

## FROM THE EDITOR'S DESK

*Hello and welcome to the February Immigration Newsletter!*

Yes- we're at that time of the year again! We are in the midst of what is annually considered one of the busiest periods in the U.S. immigration calendar—when employers and immigration practitioners alike are getting ready for the Fiscal Year 2013 H-1B filing season. USCIS will begin accepting H-1B petitions subject to the Fiscal Year 2013 cap on April 1, 2012. Considering the sudden and dramatic acceleration witnessed in the race to Fiscal Year 2012 H-1B cap in November 2011, employers are well advised to prepare and file most or all of their H-1B petitions as early as possible to ensure that their petitions have the greatest chance to be included in the quota. If you are an employer considering petitioning for an H-1B employee in April 2012, [Contact VisaPro](#) immediately as it is always suggested to get started as early as possible.

Recently, there has been some good news in the field of business immigration as the Department of Homeland Security (DHS) announced a series of administrative reforms aimed at making the U.S. more attractive to highly-skilled foreign students and workers. The reforms, said to be part of ongoing efforts to attract and retain immigrants who create jobs and boost competitiveness in the U.S., include initiatives that would, among other things,

- allow certain spouses of [H-1B](#) visa holders who are waiting for his or her [Adjustment of Status](#) application to be adjudicated to legally work;
- expand eligibility for extension of OPT to include students with a STEM degree that is not the most recent degree the student has received;
- treat [E-3](#) and [H-1B1](#) visa holders the same as other employment-based [H-1B](#) and [L-1](#) visa holders by allowing them to continue employment with their current employer for up to 240 days from the expiration of their authorized period of stay if a petition to extend their status has been timely filed;
- increase the types of evidence that employers can submit to demonstrate that a Professor or Researcher is among the very best in their field and allow "comparable evidence" beyond the specifically articulated regulatory list.

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## YOUR OPINION

Would you welcome DHS' reforms proposing to allow spouses of [H-1B](#) visa holders to work legally while the principal H-1B holder waits for his or her Adjustment of Status application to be adjudicated?

- a. Yes
- b. No
- c. Not Sure

[Cast Your Vote](#)

[View Results](#)

The DHS, however, has indicated that these administrative reforms will be completed in the future and has not given clear timelines as to when these reforms would become effective. While one will only be able to fully appreciate the impact of these initiatives after receiving more details from DHS in this regard, it is nevertheless an important initiative, promising significant benefits and incentives to highly-skilled foreign students and workers.

Meanwhile, in what may not come as a surprise to many employers and business immigration practitioners, a recent report prepared by the National Foundation for American Policy (NFAP) suggests that there has been a dramatic increase in denials of L-1 and H-1B petitions by the USCIS over the past four years. The report suggests that in FY 2011, 63% of all L-1B petitions received an RFE and 27% were issued a denial by the USCIS. The report also suggests that much of the increase in denials involved Indian-born professionals and researchers and that USCIS denied more L-1B petitions for new petitions for Indians in FY 2009 than in the previous 9 fiscal years combined! The findings, no doubt, underline that it is essential for employers to take concrete and effective steps to ensure that their petitions are properly prepared and duly filed with all necessary supporting documentation in order to minimize the scope and possibility of denial of their petitions. If you are considering hiring a foreign national, or bringing your key overseas employees to work for you in the U.S., [Contact VisaPro](#) to receive assistance with your filing strategies and increase the chances of getting your petitions approved by the USCIS.

On the [H-2B](#) front, the Department of Labor has issued a Final Rule amending the regulations governing the labor certification process for the temporary employment of H-2B foreign workers in the U.S. Under the new rule, the application process is bifurcated into a registration phase, which addresses the employer's temporary need, and an application phase, which addresses the labor market test. The registration would be valid for a period of up to 3 years enabling employers to begin subsequent applications at the second phase without having to reestablish the temporary need for the second and third years of registration if there is no significant change in conditions.

