

## FROM THE EDITOR'S DESK

With the arrival of 2009, we have successfully navigated one more year of our expedition. It has been your continuous support and trust that has made this journey a memorable one. The year 2008 had been very prolific, though it was tranquil at times and erratic at others. With the beginning of another new year, we at VisaPro promise and will strive hard to introduce exciting services to make your visa processing even more Fast, Easy and Economical! We wish you all a very Happy and Prosperous year ahead.

The [H-1B](#) visa category, which has always been in news, is once again the talk of the town. As always seems to be the case, this time too, not for a good reason. It may come as a surprise to you but the rumors that you may have heard that the [Labor Condition Application](#) (LCA)



processing times are expected to increase are true. Informal indications from US Department of Labor (DOL) have indicated that the processing time for LCAs, which are required as part of H-1B petition filings, might take up to 7 working days. This time frame is likely to be longer if an "other" source is used for a salary determination. Now, unlike in previous years, last minute filings will be a challenge. This is a crucial issue because the LCA filing date and its processing times may in turn influence or impact the larger issue of H-1B quota planning. Thus employers have to make sure that processing delays do not endanger the timely filing of an H-1B visa petition.

The year 2008 was no different from other recent years as in that the H-1B cap was reached within 5 business days

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after filings began on April 1, 2008. We expect the same for 2009. Employers should remember that March 31, 2009, is the date when they can begin shipping H-1B cases with an employment start date of October 1, 2009, to USCIS. As was the case in 2008, if the USCIS receives too many H-1B visa petitions, it will use a lottery system to select H-1B petitions for adjudication. One can expect the probability for selection in the lottery to be somewhere between 45% to 50% of the filed petitions.

This month also brought some exciting news for those who use the [H-2B](#) program for temporary nonagricultural workers. On December 19, 2008, both the USCIS and the US Department of Labor (DOL) published final rules that will change how H-2B petitions are processed in the future and the requirements for employers and beneficiaries. These changes are being made to fulfill the commitment made by President Bush's Administration in August 2007, with the failure of any comprehensive immigration reform in Congress, to address immigration challenges using existing authorities. These new rules will become effective on January 18, 2009; however certain aspects of the rules will be phased in over the next year.

#### Key areas of reform covered in the Final Rule include:

- **Centralized processing:** Re-engineers the application filing and review process by centralizing processing and by enabling employers to conduct pre-filing recruitment of US workers;
- **Post-adjudication audits:** Enhances the integrity of the H-2B program through the introduction of post-adjudication audits and procedures for penalizing employers who fail to comply with program requirements;
- **Flexibility:** Reducing from six months to three months the time an H-2B worker who has spent three years in the United States must reside and be physically present outside the United States before he or she is eligible to re-obtain H-2B status;
- **Employers' comfort:** Allowing H-2B petitioners to specify only the number of positions sought and not name the individual aliens except where an intended alien beneficiary is already present in the United States; or where an alien is from a country not eligible for participation in the H-2B program;
- **Employees' comfort:** Reducing the period of time spent outside the United States that interrupts accrual towards the 3-year maximum period of stay in H-2B status;

## YOUR OPINION

Are all visitors from VWP countries required to have an approved travel authorization via ESTA to board a plane or vessel bound for the United States?

- Yes
- No
- 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 February 2009.

*I'm Huma Abraham, a non-US resident but I was in the US for quite some time. My son was born in US and thus he's a US Citizen of 10 years age. Can he sponsor me for Green Card?*

[Submit Your Answer](#)

