



**FROM THE EDITOR'S DESK**

The immigration activity resumed this month with the Senate continuing the debate on the Comprehensive Immigration Reform Act of 2006 (S. 2611) popularly known as the "Hagel-Martinez compromise". The Senate voted on the various amendments to the proposed legislation and finally passed the bill by a 62-36 vote. During the first week, the Senate struck down amendments that would have eliminated guest worker program and legalization provisions. Now the real fight begins when the bill is presented before the Senate-House Conference Committee.

While the immigration debate continues, the H-1B numbers for FY 2007 seem to be dwindling fast. You may be tracking the latest cap update through our Immigration News section. While everyone is still guessing when the cap will be reached, over 44% of our readers who participated in last month's Opinion Poll are of the view that H-1Bs for FY 2007 will be over by June. As of May 25, 2006 USCIS has over 49,000 cap-subject H-1B petitions approved or pending. This means there are less than 12,000 H-1Bs remaining before the USCIS decides that it has received enough petitions to count towards the cap. We again remind and urge the last-minute decision makers to act fast and [contact us](#) immediately, if you intend to file an H-1B petition for an alien worker.

Would you mind paying a little extra to get a quick decision on your petition from the U.S. Citizenship and Immigration Service (USCIS)? USCIS is planning to expand the Premium Processing service to [Form I-140](#) - Immigrant Petition for Alien Worker; [Form I-539](#) - Application to Extend/Change Status; and [Form I-765](#) - Application for Employment Authorization. A notice to this effect was posted in the Federal Register by the USCIS. However, the notice indicates that premium processing for those categories will not begin until notification is posted on the USCIS website.

Our **In Focus** article explores the benefits of premium processing of a petition to get a speedy decision. Should the USCIS also consider expanding the benefit of premium processing to family visa petitions such as K-1 or K-3? Don't forget to express **Your Opinion** in this month's poll.

**Martina Powell** is the winner of last month's **Immigration Quiz**. Unlike the past few months, there was little competition for Martina this time. Although a few participants answered correctly, their responses lacked proper explanation. **Ms. Powell** wins a **FREE online consultation** with a VisaPro attorney. Congratulations!

We often receive queries from various users of our website on how to obtain a U.S. work permit. VisaPro readers are aware that there are various visas available for working in the U.S., depending upon the nature of

**IN THIS ISSUE**

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**YOUR OPINION**

USCIS is considering allowing premium processing of Employment-Based green card and EAD applications? Should the USCIS also expand the benefit of premium processing to family visa petitions such as K-1 and K-3?

- a. Yes
- b. No

[Cast Your Vote](#)  
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**IMMIGRATION QUIZ**

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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**

work, the employing organization and the employee's background. I have already informed you all that we have various exciting projects in the pipeline, one of which will allow you to determine your visa options for working in the U.S. at the click of a few buttons. While we continue to work towards adding that feature on our website, I have a wonderful article for you in this month's **Immigration Article** section. The article discusses the various options available to people of different professions to obtain a work authorization for U.S. I wish you the best of luck for your American Dream!

As always, I am looking forward to your wonderful [feedback](#) on your **Immigration Monitor**. Did you check the new version of [VisaPro Message Boards](#)? It is really great fun posting your queries and responding to others' queries. I am learning a lot about U.S. Immigration through the message boards. Are you?

See you next month with more news from the world of immigration.

*Christine*

## LATEST NEWS [XML](#)

### [Senate approves Comprehensive Immigration Reform bill](#)

The Senate yesterday approved, by a vote of 62-36, the Comprehensive Immigration Reform Act of 2006 (S. 2611). The bill sets the stage for a Senate-House showdown as the bill will now have to be harmonized with the bill (H.R. 4437) passed by the House in December.

### [H-1B TRACKER: Cap Count as of May 25, 2006](#)

As of May 25, 2006 USCIS has approved 7,718 petitions that are subject to H-1B cap and 41,316 petitions are pending.

### [I-140 and EAD may become eligible for Premium Processing](#)

USCIS recently published a notice in the Federal Register identifying Forms I-140, I-539 and I-765 for addition to an expanded Premium Processing Service.

### [Jeff Conklin is Chief Information Officer at USCIS](#)

Director Emilio T. Gonzalez announced the appointment of Jeff Conklin as the Chief Information Officer of United States Citizenship and Immigration Services (USCIS).

[Read More News](#)

## IN FOCUS

[XML](#)

### When to use Premium Processing

On June 1, 2001, the U.S. Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services) put into place a Premium Processing Service, promising to speed up the agency's applications decision process on selected work visas.

**Consultation** from an Experienced VisaPro Immigration Attorney during the month of June 2006.

*I am getting married to a French citizen next month. He is currently in the U.S. on E-2 Investor visa. I am a citizen of India, which is not a treaty country. Does that mean I cannot accompany my husband to the U.S. on E-2 dependant visa?*

[Submit Your Answer](#)

**Immigration Issue?**

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### **Winner of the Immigration Quiz - April 2006:**

Martina Powell

#### **The Question:**

*I was born in Australia but my family migrated to the U.K. when I was 3 years old and I have a British citizenship. I am 35 now and have received an offer from a U.S. company. Can I use E-3 visa rather than the H-1B??*

#### **The Winning Response:**

E-3 visa classification applies only to nationals of Australia as well as their spouses and children. Since you were born in Australia, you may qualify for Australian citizenship by birth. However, you need to confirm that your present country (U.K.) recognizes dual citizenship (Australia recognizes dual citizenship). Once you are able to prove that you are an Australian citizen, you may apply for an E-3 visa. Otherwise, the best bet may be H-1B. Also, for both visas, the position offered to you must be a specialty occupations, requiring at least a bachelor's degree, and you must possess the degree or its equivalent.