The new rule contains many significant changes from the current regulations. For example, employers will have to demonstrate and not merely attest that it is unable to locate a sufficient number of U.S. workers. The DOL has indicated that the Office of Foreign Labor Certification will be posting additional information and materials relating to the new requirements. We at VisaPro are closely studying the new rule and will soon publish guidance to employers on the changes contained in the new rule. The new regulations will go into effect on April 23, 2012 and the DOL has clarified that the H-2B application process will be administered in accordance with the current regulations until then.

Speaking about H-2Bs, we are very happy to share with our readers a recent success story in a complicated H-2B matter. The DOL issued a Request for Information (RFI) alleging that a qualified U.S. worker was unlawfully rejected by the employer and an important term or

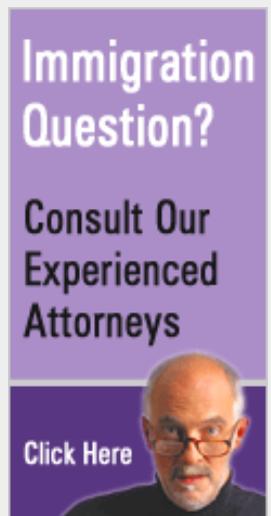
## IMMIGRATION QUIZ

### 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 February 2012.

*I came to the US on an [H-1B](#) in August 2010. I transferred to another company in May 2011 after an H-1B petition was filed and approved on my behalf. Since then I have been working with them. I will be traveling to India in April. The H-1B visa currently in my passport shows the name of my previous company but the expiration of the visa is not until after I return. Will I need to apply for a new H-1B visa while in India, or can I travel back on the same visa even though I am working with a different H-1B employer now?*

[Submit Your Answer](#)



### Winner of the Immigration Quiz - January 2012:

Mathew Simpson

### The Question:

condition of employment was not included in the advertisements for the position. Combining a detailed understanding of the labor certification process with a down-to-earth common sense approach, we were able to convince the DOL that the employer's recruitment was not flawed because it may have not listed each and every requirement of the job in the job advertisement. With our multi-faceted approach to the RFI, we were able to successfully distinguish between a job requirement that is a "condition" of employment, and that which was required for "maintenance" of employment, resulting in DOL approving the H2B temporary labor certification. To read more about the facts of the case and details on how VisaPro was able to successfully assist the employer in obtaining approval for their H-2B petitions in this complicated matter, please [click here](#).

### In some other important immigration developments so far this year:

- The Department of State has passed a new rule that delinks visa and petition validity periods, and permits the issuance of L visas with validity periods based on the visa reciprocity schedule, which for certain countries can be for a period of up to 5 years. This change would benefit [L-1](#) beneficiaries who are nationals of countries for which the reciprocity schedule prescribes visa validity for a longer period of time than the initial validity indicated in their approved L-1 petition, and who have extended their stay on L-1 status while in the United States. The change, however, affects only the validity period of the L-1 visa and does not alter the period of time that an L-1 nonimmigrant can stay in the United States.
- An important change to U.S. visa procedures was announced by the U.S. Ambassador to the People's Republic of China recently. Under a new initiative, in select circumstances, some qualified visa applicants who were interviewed and thoroughly screened in conjunction with a prior visa application may be eligible to renew their visas without undergoing another interview. Under the new Interview Waiver Pilot Program, consular officers will be permitted to waive interviews for some qualified nonimmigrant applicants worldwide who are renewing their visa within 48 months of the expiration of their previously held visa, and within the same classification as the previous visa. The pilot program was launched by Mission China on February 13, 2012. This welcome initiative will benefit numerous visa applicants from China and it is hoped that the program will be extended to other countries at the earliest.

### Other Developments in Immigration Law:

#### [March 2012 Visa Bulletin: EB-2 Priority Dates for India and China reach 05/01/10](#)

In the recently published U.S. Department of State Visa Bulletin for March 2012, the EB-2 priority dates for India and China have moved to May 01, 2010 from January 01, 2010 as posted in the February 2012 Visa Bulletin.

