



FROM THE EDITOR'S DESK

There have been a number of interesting things taking place in the world of immigration this past month. However, the change with the potential for the most significant impact will probably be the proposed changes to the [H-2B](#) temporary labor certification process. This month also saw announcements from the USCIS on proposed changes to the time that TN workers from Canada and Mexico will be allowed to stay in the US, and in its interpretation of the Child Status Protection Act (CSPA). While the changes to the H-2B program are important to employers needing seasonal help, the changes to the CSPA may directly impact a great number of individuals waiting for permanent resident visas.

In what we believe will be some welcome news, the U.S. Department of Labor (DOL) on May 23, 2008, issued proposed rules designed to modernize the application process and enhance worker protections under the H-2B temporary labor certification program. The changes are in response to the administration's Aug. 10, 2007, promise to review and update foreign worker program regulations.

"The proposed improvements in H-2B temporary labor certification program will give the department additional tools to protect workers and remove duplicative bureaucracy." said Secretary of Labor Elaine L. Chao. If the rules do as they promise it should become easier to navigate the H-2B labor certification mine field.

When a shortage of U.S. workers is demonstrated, the H-2B program makes it possible for employers to apply for temporary, non-agricultural foreign workers to fill their temporary or seasonal needs. The employer has to prove through a recruitment process that there are no qualified US workers available to fill the offered positions.

The proposed rule would adopt a process similar to the

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permanent labor certification program that was instituted in 2005. Under the new application process employers would attest, under threat of fines and other penalties that they have complied with all the program's requirements. As we saw with the re-engineering of the permanent labor certification process, this new procedure would eliminate much of the hassle encountered in the H-2B recruitment. The changes would eliminate the first step in the current procedure, the filing with the state workforce agencies (SWAs), eliminating the current duplication of efforts by the SWAs and the Department of Labor's (DOL) Employment and Training Administration (ETA). Instead of applying first with their SWAs, employers would file their H-2B applications directly with ETA. The proposed rule also removes the prevailing wage determinations from the SWAs and gives that function to the ETA. Sort of gives us "one stop shopping" for your H-2B certification.

As with all benefits there is a trade off. As part of the streamlining process the DOL is seeking to enhance protections for U.S. and foreign workers. For instance, employers would be prohibited from passing along application and other costs to foreign workers participating in the H-2B program. DOL also proposes, as they did with the changes to the permanent labor certification process, to debar for up to three years employers, attorneys and agents found to have committed fraud or willful misrepresentation concerning the H-2B employment-based immigration program, or failed to cooperate in Labor Department audits or investigations.

Finally, in what may be an attempt to move the enforcement function from the USCIS to DOL, the proposal contains a new Department of Labor enforcement program for H-2Bs. Congress vested the Department of Homeland Security with H-2B enforcement authority in 2005, but the DHS could delegate that statutory enforcement authority to the DOL.

DOL has had 3 years of experience with the "re-engineering" of the permanent labor certification process. Let's hope that the process for H-2Bs works as well, and that the implementation goes smoothly.

Other Developments in Immigration Law

USCIS Announces a Proposal to Increase Periods of Stay for TN Professional Workers from Canada or Mexico

Also this month USCIS announced that it is publishing a Notice of Proposed Rulemaking (NPRM) to increase the maximum amount of time a Trade-[NAFTA \(TN\) professional](#) worker from Canada or Mexico can remain in the United States before seeking readmission or obtaining an extension of stay. The proposal will extend the maximum period of admission for TN workers from one year to three

YOUR OPINION

Will Trade-NAFTA (TN) professional workers from Canada or Mexico remain in the United States before seeking readmission or obtaining an extension of stay after the recent Notice of Proposed Rulemaking (NPRM) to increase the maximum amount of time?

- a. Yes
- b. No
- c. Can't say

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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 June 2008.

I am currently on an L-1 Blanket and have been approached by more than one other employer for prospective employment in the USA. Can I continue on the same L-1 Blanket visa and change my employer?

[Submit Your Answer](#)

years, the same term that USCIS currently may grant to [H-1B](#) specialty occupation workers. This will be a welcome change for those TN workers coming from Mexico and Canada.

USCIS Announces Enhancements to E-Verify Program

In its continuing effort to make it easier for US employers to verify the work status of potential employees USCIS has made additional improvements to the E-Verify [employment authorization](#) program. These new enhancements are designed to reduce an already low mismatch rate, while also streamlining and increasing the effectiveness of the overall program. We welcome these changes and hope that more employers look to take advantage of this program.

USCIS Issues Revised Guidance on Child Status Protection Act (CSPA)

The USCIS recently issued guidance that will modify its earlier interpretation of the Child Status Protection Act (CSPA) which permits applicants for certain immigration benefits to retain classification as a child even if he or she has reached the age of 21.

U.S. Citizenship through Military Service

The USCIS continues to push its armed forces citizenship program. Members and certain veterans of the U.S. Armed Forces are eligible to apply for United States citizenship under special provisions of the Immigration and Nationality Act (INA). In addition, USCIS has streamlined the application and [naturalization](#) process for active military personnel and those recently discharged. Generally, the qualifying service for U.S. Citizenship must be in one of the following branches: Army, Navy, Air Force, Marine Corps, Coast Guard, and certain reserve components of the National Guard and the Selected Reserve of the Ready Reserve.

Iraqi Refugees can now seek asylum in the U.S.

The U.S. Department of Homeland Security (DHS) and the U.S. Department of State (DOS) have been committed to streamlining the process for admitting Iraqi refugees to the U.S. while at the same time ensuring the highest level of security. Starting in May 2007, DHS and DOS have worked cooperatively to administer the overseas component of the U.S. refugee admissions program (USRAP).

