year (FY) 2007, the Department issued 343,946 J-1 visas, which was 11 percent over the same period in FY 2006. He noted that 90 percent of posts have wait times of less than 30 days for student and business travelers.

The full text of Mr. Edson's testimony, which includes statistical tables by year, is available at

http://democrats.science.house.gov/Media/File/Commdocs/hearings/2008/Research/08feb07Research/Edson_Testimony.pdf. The hearing testimony of all the witnesses is available at http://science.house.gov/publications/hearings_markups_details.aspx?NewsID=2064.

8. USCIS Revises Security, Name Check Requirements

U.S. Citizenship and Immigration Services (USCIS) issued a memorandum to the field on February 4, 2008, on revised national security adjudication and reporting requirements. The memo notes that USCIS is revising its guidance in response to a need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). In the context of removal proceedings, ICE has determined that Federal Bureau of Investigation (FBI) fingerprint checks and Interagency Border Inspection Services (IBIS) checks are required. If an FBI name check reveals "actionable" information after an immigration judge has granted permanent residence, the memo states, the Department of Homeland Security may detain the permanent resident and initiate removal proceedings.

USCIS said that a definitive FBI fingerprint check and an IBIS check must be obtained and resolved before approval of an Application for Adjustment of Status (Form I-485), Application for Waiver of Ground of Inadmissibility (Form I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Form I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (Form I-698).

USCIS said it will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than six months, USCIS said the adjudicator will approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. "The FBI has committed to providing FBI name check results within this timeframe," the memo noted. There is no change in the requirement that name check results be obtained and resolved before the adjudication of a naturalization application.

The memo is available at <http://www.uscis.gov/files/pressrelease/DOC017.PDF>.

9. Recent Firm News

Individual Updates:

Attorney Rita Sostrin was sworn in by the U.S. Supreme Court on February 25, 2008.

Attorney Allison-Claire Acker was appointed as Chair of the Santa Monica Bar Association's Immigration Section and installed on February 20, 2008.

Presentations/ Speaking Engagements:

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.

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

On February 9, 2008, Attorney Bernard P. Wolfsdorf gave a presentation before the Los Angeles County Bar (LACBA) Immigration Law Section on the H-1B Specialty Occupation Visas and Alternatives.

On February 16, 2008, Attorneys Rita Sostrin, Naveen Bhora and Avi Friedman conducted an Immigration Seminar for Physicians in Santa Monica, CA.

On February 21, 2008, Bernard P. Wolfsdorf spoke to the Southern California Chapter of AILA about Investor Visas.

On March 6, 2008, Attorney Naveen Bhora spoke on a web-seminar titled "Diversity Visa Lottery: How to Ensure Your Client Can Turn a Lottery Win In to Permanent Residence" sponsored by the American Immigration Lawyer's Association.

Upcoming Events...

March 15 – Attorneys Rita Sostrin, Avi Friedman, and Naveen Bhora will be conducting an Immigration Seminar for Physicians in Houston, Texas.

April 16 – Attorneys Rita Sostrin and Bernard Wolfsdorf will speak at the AILA San Diego Chapter meeting.

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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 via email at salaw@wolfsdorf.com

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