

WOLFSDORF IMMIGRATION NEWSLETTER MAY 2008

1. H-1B Cap Update: Cap Reached, Random Selection Completed; Some Applications 'Wait-Listed'

U.S. Citizenship and Immigration Services (USCIS) announced on April 8, 2008, that it had received enough H-1B petitions to meet the congressionally mandated cap for fiscal year (FY) 2009 (65,000 for those with Bachelor's degrees, and 20,000 for those with U.S. graduate degrees). USCIS announced that it received nearly 163,000 H-1B petitions by April 7, 2008, including approximately 31,200 petitions were individuals with advanced degrees. On April 14, USCIS conducted a random computerized selection of winning petitions, which will continue to full adjudication. If approved, those H-1B petitions will be eligible to receive an H-1B visa number.

Petitioners whose properly filed petitions have been selected for full adjudication should receive a receipt notice dated no later than June 2, 2008. USCIS will return unselected petitions with the fee(s) to petitioners or their authorized representatives. USCIS has also "wait-listed" some H-1B petitions, meaning they could replace petitions chosen to receive an FY 2009 cap number but that subsequently are denied, withdrawn, or otherwise found ineligible.

The announcement that the H-1B cap has been reached is available at http://www.uscis.gov/files/article/H-1B_8Apr08.pdf. The announcement about the random selection process is at http://www.uscis.gov/files/article/Update_USCIS_Runs_H1-B_Random_Selection%20Process.pdf. The announcement of the preliminary number of H-1B petitions received is at http://www.uscis.gov/files/article/USCIS%20Update_H1B_Preliminary%20Count1_10Apr08.pdf. The announcement about USCIS's policy regarding receipt at the wrong service center is at http://www.uscis.gov/files/article/H-1B_Filing_4Apr08.pdf.

2. USCIS Announces Proposal to Increase Periods of Stay for TN Professional Workers From Canada or Mexico

U.S. Citizenship and Immigration Services (USCIS) announced today that it is publishing a Notice of Proposed Rulemaking (NPRM) to increase the maximum amount of time a Trade-NAFTA (TN) professional worker from Canada or Mexico can remain in the United States before seeking readmission or obtaining an extension of stay. The proposal will extend the maximum period of admission for TN workers from one year to three years, the same term that USCIS currently may grant to H-1B specialty occupation workers. The proposed rule will further allow eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years, as opposed to the current maximum of one year. TN nonimmigrants are not subject to a maximum period of stay and thus may seek multiple readmissions or extensions, provided their intended professional activity continues and they remain otherwise eligible. Current regulations require that TN workers seek readmission or apply for an extension of stay each year.

3. DHS Issues Interim Rule on Optional Practical Training for F-1 Students

The Department of Homeland Security (DHS) issued an interim final rule, effective April 8, 2008, that extends the maximum period of optional practical training (OPT) from 12 months to 29 months for F-1 students who have completed a science, technology, engineering, or mathematics (STEM) degree and accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. Currently, F-1 students are eligible for 12 months of OPT to work for a U.S. employer in a job directly related to the student's major area of study.

The interim rule requires F-1 students with an approved OPT extension to report changes in the student's name or address and in the employer's name or address, and periodically to verify the accuracy of this information. The rule also requires the employers of F-1 students with an extension of post-completion OPT authorization to report to the student's designated school official (DSO) within 48 hours after the OPT student has been terminated from, or otherwise leaves, his or her employment with that employer before the end of the authorized period of OPT. The interim final rule also implements a programmatic change to allow students to apply for OPT within 60 days of concluding their studies.

USCIS said the interim rule ameliorates the so-called "cap-gap" problem by extending the authorized period of stay for all F-1 students who have a properly filed H-1B petition and change of status request (filed under the cap for the next fiscal year) pending with USCIS. If USCIS approves the H-1B petition, the students will have an extension that enables them to remain in the U.S. until the requested start date as indicated in the H-1B petition takes effect.

The interim rule is available at:

[USCIS Announces a Proposal to Increase Periods of Stay for TN Professional Workers From Canada or Mexico \(36KB PDF\)](#)

4. USCIS Revises I-765 To Add F-1 Eligibility Codes

U.S. Citizenship and Immigration Services (USCIS) announced on April 24, 2008, that it has revised the Application for Employment Authorization (Form I-765) to include additional eligibility codes under the Department of Homeland Security's interim final rule regarding Optional Practical Training (OPT), published on April 8, 2008. The rule modifies the conditions and duration of OPT for qualified F-1 nonimmigrant students.

USCIS will accept the July 30, 2007, edition of the form through July 8, 2008. As of July 9, USCIS will only accept the revised Form I-765, dated April 4, 2008, and will reject all requests using previous editions of the form.

