Immigration Monitor
Monthly Immigration Updates

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FROM THE EDITOR'S DESK

Welcome back to all our regular readers, and to all our new readers. There is a lot of news to get to this month, and there was a lot going on in the immigration landscape, with the 29th Olympiad being the source of several immigration related stories. VisaPro would like to congratulate all the immigrants representing the United States in the 2008 Olympics in Beijing, China. The Chicago Tribune, on Aug 13, 2008, reported that the US is being represented at the Beijing Olympics by at least 33 immigrant athletes who migrated from other countries, up from 27 during the 2004 Summer Games. This statistic does not include any of the athletes who are children of recent immigrants. We should be in high spirits because these Olympic athletes immigrated to the US seeking a better life and are now sharing their talents with the nation. Nora Garcia of the Illinois Coalition for Immigrant & Refugee Rights (Chicago) said that we should design a fair and humane immigration policy that recognizes the talents in the faces of the immigrants who come to give their all to the nation. Well, this seems to be good news for all immigrants, isn't it?

Let's now look at what else is going on in the Immigration landscape. As was the case in recent months; this month was not a tranquil one for the United States Citizenship and Immigration Services (USCIS). The USCIS was ruffled by Hurricane Dolly as it was forced to temporarily close its Harlingen, Texas Office. But the USCIS deserves a word of praise as they raised a helping hand for all applicants who missed appointments due to Hurricane Dolly by quickly rescheduling new appointments. USCIS may be have to make these same arrangements with the projected landfall of Hurricane Gustav along the Gulf Coast.

IN THIS ISSUE

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On another front, while the USCIS is charged with protecting US citizens it made a crucial decision when it decided to revise the list of vaccines essential for applicants seeking Adjustment of Status to become legal permanent residents. This revision follows input and guidance from the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC).

On the employment visa front the USCIS announced a series of proposed rule changes intended to streamline procedures for hiring foreign workers under the H-2B program. As we noted in a recent article, the H-2B program allows employers to hire foreign workers to fill temporary, non-agricultural occupations for which U.S. workers cannot be found. Under the current rules the maximum validity of an H-2B visa is usually for one year. Among several proposed changes is a reduction in the amount of time H-2B workers must wait outside the US after they have reached the 3 year maximum time in H-2B status before being eligible to reapply under an H or L class visa. The proposals would also eliminate the requirement for employers to show "extraordinary circumstances" to hire an H-2B worker for more than 1 year. Watch this column for updates as additional information becomes available.

Moving on,the USCIS on July 30, 2008, announced that it had received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the first half of Fiscal Year 2009 (FY2009). The USCIS gave notice to the public that July 29, 2008 was the "final receipt date" for new H-2B worker petitions requesting employment start dates prior to April 1, 2009. The final receipt date is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the first half of FY2009. Therefore the USCIS began rejecting all petitions for new H-2B workers seeking employment start dates prior to April 1, 2009 that arrived after July 29, 2008.

On another front, the USCIS announced on August 25, 2008, it has revised the filing instructions for the Petition to Remove Conditions on Residence (Form I-751). With this announcement all petitioners filing a Form I-751 must file with the California or Vermont Service Center, depending on the state in which they reside. Additionally, beginning September 24, 2008, USCIS will only accept the revised form dated August 25, 2008, and will reject any applications submitted with previous versions of the form, as well as petitions filed with the incorrect Service Center. Contact VisaPro with any questions you have regarding the process to remove the conditions from your permanent resident status.

The USCIS also issued a reminder to use the correct

YOUR OPINION

Must a Conditional Green Card holder first receive an Employment Authorization Document (EAD) before he may accept employment in the US?

a. Yes

b. No

c. Can't say

Cast Your Vote

View Results

IMMIGRATION QUIZ

Win a FREE Online Consultation!

Submit your answer to the query below. The best response will be published in the next **Immigration Monitor** and the winner will receive a ***FREE Online Consultation*** from an Experienced VisaPro Immigration Attorney during the month of September 2008.

Does an individual (foreign national) need to give up his or her passport from his native country after he receive a green card based on marriage to U.S. citizen?

Submit Your Answer

version of the Application for Employment Authorization (Form I-765). Only the version dated 05/27/08 should be used. The edition date appears in the lower right hand corner of the form as "Form I-765 (Rev. 05/27/08) N". Submission of an earlier version of the form may result in rejection of the application, and delays in receiving your work authorization.