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Martina Powell receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of May 2006.

## IMMIGRATION ARTICLE XML

### How do I get a US Work Permit?

There are many types of work visas, each with specific requirements as to type of position, type of employer, duration, etc. One of the most important steps in the visa application process is to determine what category/ies may be the most suitable, considering the nature of the position, your background and goals, and other factors.

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## PROCESSING TIMES XML

▶ [Visa Bulletin](#) ▶ [USCIS Processing Times](#) ▶ [Local USCIS Offices](#)

## DISCUSSION CORNER XML

[Need help from Desperated H1B worker who got screwed up by bad company and attorney](#)

By wuedward

[Time frame after I129F Approved???](#)

By Harry123

[overstayed visa waiver and lost citizenship](#)

By rachael

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**H-1B VISA** (Persons in a Specialty Occupation)  
Quick, Easy, Economical.

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## QUESTIONS AND ANSWERS

- 1. My friend submitted his I-140 and I-485 last year and they were filed in Vermont Service Center. The receipt number starts with EAC. A few days ago when I checked the case status online, it said that his case had been transferred to Lincoln NE Center. Will the new center use the filing date as the date when they got the application or the date when Vermont Service Center received?**

The USCIS recently instituted new policies regarding where cases will be filed and where they will be adjudicated. They are in the process of establishing greater specialization with the Nebraska and Texas Service Centers handling the employment based permanent residence cases (Forms I-140 and accompanying adjustment of status applications) and the Vermont and California Service Centers handling the nonimmigrant employment based cases ([Form I-129](#) and accompanying forms). It is our understanding that with this change the service centers will be exchanging cases for processing.

It is also our understanding that the case should retain its original date for processing and should be processed in order; it should not "go to back of the line" as if it was just received. As with any major change in procedures there may be some initial delays in the process, and some cases may end up out of order for processing. These bugs should be worked out fairly quickly and the overall processing times should decrease.

### 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](#)

2. **I with my husband and two sons got our green card in December 2003. We went to the US in May 2004 and applied for a reentry permit as my second son had to complete his studies here in India. We (my husband, my second son and I) have been given permission to return to the US by November, 2006. My first son is in the US pursuing his MS. Do we (the three of us) need to again apply for a re-entry permit when we go to the US now or is it possible to visit the US henceforth once in a year without applying for a [reentry permit](#)?**

It all depends on your intent to make the US your permanent home. Maintaining your permanent residence status is dependent on your intending to make the US your permanent home and living here. If you plan to make the US your permanent home but spend a significant period of time outside the US you should continue to get a re-entry permit for those extended periods outside the US.

Any time you are outside the US for longer than six months there is a presumption that you have abandoned your permanent residence status. The USCIS looks at several factors in determining abandonment: whether you have kept a home in the US that you have unrestricted access to, whether you maintained US bank accounts and filed your US tax returns as a US resident, whether you kept a US driver's license current, whether you are working for a US employer overseas or for a foreign employer, and whether you have obtained a re-entry permit. Each case is based on the facts involved. However, as a rule of thumb, the longer you remain outside the US the more difficult it will be to show that you intend to make the US your permanent home.

[More Q&A](#)

## SUCCESS STORIES

### **Failure to file a change of status for your spouse is not necessarily fatal to your case**

We received a frantic call from Dr. Wang. It seems that his wife has been out of status now for over a year (close to a year and a half). When Dr. Wang joined his current employer, they filed for his change of status from [F-1](#) to [H-1B](#), but failed to file a change of status for his wife, even though they knew he was married and that she was in the US with him. Once Dr. Wang's H-1B status was approved his wife no longer qualified as an F-2 and technically fell out of status. This error was only discovered when Dr. Wang accepted a position with a new employer and they were preparing his new H-1B petition.

Because she had been out of status for so long it became critical to find a way to get Mrs. Wang back into status in the US. If she were to leave the US to get a new visa it was possible that a consular officer could have determined that she was out of status for over a year and thereby subject to the 10 year bar.

Some quick research confirmed that we could still seek a change of status for Mrs. Wang under 8 C.F.R. § 248.2 if we could show that the error in not filing was "through no fault of her own." We gathered as much information as possible to show that the attorneys that filed Dr. Wang's change of status to H-1B was aware that he was married and that his wife was in the US with him. We were able to show that Dr. Wang had provided the attorney with his wife's information but that he failed to prepare the change of status for her. We also got a statement from Dr. Wang that the attorney did not advise him to file a change of status for his wife, and that the Wang's relied on the attorney's expertise and assumed that everything that was required had been completed and filed.

To our great delight Mrs. Wang's [change of status](#) application was approved after about 6 months (because of the length of time that Mrs. Wang had been out of status the USCIS asked for additional evidence about what Mrs. Wang had been doing in the US since her husband had changed status, which was quickly provided to the service center) and her status was extended to match that of Dr. Wang.

The regulations require that a change of status application must be received by the service center with jurisdiction over the place of residence of the applicant before the applicant's current status expires. If the application is not timely filed, USCIS has the discretion to excuse the late filing if the applicant can show that:

- a. the late filing was due to extraordinary circumstance beyond the control of the applicant, and that the delay was commensurate with the circumstances;

- b. the applicant has not otherwise violated their status (e.g., has not engaged in unauthorized employment);
- c. the applicant remains a bona fide nonimmigrant; and
- d. the applicant is not in removal proceedings.

The outcome is clearly dependent on handling the facts of the case, and as demonstrated here, can be successful even when the applicant has been out of status for a lengthy period of time.

Our attorneys 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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