USCIS's announcement is available at http://www.uscis.gov/files/article/I-765_24Apr08.pdf. The OPT interim rule is available at <http://edocket.access.gpo.gov/2008/pdf/E8-7427.pdf>. The revised I-765 is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

The interim rule is available at <http://edocket.access.gpo.gov/2008/pdf/E8-7427.pdf>.

5. DOS Issues Annual Guidance on Students and Exchange Visitors

The Department of State has released a cable sent to the field on March 11, 2008, regarding student (F and M) and exchange visitor (J) issues. Among other things, the cable notes that first-time applicants may be the highest priority when scheduling appointments, and repeat applicants may be scheduled on a lower-priority tier. The cable also clarifies some information on the DS-2019 form, and discusses new Exchange Visitor Program (EVP) sanctions regulations and new Termination of Designation and Revocation of Program regulations, which became effective January 22, 2008.

The cable is available at http://travel.state.gov/visa/laws/telegrams/telegrams_4202.html. Additional information about the exchange visitor program is available at <http://exchanges.state.gov/education/jexchanges/>. Statistics and data tables about foreign students and exchange visitors are available at <http://opendoors.iienetwork.org/>.

6. USCIS Releases Processing Times for Naturalization Applications Filed During Summer 2007

U.S. Citizenship and Immigration Services (USCIS) has released the projected times for local offices to complete processing of citizenship applications filed during the summer of 2007. Projected processing times at the end of September 2008 range from a high of 14.7 months for Washington, D.C., to a low of 5 months for Helena, Montana.

Last July, USCIS received 460,000 applications for naturalization, which was three times the record for any previous month. For the year, USCIS received 1.4 million naturalization applications, almost double the normal annual volume.

USCIS said it is hiring and training hundreds of additional immigration officers to adjudicate these cases. The agency is also conducting naturalization interviews on weekends, after normal business hours, and in additional locations.

The processing times, USCIS said, "provide a sense of how quickly a case may be processed if there are no complicating factors," noting that some cases will take longer to complete; for example, if an applicant has been asked to submit additional information or fails the naturalization test, or if the FBI namecheck is in progress.

The projected processing times are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2de02ad51e679110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

7. DHS Proposes Biometric Airport and Seaport Exit Procedures

The U.S. Department of Homeland Security (DHS) announced on April 22, 2008, a proposed rule that will establish biometric exit procedures at all U.S. air and sea ports of departure. The majority of non-U.S. citizens and non-permanent residents, except for Canadians, are already required to submit digital fingerprints and a digital photograph for admission into the country. The US-VISIT exit proposal would require non-U.S. citizens who provide biometric identifiers for admission to provide digital fingerprints when departing the country from any air or sea ports of departure.

The DHS requests public comments on all of the alternatives discussed in the proposed rule and the underlying assumptions and analyses.

Comments may be submitted via:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number (DHS-2008-0039) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Mail: Written comments may be submitted to: Michael Hardin, Senior Policy Advisor, US-VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, Virginia 22209. Submissions must include the agency name and docket number (DHS-2008-0039).

The proposed rule was published in the *Federal Register* at <http://edocket.access.gpo.gov/2008/pdf/E8-8956.pdf>. Following the 60-day public comment period and review, a final rule will be published outlining the new requirements and their effective date.

Meanwhile, Sen. Patrick Leahy (D-Vt.) held an oversight hearing on the Department of Homeland Security. The sole witness was Secretary Michael Chertoff. Among other things, Sen. Leahy discussed his concerns about the Department's implementation of the Western Hemisphere Travel Initiative. "The Department must now make good use of the time Congress has given to make sure that implementation goes smoothly, and to minimize disruption in Americans' lives and in our relationships with our good neighbors to the north and south," he said, adding that "I also share the view of many on both sides of the aisle and across the country about the so-called REAL ID Act and its unfunded mandates for States." In advance of the hearing, Sen. Leahy said, "The good news is that the Bush administration will not fight the new law that moves the passport requirement to next year. The bad news is that there is little reason to believe DHS will be ready even then." Statements from Sen. Leahy and Secretary Chertoff are available at <http://judiciary.senate.gov/hearing.cfm?id=3226>.

8. ICE Arrests Hundreds of Workers

In April, U.S. Immigration and Customs Enforcement (ICE) agents arrested hundreds of undocumented workers, including more than 300 workers at Pilgrim's Pride plants in five states who are suspected of committing identity theft and other criminal violations to obtain their jobs.

ICE special agents also detained 45 undocumented workers at 10 sites and arrested 11 individuals for conspiring to harbor undocumented workers who were smuggled into the U.S. to work in Mexican restaurants in four states. This operation involved approximately 130 ICE agents and 30 state and local law enforcement officers and began in May 2006.