Other Developments in Immigration Law

USCIS Changes Vaccination Requirements for Adjustment of Status Applicants

The USCIS on July 24, 2008 announced a revised list of vaccines required for applicants seeking to adjust status to become legal permanent residents. This revision follows guidance from the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). The requirements for these new vaccines went into effect on July 1, 2008, however CDC approved a 30day grace period for any medical exam conducted before August 1, 2008. At that time the new vaccinations, if appropriate, must be administered in order for USCIS to approve the applicant for Adjustment of Status. CDC's revised Technical Instructions to Civil Surgeons for Vaccination Requirements require the following age-appropriate additional vaccinations for the applicants undergoing their Adjustment of Status to legal permanent resident:

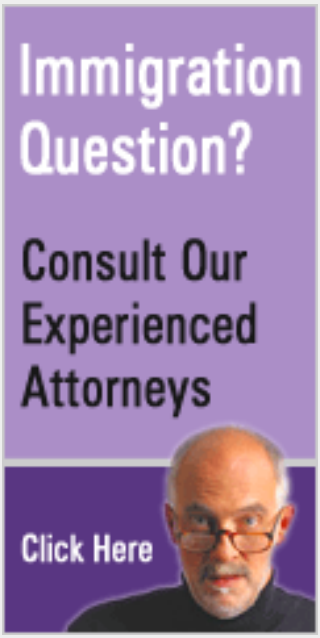
- Rotavirus
- Hepatitis A
- Meningococcal
- Human Papillomavirus
- Zoster

USCIS Clarifies Fee Exemption Eligibility for the Application for Waiver of Grounds of Inadmissibility (Form I-601)

The USCIS remind its customers that the Application fee for Waiver of Grounds of Inadmissibility (Form I-601) is always required. Actually this year the USCIS has received numerous applications filed without the appropriate fee due to an incorrect interpretation of the regulations. The authority to waive or exempt payment of the $545 fee as discussed in the Code of Federal Regulations 8 CFR 245.1 (f) cites an October 1977 law that applied only to applications from certain Vietnamese, Laotian and Cambodian parolees filed by October 28, 1983.

DOL Announced grant exceeding $758,000 to Assist Trade-Affected Workers in Massachusetts

The U.S. Department of Labor (DOL) announced a $758,714 grant to assist approximately 170 workers



Winner of the Immigration Quiz - July 2008:

Anna Fernandez

The Question:

Can I come to the United States on a Visa Waiver Program, marry a US citizen and then apply for the Adjustment of status?

The Winning Response:

You can get married and file for Adjustment of Status if you enter the US on the Visa Waiver Program (VWP). However, if you marry and file for adjustment of status within 30 days of entry there is a presumption that you had that intent upon entry (rather than coming as a visitor) and the USCIS, while they rarely do, could deny your Adjustment of Status application.

Anna Fernandez receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of August 2008.

affected by ongoing layoffs at the Alcatel-Lucent plant in North Andover, Mass. The grant, awarded to the Massachusetts Department of Workforce Development, will provide Alcatel-Lucent workers with full access to dislocated worker services not available through the Trade Adjustment Assistance (TAA) program. These services include skills assessment, counseling, case management and job search assistance. On Dec. 10, 2007, Alcatel-Lucent workers were certified by the Department of Labor (DOL) as eligible for TAA. The plant is scheduled to close on Dec. 31, 2008.

Immigration Articles and Other Fun Stuff

Now for the regulars -- this month's **Immigration Article**, marks the continuation of our journey to explore alternatives to the H-1B visa. So far our travels have covered the E-3, H-1B1, and TN NAFTA (Mexico), most of the visas that typically serve as alternatives to the H-1B visa. This month we bring you TN NAFTA (Canada) as an alternative to the H-1B for Canadian citizens. Also check out our **In Focus** section this month which will provide a detailed analysis of all the preference categories that qualify an individual for a Family Based Immigrant visa. These visas are all based upon the beneficiary's relationship to a US citizen or Legal Permanent Resident.

Every month we bring you a new, and of course interesting, question for our opinion poll. Last month's poll results indicate that 77.78% of the respondents believe that a person who served the United States honorably in the warfront should be eligible to apply for immediate US Citizenship. We appreciate that people take an interest in the pole questions and take the time to cast their vote and give us their feedback. Keep it up! and continue to cast your vote to express **Your Opinion**.