Hi, I am a US Citizen, and my fiancée is in Thailand. We have been engaged for some time now, but we can't get married because her divorce from a previous marriage has not finalized. However, it is nearing completion. We hope to have a final court order in a couple of months. I was told that it takes nearly 4-5 months for a K-1 petition to be approved. Can I apply for a [K-1](#) visa for her now, so that we could save some time on the waiting period?

#### The Winning Response:

You cannot file the K-1 visa petition unless both of you are legally free to marry. As your fiancée's divorce is not complete yet, you cannot file the K-1 visa petition now. You can file it only after the divorce has become final.

**Mathew Simpson** receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of February 2012.

### JOBS @ VisaPro

- Full-Time
- Part-Time
- Semi-Retired

**Job Type:** W-2 or 1099

**Location:** Work from anywhere in the U.S. No need to relocate.

- ▶ [Immigration Attorney](#)
- ▶ [Immigration Paralegal](#)

### NEW TO VisaPro?

Do you have questions regarding the [H-1](#), [L-1](#), [E-1](#), other work visas or green cards? VisaPro has answers to commonly asked immigration questions. [Click here](#) to know more.

Meanwhile, the EB-2 numbers for other countries remained current, along with EB-1, EB-4, and EB-5 numbers for all countries. In the EB-3 category, the priority dates for professionals and skilled workers advanced from 12/01/04 to 01/01/05 in respect to China; from 08/15/02 to 08/22/02 in respect to India; and from 02/22/06 to 03/15/06 in respect to all other countries. In the EB-3 Other Workers category, the priority dates remained at 04/22/03 in respect to China, but advanced from 08/15/02 to 08/22/02 in respect to India; and from 02/22/06 to 03/15/06 in respect to all other countries.

### [DHS Announces Publication of Final Rule For Permanent Global Entry Program](#)

DHS has recently announced the publication of a final rule that would establish "Global Entry" as a permanent program. 'Global Entry' is a U.S. Customs and Border Protection (CBP) voluntary initiative that allows expedited clearance for pre-approved, low-risk travelers. The Global Entry program offers quicker processing at select U.S. Ports of Entry by providing expedited inspection and examination processing and allowing low-risk travelers to proceed directly to automated Global Entry kiosks upon their arrival in the United States. The final rule becomes effective on March 7, 2012.

### [Immigration Articles and Other Fun Stuff](#)

Check out our '**Featured Video**' of the month '[214\(b\) Visa Denial: How to Avoid It and Can You Overcome It?](#)', which explains what a 214(b) visa refusal means and highlights the "5 W's" you should tell the consular officer to avoid a visa denial. Please check out and subscribe to our YouTube channel to take advantage of another great service provided to you by VisaPro.

Also remember to check out our **In Focus** article for this month- '[US Visa for Occupational Therapists: The H-1B Visa, TN Visa, and More...](#)' which presents a snapshot of the various US visa options available to foreign national occupational therapists, who want to come and work in the U.S.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that an overwhelming majority of our respondents (**76.47%**) expect 2012 to be an immigration friendly year. We definitely hope they are right! We appreciate that people take interest in the opinion question and cast their votes to give us their feedback. Keep it up! And continue to cast your vote to express **Your Opinion**.



We congratulate **Mathew Simpson** for winning last month's Immigration Quiz. We received a significant number of responses from our readers, but **Mathew Simpson** gave the best answer and won a free online consultation to discuss the concerned

Immigration issues. It's time to get ready 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](mailto:Immigration-Monitor@VisaPro.com) to your address book or safe list.

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

*Christine*

## FEATURED VIDEO

### 214(b) Visa Denial: How to Avoid It and Can You Overcome It?



What does a 214(b) visa refusal mean and what can you do to re-apply? Learn the 5 W's you should tell the consular officer to avoid a visa denial.