### Winner of the Immigration Quiz - December 2008:

Kishor Tiwari

### The Question:

- **No additional fees:** Prohibiting H-2B employers and recruiters from imposing certain fees on prospective H-2B workers as a condition of securing employment;
- **Approved Labor Certification:** Requiring an approved temporary [Labor Certification](#) in connection with all H-2B petitions;
- **Employees' flexibility:**
  - a) Amending the definition of "temporary services or labor" to allow U.S. employers and eligible foreign workers the maximum flexibility to complete projects that could be for a specific one-time need of up to 3 years without demonstrating extraordinary circumstances;
  - b) Beginning with petitions filed for workers for Fiscal Year 2010, prohibiting H-2B petitioners from requesting an employment start date on the Form [I-129](#), "Petition for a Nonimmigrant Worker," that is different than the date of need stated on the approved temporary labor certification;
- **Ensuring employers' safety:** Requiring employers to notify USCIS when H-2B workers fail to show up for work, complete the work more than 30 days early, are terminated, or abscond from the worksite;
- **Petition approval for participating countries:** Permitting the approval of H-2B petitions only for nationals of certain countries designated as participating countries by the Secretary of Homeland Security, in consultation with the Secretary of State, and appearing on a list to be published annually in the Federal Register. The initial list of participating countries designated as important to the operation of the program and to be published simultaneously with this Final Rule, includes Mexico, Jamaica, and 26 others. DHS may allow on a case-by-case basis a worker from a country not on the list to be eligible for the H-2B program if such participation is in the U.S. interest;
- **Statutory power to DOL:** Delegating to the Department of Labor (DOL) the statutory authority to impose certain administrative remedies and/or penalties where a substantial failure to meet any of the conditions of the H-2B petition or a willful misrepresentations of a material fact in such petition is found; and
- **Land-border exit system:** Establishing a land-border exit system pilot program, which requires H-2B workers admitted through a port of entry

*Does a person coming to the US on [K-1 Visa](#) eligible to change his or her visa category?*

### **The Winning Response:**

No, the K-1 nonimmigrant status can neither be changed nor extended. If you don't marry the Petitioner who filed the fiancé (fiancée) petition on your behalf within 90 days, you must leave the United States.

**Kishor Tiwari** receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of January 2008.

### **JOBS @ VisaPro**

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

participating in the pilot program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

As we reported in last month's newsletter, the USCIS announced certain revisions to the special immigrant and nonimmigrant religious worker visa classifications on November 28, 2008. Since the final rule was effective upon publication, the USCIS published materials in the form of Q & As to explain the application of the new rule. Given the USCIS' history of clarity it is no surprise that they have had to issue additional Q & As so that people can understand and follow the new rule.

In recent times, there has been a significant increase in the level of scrutiny of [L-1](#) filings by the USCIS, resulting in more Requests for Evidence (RFEs) and ultimately, a higher rate of denials. Even L-1 extensions are scrutinized as never before and are resulting in denials. In light of the increased strict scrutiny of L-1 cases, those employers that primarily rely on L-1 visas to bring foreign workers to the US may have no option but to wait for the H-1B quota to open again and file H-1B petitions for those individuals that they would normally seek L-1s for. These employers should plan to make use of the H-1B filing period that opens April 1, to file H-1B cases instead of solely relying on L-1 cases to go through. Thus, with proper planning you can keep yourself and your company's employment needs intact of the changing immigration policies.



Finally, we would be remiss if we did not turn our attention to one of the major upcoming events of the year – yeah... you got it right...I'm talking about the inauguration ceremony of President-elect Barack Obama. With the swearing-in of President-elect Obama on the agenda, the New Year celebrations have undoubtedly hit the peak.

Wanted to take part in our immigration events, but missed your chance? Check out the informative library of immigration law videos from past conferences.



[More Videos...](#)

Barack Obama will be sworn in as the 44th President of the United States on January 20, 2009, and people all over the globe are anxiously awaiting the grand event. Mr. Obama will take office in January amid massive unrealizable expectations and facing a daunting list of problems - the wars in Iraq and Afghanistan, the broken healthcare system, the spiraling federal budget, and America's profligate energy regime – all prominent among them. Eclipsing them all however, as Obama has made clear in recent days, is the challenge of rebuilding the economy and the banking system. These, though, are issues for another day. People believe that Obama is a symbol for happiness, glory and humanity. But what we are more interested in is his views on immigration. *Obama, in one of his campaign speeches, promised that he would make immigration his top priority and will definitely initiate ways and means to make it a fair journey.* Obama and Vice-President elect Joe Biden will introduce ways to fix the dysfunctional immigration bureaucracy and increase the number of legal immigrants to keep families together and meet the demand from employers for jobs they cannot fill. Obama has stated he would also initiate measures to discourage illegal migration to the United States.