ICE agents interviewed roughly 100 employees at a resort in Leesburg, Virginia. Agents arrested 53 immigration status violators and another six were apprehended outside the facility. The 59 workers are nationals of El

Salvador, Guatemala, Mexico, Honduras, Bolivia, Peru, and Argentina. All face removal proceedings.

Details on the arrests are available at <http://www.dhs.gov/ximgtn/enforcement/>.

9. DHS Signs Visa Waiver Agreement With Korea

On April 18, 2008, Department of Homeland Security (DHS) Secretary Michael Chertoff signed a Visa Waiver Program (VWP) Memorandum of Understanding (MOU) with Korean Minister of Foreign Affairs and Trade Yu Myung-hwan. The security enhancements outlined in the agreement "put[] Korea on the path toward visa-free travel to the U.S., and potential designation as a VWP member as early as later this year," the DHS announcement states.

The DHS said it plans to establish an electronic system of travel authorization for air passengers. VWP travelers will be asked to provide some basic information online, which will generate an authorization number for travel. The agency said it will announce details on how the authorization systems will work, and when they will begin, later this year.

The VWP has 27 current members from Asia and Europe. The U.S. has signed enhanced VWP agreements with the Czech Republic, Estonia, Latvia, Slovakia, Hungary, Lithuania and Malta in recent weeks. Each country has committed to meeting the new security requirements of the program.

The announcement is at

http://www.dhs.gov/xnews/releases/pr_1208545066700.shtm.

10. House Holding Series of Immigration Hearings

House Judiciary Committee Chairman John Conyers, Jr. (D-Mich.), and chairwoman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Rep. Zoe Lofgren (D-Cal.), announced that an oversight hearing held April 16, 2008, on the H-2B program was the first in a series of immigration hearings to be held by the subcommittee and the full Judiciary Committee.

"Over the past year, it has become clear that we need an immigration system that is fair, legal, and tough," said Rep. Conyers. The series will be conducted in coordination with several other House committees.

The Judiciary Committee's announcement is available at <http://judiciary.house.gov/newscenter.aspx?A=954>. Testimony from the H-2B hearing has been posted to the House Web site (<http://judiciary.house.gov/oversight.aspx?ID=432>). As of press time, testimony was not yet posted (<http://judiciary.house.gov/oversight.aspx?ID=435>) for a hearing held on wasted visas and growing backlogs on April 30, 2008.

11. Expensive Virtual Border Fence To Be Replaced

Just two months after Secretary of Homeland Security Michael Chertoff accepted the Boeing Co.'s completed \$20 million virtual fence along portions of the border with Mexico, the agency announced it will replace the Arizona-Mexico virtual fence with new radios, cameras, towers, and computer software. Customs and Border Protection officials recently acknowledged that the "Project 28" pilot program is not working sufficiently. Border Patrol agents in the Tucson sector agreed with Boeing's conceptual design of Project 28 but said the final system might have been more useful if they and others had been given an opportunity to provide feedback throughout the process, according to a Government Accountability Office (GAO) report issued in February 2008.

An article about plans to replace the virtual fence is available at http://www.govexec.com/story_page.cfm?articleid=39838&dcn=e_gvet. A GAO report on border security, issued in March 2008, is available at <http://www.gao.gov/new.items/d08542t.pdf>. The GAO report issued in February 2008, detailing some of the problems with the Project 28 program, is available at <http://www.gao.gov/new.items/d08508t.pdf>.

Links to these videos and brochures are available at:

http://www.dhs.gov/xtrvlsec/programs/editorial_0435.shtm.

A list of the current ports of entry under US-VISIT is available at:

http://www.dhs.gov/xtrvlsec/programs/editorial_0685.shtm.

New Publications and Items of Interest

How immigration is saving Social Security. The *New York Times* published an editorial on April 2, 2008, "How Immigrants Saved Social Security." The editorial takes the position that undocumented immigration has had an even better effect on Social Security than legal immigration. The editorial is available at http://www.nytimes.com/2008/04/02/opinion/02wed3.html?_r=2&ref=opinion&oref=slogin&oref=slogin.

2007 LPR statistics. The Department of Homeland Security has posted online the *Annual Flow Report: U.S. Legal Permanent Residents: 2007*, published March 2008. The Office of Immigration Statistics report presents information, obtained from applications for LPR status, on the number and characteristics of persons who became LPRs in the U.S. during 2007.

The report is available at

http://www.dhs.gov/xlibrary/assets/statistics/publications/LPR_FR_2007.pdf.

Drew Carey video. "The Beckham Factor," a video clip from Drew Carey about U.S. attitudes toward immigration, is available at

<http://www.truthinimmigration.org/CompleteStory.aspx?sid=25>.

Recent Firm News:

Bernie Wolfsdorf, AILA First Vice President spoke on May 2 at the 2008 Upper Midwest Immigration Conference in Eagan, Minnesota. He provided a consular processing update focusing on trends and forecasts in visa issuance.

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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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