[More Videos...](#)

## LATEST NEWS XML

### [H2B Cap Count Update](#)

USCIS has updated the count of H2B visa petitions received and counted towards the H2B cap for the fiscal year 2012 employment. As of February 17, 2012, USCIS has received filings on behalf of approximately 36,195 beneficiaries, and approved approximately, 29,779 H2B beneficiaries against the cap amount of 33,000 for the 1st half of FY 2012.

### [USCIS Announces Inability to Approve Form I-800 for Adoptions from Vietnam](#)

USCIS has announced that until further notice, it will not be able to approve any Form I-800 that is filed on behalf of a child to be adopted from Vietnam. Because U.S. prospective adoptive parents cannot complete the immigration process for an adopted child from Vietnam, USCIS has urged parents to not file any Form I-800 on behalf of a child to be adopted from Vietnam and not to file Form I-800A, identifying Vietnam as the country from which they seek to adopt.

## US Visa for Occupational Therapists: The H1B Visa, TN Visa, and More...

Foreign national occupational therapists who wish to work in the U.S. have a variety of U.S. visa options to choose from. Each U.S. occupational therapist visa option is designed to serve a particular need, and each U.S. visa available to occupational therapist comes with its own requirements, advantages and limitations, often making it a difficult exercise for foreign national occupational therapists and their employers to identify the one that would be most suitable in their situation. In this article we present a snapshot of the most popular U.S. occupational therapist visa options that are available to foreign national occupational therapists who want to come and work in the U.S. temporarily.

[Read Full Article](#) | [Read More Articles](#)

### PROCESSING TIMES XML

▶ [Visa Bulletin](#)

▶ [USCIS Processing Times](#)

▶ [Local USCIS Offices](#)



## H-1B VISA (Persons in Speciality Occupation)

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VisaPro

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## QUESTIONS AND ANSWERS

**Q1. I have applied as an immigrant to US as skilled worker, and I have my USCIS receipt number with me. How can I know when I can get my Green Card?**

**Ans.** To know the current status of your case, please use our '[My Visa Status](#)' tool. We are not aware of your nationality and the priority date of your Green Card application, hence, it would be impossible for us to make an estimation of when you could be receiving your Green Card. As per the March 2012 Visa Bulletin, the priority dates in the [EB-3](#) Skilled Workers category have advanced to 01/01/05 in respect to China; to 08/22/02 in respect to India; and to 03/15/06 in respect to all other countries. Please keep checking the visa bulletin regularly. You will become eligible to file for an [Adjustment of Status](#) if you are inside the U.S. in valid nonimmigrant status when your priority date comes up in the visa bulletin. Alternatively, if you are outside the U.S., the National Benefits Center will notify you of the next steps once your priority date comes up in the visa bulletin.

### 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](#)

**Q2. I and my wife had a 10 year tourist visa for visiting USA where my son lives and works. It expired in March last year. I need to renew/extend the same. What is the procedure? What type of sponsorship is required from my son to apply?**

**Ans.** If your [B-2 Tourist Visa](#) has expired and you wish to travel to the U.S. as a tourist to visit your son and stay with him temporarily, you need to apply for a fresh B-2 visa at an appropriate U.S. Embassy or Consulate in your home country by filing in the online DS-160 form and appearing for a personal interview. Please check the website of the appropriate U.S. Embassy or Consulate for details on the procedure to be followed for filing the online DS-160 form, scheduling the interview, and documents to be submitted.

[More Q&A](#)

## SUCCESS STORIES

*"I just wanted to write a quick note to thank you for all your efforts regarding my new H1-B visa.*

*I truly appreciate your thorough follow-up to the USCIS request for evidence. Your quick turnaround ensured that my visa was issued in a timely manner.*

*Thank you once again!"*

**Ted**  
United States

[More Success Stories](#)

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Do you have any interesting immigration-related news to report? We will give a **FREE Online Consultation** to whoever provides us with the best news story of the month. [Send](#) your story.

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