### **Other Developments in Immigration Law:**

#### *USCIS Reaches H-2B Cap for Second Half of Fiscal Year 2009*

The USCIS, on January 08, 2009, announced that it has received a sufficient number of petitions to reach the congressionally mandated [H-2B](#) cap for the second half of Fiscal Year 2009. The USCIS, however, continues to process the H2B petitions, which are not subjected to the cap like [Extension of Stay](#) of a current H-2B worker in the United States; Change the terms of employment for current H-2B workers and extend their stay; or allow current H-2B workers to change or add employers and extend their stay.

#### *Premium Processing Available for Blanket L Petitions*

Premium Processing is available to request the [Blanket L](#) classification for a Petitioner and its qualifying related entities. A request for premium processing of a Blanket L petition should be made on Form [I-129](#), Petition for Nonimmigrant Worker, not on Form [I-129S](#), Nonimmigrant Petition Based on Blanket L Petition. "LZ" should be entered as the requested nonimmigrant classification in Part 2, Item 1 of Form I-129. Individual employees should not be named in the Form I-129. Section 2 of the L classification supplement to Form I-129 should also be completed when seeking Blanket L approval.

#### *Electronic Travel Authorization required for Visa Waiver*

## Countries

Nationals from the Visa Waiver countries, wishing to enter the US will now need to apply electronically for travel authorization. The rule is effective from 12 January 2009. Visa Waiver Program Applicants are advised to apply for ESTA at least 72 hours before travelling to the US. You should provide biographical data, including name, birth date, and passport information, destination address in the US. You will also need to answer questions regarding communicable diseases, arrests and convictions for certain crimes, and, if relevant, provide details of visa revocation or deportation.

### **Immigration Articles and Other Fun Stuff:**

Now for the regulars – this month's **Immigration Article** entitled '*The Form [I-751](#) – Petition to Remove Conditions on Permanent Residence*' is a must read if you are granted Conditional Residency in the US through marriage to a US Citizen. The article gives you a comprehensive guide on removing the Conditions on your residency. Also check out our **In Focus** section for this month, which gives you a detailed insight of both the Immigrant and Nonimmigrant Visas. The articles also help you differentiate between the two based upon their benefits, characteristics and usage. Read the article to find out more.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that 87.50 % of the respondents believe that the US should increase the number of family-based visas to unite U.S. citizen & permanent residents with their family members. We appreciate that people take interest in the opinion question and cast their vote to give us their feedback. Keep it up! And continue to cast your vote to express **Your Opinion**.



We congratulate **Kishor Tiwari** for winning last month's **Immigration Quiz**. Again, we received a significant number of responses from our readers, who talked about various solutions to support their position, but

Kishor Tiwari gave the correct answer and won a free online consultation to discuss his Immigration issues. So 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 next month with a lot more noise from the Immigration World!**

Christine

## RECENT IMMIGRATION EVENTS



VisaPro Attorney  
Mr. Thomas Joy  
at Bangalore



Consular Interview  
Mock Session



Seminar Attendees  
at Hyderabad

More 

## LATEST NEWS

### [Sandia Corp. to Pay More Than \\$2 Million in Overtime Back Wages to More Than 2,657 Employees](#)

Sandia Corp., a firm doing business as Sandia National Laboratory in Albuquerque, has agreed to pay \$2,077,248 in overtime back wages to 2,657 research employees after a U.S. Department of Labor Wage and Hour Division investigation found violations of the Fair Labor Standards Act (FLSA). An investigation by the Wage and Hour Division district office in Albuquerque covering the period from May 23, 2006, to Oct. 31, 2008, found that Sandia Corp. failed to establish a fixed workweek, resulting in employees not receiving complete wages for overtime hours worked.

