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IMMIGRATION ATTORNEYS

Business Immigration Reporter

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USCIS SIGNIFICANTLY IMPROVES SOME VISA PROGRAMS

The Department of Homeland Security (DHS) amended its regulations to improve the programs serving the H-1B1(Chile & Singapore), E-3 (Australia) and CW-1 (Commonwealth of the Northern Mariana Islands) nonimmigrant classifications and the EB-1(extraordinary ability in the sciences, arts, education, business, or athletics) immigrant classification, and remove unnecessary hurdles that place such workers at a disadvantage when compared to similarly situated workers in other visa classifications.

The changes become effective February 16, 2016 and are described by DHS as follows:

- DHS is including H-1B1 and principal E-3 classifications in the list of classes of foreign nationals authorized for employment incident to status with a specific employer. This means that H-1B1 and principal E-3 nonimmigrants are allowed to work for the sponsoring employer without having to separately apply for employment authorization.
- DHS is authorizing continued employment with the same employer for up to 240 days for H-1B1 and principal E-3 nonimmigrants whose status has expired while their employer's timely filed extension of stay request remains pending.
- DHS is providing this same continued employment authorization for CW-1 nonimmigrants whose status has expired while their employer's timely filed Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, request for an extension of stay remains pending.

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- Existing regulations on the filing procedures for extensions of stay and change of status requests now include principal E-3 and H-1B1 nonimmigrant classifications.

- Employers petitioning for EB-1 outstanding professors and researchers may now submit initial evidence comparable to the other forms of evidence already listed in 8 CFR 204.5(i)(3)(i), much like certain employment-based immigrant categories that already allow for submission of comparable evidence.

NEW LAW INCREASES SOME H-1B AND L-1 PETITION FEES

The additional fees apply to businesses that employ 50 or more employees in the United States, with more than 50 percent of those employees in H-1B or L (including L-1A and L-1B) nonimmigrant status. These petitioners must submit the additional fees with an H-1B ($4,000.00) or L-1($4,500.00) petition filed, starting / postmarked December 18, 2015:

- Initially to grant status to a nonimmigrant described in subparagraph (H)(i)(b) or (L) of section 101(a)(15) of the Immigration and Nationality Act; or

- To obtain authorization for a nonimmigrant in such status to change employers.

This fee is in addition to the base processing fee, Fraud Prevention and Detection Fee, ACWIA fee (when required), as well as the premium processing fee, if applicable. Public Law 114-113 fees will remain effective through September 30, 2025.

NEW VISA WAIVER PROGRAM RESTRICTIONS

The Consolidated Appropriations Act of 2016 includes provisions that change the Visa Waiver Program (VWP) some of which take effect immediately. It remains unclear how Customs & Border Protection (CBP) and other DHS agencies will take steps to implement and enforce the new laws, but here's what it says:

According to the American Immigration Lawyers Association, effective December 18, 2015:

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Immigration Help Center
Tampa, Florida
813-888-6700
MAP

Orlando, Florida
407-857-1300
MAP

Albuquerque, New Mexico
505-266-8739
MAP

El Paso, Texas
915-533-6699
MAP

Individuals who have been present in Iraq, Syria, Iran, or Sudan (or other countries designated by DHS as supporting terrorism or "of concern") at any time on or after March 1, 2011, are not eligible to participate in the VWP. The new law exempts those performing military service in the armed forces of a VWP country or those carrying out official duties in a full-time capacity in the employment of a VWP country government. In addition, DHS may waive exclusion from the VWP if it would be in the law enforcement or national security interests of the United States.

The new law also excludes from the VWP individuals who are nationals of Iraq, Syria, Iran, or Sudan. Nationality typically depends on the laws of the designated country, so it is important to note that an individual may be a national of a particular country, even if he or she has never resided in that country and/or does not have a passport issued by that country.

To participate in the VWP an individual must possess at the time of application for admission an electronic passport that is machine-readable.

INTERNAL I-9 AUDIT GUIDANCE

Although ICE I-9 employment eligibility enforcement activity is underway daily nationwide, most employers are unaware of it unless a “big story” breaks. We all remember the ICE I-9 audit nightmares at Chipotle Grill, Abercrombie & Fitch and others. All employers should be keenly aware that it is not a question if ICE will knock on their door, but when ICE will knock on their door.

As we start this new year it is a good time to evaluate your company’s employment eligibility policies and procedures to insulate yourself and your business from unwanted I-9 compliance failures and business interruptions.

Recently, the USCIS (United States Citizenship & Immigration Services) and OSC (Office of Special Counsel) of the DOJ (Department of Justice), published a joint guidance “*Guidance for Employers Conducting Internal Employment Eligibility Verification Form Audits*.”

I strongly recommend reviewing this guidance as it provides many common sense good faith compliance tips. If your business maintains a written I-9 compliance protocol, I recommend incorporating this guidance by reference.

You can find the guidance here.

FEBRUARY 2016 VISA BULLETIN

The use of immigrant visa numbers for this fiscal year is well underway. Although the numbers appear to be progressing normally, the newly implemented adjustment filing dates have not reflected any material changes since last October.

The current Visa Bulletin is available here.

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