We congratulate **Anna Fernandez** for winning last month's **Immigration Quiz**. As usual, we received a significant number of responses from our readers who talked about various solutions to the quiz question,

but Anna Fernandez gave the correct answer and won a free online consultation to discuss her Immigration issues. So it's time to get ready again for this month's quiz. If you know the correct answer your name might be featured in next month's newsletter. All the Best!!!

To ensure you receive your Immigration Newsletter, please add Immigration-Monitor@VisaPro.com to your address book or safe list.

See you next month with a lot more noise from the Immigration World!

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LATEST NEWS XML

USCIS Informs the Public that New Passport Card is Acceptable for Employment Eligibility Verification

The USCIS informed the public that the new U.S. Passport Card may be used in the Employment Eligibility Verification form (I-9) process and can also be accepted by employers participating in the E-Verify program. The new card provides a less expensive and more portable alternative to the traditional passport book, and will expedite document processing at United States land and sea ports-of-entry for U.S. citizens traveling to Canada, Mexico, the Caribbean, and Bermuda. However the new passport card cannot be used for the international travel by air. The new passport card would be considered a "List A" document that may be presented by newly hired employees during the employment eligibility verification process to show work authorized status.

USCIS Updates Projected Naturalization Processing Times

The USCIS announced today that it continues to make steady progress in reducing the significant number of naturalization applications it received last year. USCIS now anticipates naturalization application processing will average 10-12 months nationally by the end of September 2008 - a substantial improvement from its estimated average processing time of 16-18 months first announced last year. In response to the surge in applications, USCIS implemented a work plan to reduce the backlog. The USCIS also anticipates completing more than one million naturalization applications by the end of this fiscal year, including most of the applications received during the summer of 2007.

USCIS Proposes Changes to Improve the H-2B Temporary Non-agricultural Worker Program

The USCIS announced on August 15, 2008 a series of proposed rule changes that will streamline procedures for hiring workers under the H-2B program. These changes are being proposed in further fulfillment of the commitment made by the Administration last August, after the failure of Congress to pass comprehensive immigration reform, to review and improve visa programs for

temporary workers on H-2B using existing authorities. The proposed rule, which has been sent to the Federal Register, supplements the extensive reforms of the H-2B program already proposed by the Department of Labor in its proposed rule published on May 22.

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IN FOCUS XML

Family-Based Immigrant Visa: Who Qualifies?

The US Congress, by conferring permanent residence eligibility upon certain family-based groups, has properly recognized the importance of family unification in American immigration law. The family-based Immigration falls under two basic categories: Unlimited (Immediate relatives of U.S. Citizens) and Limited (the "preference" categories). Approximately 500,000 family-based immigrant visas are available each year. Family based immigration has many benefits for US citizens or permanent residents that want to be reunited with family, be it a spouse and children, a newly adopted child, or brothers and sisters. The closeness of the relationship will determine if the foreign national can be sponsored under the family based categories, and if they can how long it will take for them to get the immigrant visa.

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TN Visa, a viable alternative to H-1B for Canadians

This is the second of two articles on the TN visa. The TN visa came into being with the passage and ratification of the North America Free Trade Agreement – NAFTA. The first article explored the TN as it applies to Mexican citizens. In this segment we will review the application of the TN status to Canadians.

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DISCUSSION CORNER

Married to an Illegal immigrant form El Salvador
By Chikipiwi

Getting married while on a tourist visa
By Sarah & Victor

I-130 pending status what does it mean?
By Nova1

More Discussions

QUESTIONS AND ANSWERS

1. **I am a US citizen and my fiancée is on a 2-year work visa in the United States. We want to get married and reside in the USA. Is there any way we can do that if her employer cancels her work visa? If she needs to return to her home country, would it be to our advantage to get married in the USA before she leaves the country?**

   If you and your fiancée get married she will be considered an "immediate relative" and can apply for her permanent residence without having to wait. If you are in the US when you marry you can submit a Petition for Alien Relative on your spouse's behalf, and she can file for Adjustment of Status concurrently (she would NOT have to leave the US to get her green card). Once she has filed for adjustment of status she is considered to be maintaining a legal status in the US until the USCIS makes a decision on her application. Therefore, she will be in status even if she is no longer working for the H-1B employer. Moreover, as part of the adjustment package she can request work authorization that would allow her to work for any employer she wishes, i.e., she would no longer be tied to the H-1B employer. The adjustment of status application also allows her to apply for Advance Parole that would allow her to travel and return to the US without having to get a new US visa in her home country.