### [100,000 Employers Use E-Verify Program](#)

The USCIS, January 08, 2009, announced that more than 100,000 employers have signed up to participate in E-Verify, a free, easy to use online system that equips participating employers with the tools to quickly and effectively verify the employment eligibility of newly-hired employees. E-Verify is the best means available to the employers for determining employment eligibility of new hires and the validity of their Social Security Numbers (SSN). E-Verify assists employers in maintaining a legal workforce and protects jobs for authorized U.S. workers.

### [USCIS Announces New Filing Location for EB-5 Petitions](#)

The USCIS released the advance copy of their notice announcing the requirement that petitions and applications related to the Alien Entrepreneur (EB5) immigrant classification, and Regional Center Proposals under the EB5 Immigrant Investor Pilot Program, must be filed at the California Service Center (CSC). This Notice is effective January 26, 2009 for the filing of Forms I-526, I-829, and Forms I-485 based on an approved Form I-526.

[Read More News](#)

## Immigrant Visas Vs Nonimmigrant Visas

There are two types of visas available to the foreign nationals entering into the United States – the Nonimmigrant visa and Immigrant visa. Both of them differ in their nature, usage and benefits. It is the purpose of your travel to the United States that determines the appropriate visa category for you. Both the immigrant and nonimmigrant visa categories have their own pros and cons. An individual needs to decide the category most suitable to him or her based on the purpose of the travel to the US and other qualifying factors. This article is thus designed to make you understand the basic differences between the immigrant and nonimmigrant visa so that when required, you can choose the appropriate one for yourself.

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## IMMIGRATION ARTICLE XML

### The I-751 – Petition to Remove Conditions on Permanent Residence

When a foreign national marries a US citizen they are allowed to apply for permanent resident status in the US but if the marriage is less than two years old, the foreign-born spouse will be given 'Conditional Residency'. Conditional residence is given for two years. The statute requires that the parties to the marriage submit a joint petition, form I-751; Petition to Remove the Conditions on Residence within the 90-day period before the card expires. If you fail to timely file the Form I-751 within the 90-day period before your second anniversary, your conditional resident status will automatically be terminated, and the USCIS will order that removal proceedings be started against you. Thus, removal of the conditions on your Permanent Residence status should not be assumed to be an easy process. All you need is proper care and timely filing. Once your petition is approved, you will be granted a 10-year permanent resident card, which is certainly worth your efforts.

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## PROCESSING TIMES XML

▶ [Visa Bulletin](#)

▶ [USCIS Processing Times](#)

▶ [Local USCIS Offices](#)

## DISCUSSION CORNER

[H1B - layoff, status, transfer to L2](#)

By Raiden

[Change employers after 6yrs H-1B and no I-485](#)

By Banjo

[Canadian marrying American](#)

By Mitsurugi

[Can I file for I-130/AOS while on B-2/B-1 Visa](#)

By S.Saqlain

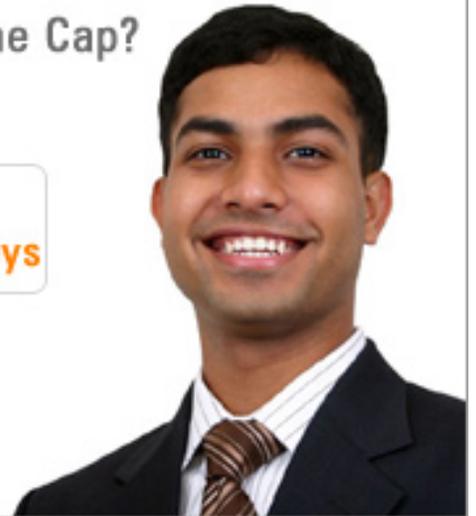
[More Discussions](#)

## 2009 H-1B Cap Strategies

How to beat the Cap?