Immigration Articles and Other Fun Stuff

Now for the regulars -- this month's **Immigration Article** will provide an overview on the immigration process for green card through marriage depends upon whether you

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Winner of the Immigration Quiz - April 2008:

Maria Frankfurt

The Question:

I had an H-1B visa with Company A which is still valid and not cancelled. Now I have moved to Company B and have started working for them. They have filed for my H-1B transfer which is still pending. Now I am planning to move to Company C. Will I be able to transfer my visa to company C without any risk involved?

The Winning Response:

As long as you have always had a valid H-1B visa or a petition pending for an extension or a new employer there should be no problem in switching to Company C. However, the USCIS will not complete processing a petition by Company C until they have adjudicated the petition by Company B.

intend to marry the foreign national in the U.S. or outside the U.S and also Check out our **In Focus** section which will tell about how you can enter US without a visa. We have again brought an interesting question for our opinion poll. We ask all our readers to cast their vote and we appreciate that people are taking their time to give their opinion. Keep it up! Last month's poll results indicate that 70% of the respondents believe that the Optional Practical Training (OPT) Extension for foreign students will act as an interim relief for US companies seeking to attract and retain highly skilled foreign workers. Cast your vote to express **Your Opinion**.



Maria Frankfurt deserves Congratulations for winning last month's **Immigration Quiz**. Answers to the quiz indicated that many of our readers were unsure as to whether transfer of H-1B to Company C is possible or

not. However, Ms. Frankfurt gave the correct answer and won a free online consultation to discuss her Immigration issues. 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 to your address book or safe list.

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

Christine

Maria Frankfurt receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of May 2008.

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LATEST NEWS XML

[U.S. Department of Labor proposes rules to modernize and increase protections under H-2B program](#)

The U.S. Department of Labor (DOL) today proposed rules to modernize the application process and enhance worker protections under the H-2B temporary labor certification program. The changes respond to the administration's Aug. 10, 2007, promise to review and update foreign worker program regulations.

[USCIS to Revise Filing Instructions for Petition to Remove Conditions on Residence](#)

U.S. Citizenship and Immigration Services (USCIS) will soon be revising the filing instructions for the Petition to Remove Conditions on Residence (Form I-751) to require filing at the California or Vermont Service Centers, where all Forms I-751 are currently adjudicated. The adjudication functions for these petitions have already been assigned to these locations in anticipation of this change. Therefore, all petitioners filing a Form I-751 are requested to file the petition with the California or Vermont Service Centers, depending on the state in which they reside.

[U.S. Citizenship through Military Service](#)

Members and certain veterans of the U.S. Armed Forces are eligible to apply for United States citizenship under special provisions of the Immigration and Nationality Act (INA). In addition, U.S. Citizenship and Immigration Services (USCIS) have streamlined the application and naturalization process for military personnel and those who recently discharged. Generally, the qualifying service for the U.S. Citizenship is in one of the following branches: Army, Navy, Air Force, Marine Corps, Coast Guard, certain reserve components of the National Guard and the Selected Reserve of the Ready Reserve..

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Enter US without a Visa

The Visa Waiver Program allows foreign nationals from certain designated countries to enter the U.S. for a period of up to 90 days as a visitor for business or pleasure without obtaining a visa.

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IMMIGRATION ARTICLE XML

US citizen marrying a foreign national: Issues involved

Each year, thousands of U.S. citizens marry foreign-born persons and file for their permanent residence process in the United States. The immigration process for green card through marriage depends upon whether you intend to marry the foreign national in the U.S. or outside the U.S. Each situation has its own distinct requirements and procedures and thus, requires different planning.

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DISCUSSION CORNER

[H1 to L1 and again H1](#)

By maverick123

[Can I apply for the green card on a F-1 visa?](#)

By muzammal

[Can I file I-485 while I-130 pending?](#)

By jjguo

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QUESTIONS AND ANSWERS

1. **I currently am employed in the USA on a [L-1](#) visa; my partner is accompanying me on a [B-2](#) visa. As we are not yet married is there any way to obtain an L-2 visa for her in order that she can work?**

Unfortunately, there is no way for your partner to qualify for the [L-2](#) visa. By statute and regulation only a spouse or child will qualify for L-2 status, and subsequently work authorization.

While she cannot qualify for L-2 status, and get work authorization through that route, depending on her education and experience there may be other visa options that are available to her.

2. **I am staying in US for the past nine years on P-3 visa and now it is going to be expired in couple of months. I have maintained my legal status in US. Now I'm getting married to a US citizen this year and I want to stay in US without going back adjust my status to permanent residency on my own. What do you suggest to become a Green Card holder and what is the procedure?**

If you marry a US citizen you will be able to file for [permanent residence](#) as soon as you are married. Since you will be marrying a US citizen you will be considered an "immediate relative" and do not have to wait for a visa to become available. Your spouse would file a Form [I-130](#), Petition for Alien Relative, on your behalf, and you would file the adjustment of status package concurrently. As part of the adjustment package you would file for work authorization using Form [I-765](#) (once you have filed the [adjustment of status](#) application you can no longer work on the [P-3](#) visa). If you need to travel outside the US while you are waiting for your green card you would file for [advance parole](#) on Form [I-131](#) (again, once you have filed for adjustment of status you cannot leave the US until the green card is granted unless you have advance parole)

[More Q&A](#)

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](#)

SUCCESS STORIES

"I would like to personally thank the VisaPro team for helping our company obtain [[TN Mexico](#)] visas for our employees outside the country. It's extremely valuable for our company to get such professional service for such an affordable price. Through the process, VisaPro provided excellent support and was always available to answer our questions.

I unhesitatingly recommend VisaPro to anyone needing assistance with immigration needs."

Steve Schroeder, President
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