2. **Can a person in India, whose family-based green card application is being processed, come to the U.S. on a J-1 visa for a short time?**

GOT A QUESTION?

If you have a short, simple query on immigration to the U.S., send your questions to us. We will select and answer a few of the queries in every issue.

Note: Responses posted in this section provide only general information. Since immigration law is a complex matter, please consult an immigration attorney before acting upon any responses provided.

Ask Your Question

The pending green card application makes it very difficult to obtain a J-1 visa. This is based on a concept known as "nonimmigrant intent." Under US immigration law all applicants for a visa are considered to be intending immigrants until they prove otherwise. To qualify for a J-1 visa, or to enter the United States in J-1 status, the applicant must intend to come to the US on a temporary basis. A pending green card application clearly shows that the applicant has expressed the intention to come to the US on a permanent basis. However, if the waiting period to process the family-based green card is extensive (as it is for the second, third and fourth preference categories), and it is possible to enter the US on the J-1 visa, complete the J-1 purpose, and return home to complete the two-year home residency requirement (if applicable) before the green card process is completed, the nonimmigrant intent may not be an issue. Each situation has to be carefully evaluated.

More Q&A

SUCCESS STORIES

How Strategy and Preparation can Prevent Denial of H-4 (Dependant) Visa Resulting from Out-of-Status F-1 (Student) Visa

The scene - You just got married and everything is looking good. Your spouse has a great job offer in the US and is moving there to start work in a couple of weeks. She got her H-1B visa at the consulate several weeks ago, but yours was denied. You are now faced at being separated from your new wife for several months (or years). Do you reapply? or do you just accept the decision of the consular officer and wait it out? A client, Mr. N, came to VisaPro with this scenario recently.

The background - Mr. N had been granted a visa for the US in the past. Several years ago he had come to the US to pursue his Master's degree on an F-1 visa. As a student you have to continue to attend classes full-time to maintain your status. Unfortunately Mr. N had some medical issues, he suffered from clinical depression, which prevented him from attending school. He did not finish his classes one semester, was denied readmission, and his student status was terminated. He worked with the school to get treatment for his depression and was given a second chance. He applied for reinstatement of his student status and was approved, allowing him to continue his studies. At this point we wish we could say that everything worked out and he finished his degree program and returned to India. But the depression continued to affect his school work. He transferred to another school and started over. Unfortunately he was no more successful at the new school and soon dropped out. He again found himself out of status. Since he was no longer in school he no longer had access to the treatment that he had been receiving for the depression. It took him several years before he was able to return to India. Once back in India he was able to get treatment and has now overcome the depression. However because he had failed to maintain his student status the consular officer denied him the H-4 visa, and as a consequence, the ability to live with his wife in the US.

The solution -- When he first came to us Mr. N had already been denied an H-4 visa so we were facing an uphill battle. We sat down with Mr. N and got a complete history. To his credit Mr. N had been forth coming and truthful with the consular officer at his first interview - he did not try to hide any of his background.

Our analysis showed that even though Mr. N had been out of status in the US for over 3 years he was not subject to the10 year ban for being an overstay. Because he had

entered the US as a student he was granted duration of status, meaning that he did not have a set date that he had to leave the US. Because he did not have a set date to leave the US he never "overstayed his authorized stay in the US," and therefore never triggered the bar. With this in hand we prepared an extensive letter for Mr. N that outlined his background and the law that applied to his situation. We also obtained extensive documentation from his doctors showing that his depression was no longer the problem that it had been when he was in the US as a student. The final step in the process was to prepare Mr. N for his second visa interview. We went through the process with him several times to prepare him for the type of questions that he was likely to receive and how to phrase his answers.

The result - Mr. N attended his second interview, but this time he was much better prepared. He was able to answer all the consular officer's questions and presented himself very well. Our letter showed that while he had been out of status he never had an overstay, therefore he did not trigger the 3/10 year bans. We also showed that as an H-4 he was not subject to the "intending immigrant" provisions in Section 214(b), the section used most often by consular officers to deny visa applications. **All of the hard work and preparation paid off, because at the end of the interview the consular officer granted the H-4 visa. Mr. N is now residing in the US with his wife, beginning a new life together.**

Our lawyers have the experience to review and analyze difficult cases and formulate strategies for success. We would be happy to review your case and discuss your options.

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