Contact  
VisaPro Attorneys

VisaPro



## QUESTIONS AND ANSWERS

- I have a Company in Switzerland (owner, but have people who run the Company, even when I'm in the US for 6 to 8 month a year) - I bought a house in Tampa Bay area and want to stay here about 8 month a year and be able to come and go without the B-visa restrictions. I founded a LLC in Florida (but no business yet) - I already have a SSN and CA driver license since 2003 - I have a [B1/B2](#) visa since last year June. I know that the [L-1](#) visa is probably the best option to be able to stay as long as I want. I already did make some contacts and could start doing business in the US and transfer myself and my knowledge immediately. As I bought the house and pay a lot in Switzerland for another house, I do not have money for an [E-2](#), but maybe there are other ways to get this (transferring Swiss clients to the US branch maybe...is all internet based anyway). My company makes around \$250,000.00 pa.**

Since your LLC in Florida is not yet doing business, it would appear that a new office L-1 Intracompany

### 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](#)

transferee visa would be appropriate for your case. In order to qualify, you must prove that you have been employed by a company abroad for at least 1 year of the past 3 years in a position that is executive or managerial and that you are being transferred to the US to a related company in a position that is executive or managerial. The companies must be related by common ownership and control. The fact that you own 100% of each would be enough. When applying for a new company [L-1](#) you will also need to prove that you have sufficient premises to house the new office.

You will need to prove that the US operation, after 1 year, will be built up enough (employees and revenues) to support an executive or managerial position in order to extend your L-1 visa. You will need to submit a business plan showing the investment, organizational structure and goals of the new company. You will also need to show the organizational structure of the foreign entity. Finally, you will need to keep the operation in Switzerland active during the entire length of your L-1 visa. The initial new office L-1 visa will be for 1 year and can be extended in increments of 2 years each up to a total of 7 years.

Finally, the above indicated scenario could lead to permanent resident status (green card) without the need to go through the [Labor Certification](#) process of proving a shortage of qualified US workers. An [E-2](#) treaty investor visa may also be a possibility. However, your lack of funds for the immediate investment required would make the L-1 visa more attractive since the new office L-1 visa does not need the high level of investment that you would need for the E-2 visa. With an E-2 visa, you do not need to maintain the company in Switzerland. An E-2 visa does not have a 7 year limit and can be extended in increments indefinitely as long as you are managing the investment. If you structure the E-2 case appropriately, including continuing to maintain an active Switzerland operation throughout the life of the E-2, then the E-2 visa can also lead to a green card and avoid the labor certification process.

2. **I came to the US from Ecuador as [F-1](#) student to pursue my master's degree which I have already accomplished, and at this point I am working under OPT. When I applied for my F-1 visa I was engaged and living with my girlfriend and our son, so we all went to the embassy and asked to get tourist visas for them so they can visit me here, surprisingly when we receive our passports back they gave them [F-2](#) visas, since then they have visited me in the States a few times. Now my question is as follow. At this point I am about to apply for an [H-1B](#) visa, and would like to get [H-4](#) visas, can I do that?**

The H-4 visa is available for dependants of the principal H-1B visa holders, so only your son would qualify for an H-4. You cannot list them on your H-1B petition (in fact there is no place on the petition for you to list them). However, once you are married your wife only needs show the marriage certificate and proof that you are in H-1B status to be issued an H-4 visa (as noted above, your son would already qualify for the H-4). For dependants that are outside the US the application is made at the US consulate, you do not need prior approval from the USCIS. The visa is generally issued on the day of your nonimmigrant visa interview or the following day. The procedures vary between consulates and you would have to check the website for Ecuador for current requirements. If you have travelled home and are married you can all apply for your visas at the same time.

[More Q&A](#)

## SUCCESS STORIES

"I'd like to express sincere and heartfelt thanks the Visa Pro team for successfully preparing the case that led to my wife getting the green light on her [[K-3](#) visa] to the USA. This is the best news I have received this year, and without a doubt the most positive news I have received since I got married to Irina last year.

Thank you so much for helping me and Irina to navigate through the maelstrom of legal paperwork required for processing an immigration visa. I am certain that your help was critical to the success of our case and we are so happy that we followed your advice.

May God bless you all mightily for the outstanding work you do to bring lives together. I will happily refer you to anyone that comes into my path requiring immigration visa services."

Yours most thankfully and respectfully,

**Steve & Irina Latham,**  
United States

[More Success Stories](#)

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