

## **Gulf Coast Immigration Monthly Newsletter - January 2013**

### **J-1 Visa (Exchange Visitor Program), Opportunity for Business to Go Global**

The Exchange Visitor (J) non-immigrant visa category is to foster global understanding through its multifaceted programs. It enables qualifying foreign nationals to come to the U.S. to teach, study, conduct research, demonstrate special skills or receive on the job training for periods ranging from a few weeks to several years. For example, the J-1 trainee, intern, and summer work travel programs can be valuable tools in the current highly competitive global economy as training skilled individuals from around the world not only adds diversity to American organizations but also gives the organization the opportunity to create international business networks and gain better knowledge of international markets

The Department of State (DOS) designates U.S. government, academic and private sector entities to conduct educational and cultural exchange programs and the Department of Homeland Security (DHS) implements the J-1 Visa regulations.

Before applying for the J-1 visa at the U.S. Embassy or Consulate in their home country, foreign nationals should have one of the designated sponsors. All exchange visitors are expected to return to their home country upon completion of their program to share their exchange experiences. In particular, exchange visitors who are funded by either government or the U.S. government, have specialized knowledge, including medical training, will be subject to the two-year home-country foreign residency requirement at the end of the exchange visitor program and may not benefit from certain employment-based or family-based visas until the foreign residency requirement is satisfied.

### **EB-5 Cases Involving Tenant Occupancy Methodology for Job Creation**

U.S. Citizenship and Immigration Services (USCIS) released operational guidance for EB-5 cases involving tenant occupancy to facilitate adjudication of cases involving issues related to the "tenant-occupancy" methodology for establishing job creation in EB-5 cases in December 2012. USCIS will apply the guidance to pending cases and cases filed on or after December 20, 2012, that rely on the tenant-occupancy methodology. The guidance does not rescind or supersede other EB-5 guidance.

In regional center cases that rely on tenant occupancy models, USCIS requires evidence that the claimed jobs result, directly or indirectly, from the economic activity of the EB-5 commercial enterprise. With respect to indirect job creation, applicants and petitioners must project the number of newly created jobs that would not have been created but for the economic activity of the EB-5 commercial enterprise. "In making that projection, they are to use economically and statistically valid forecasting tools," USCIS noted.

## **New H-2A Prevailing Wage**

The Department of Labor (DOL) announced new prevailing wage and piece rates covering the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) and corresponding employees to perform agricultural labor or services in certain occupations, including open range production of livestock, itinerant animal shearing, sheep herding, goat herding, and custom combine operations. For open range production of livestock, sheep herding, and goat herding occupations, which are characterized by other than a reasonably regular workday or workweek, the prevailing wage results, reflected as monthly or daily prevailing wage rates, are deemed to be the Adverse Effect Wage Rates (AEWR) for those occupations.

The H-2A nonimmigrant worker visa program enables United States (U.S.) agricultural employers to employ foreign workers on a temporary basis to perform agricultural labor or services.

The Immigration and Nationality Act (INA) authorizes the Secretary of the DHS to permit employers to import foreign workers to perform temporary agricultural labor or services of a temporary or seasonal nature if the Secretary of the U.S. DOL (Secretary) certifies that: (1) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

## **FY2013 H-2B Cap Count**

As of 1/4/13, USCIS receipted 22,769 beneficiaries toward the 33,000 H-2B cap amounts for the first half of FY2013. This count includes 18,996 approved & 3,773 pending beneficiaries. H-2B cap count information for the second half of FY2013.

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs. There is a statutory numerical limit, or "cap," on the total number of aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30).

## **DOS has introduced "Visa Status Check"**

Department of State has introduced the online "Visa Status Check," which allows both immigrant and nonimmigrant applicants to check the status of their cases at the Consular Electronic Application Center (CEAC).

## **E-Verify Employers Search Tool**

USCIS has launched a new E-Verify Employers Search Tool that allows the user to find employers and federal contractors currently enrolled in E-Verify. The search tool includes the business name, federal contractor identifier, federal contract employee verification, city, state, zip code, and workforce size. The search tool includes only employers and federal contractors that have self-reported that their company has five or more employees.

## **New Immigrant Visa Fee**

On February 1, 2013, USCIS will begin collecting a new fee of \$165 from foreign nationals seeking permanent residence in the United States. The agency said that the new fee will allow USCIS to recover the costs of processing immigrant visas in the United States after immigrant visa-holders receive their visa packages from DOS, which includes staff handling and the cost of producing and delivering the permanent resident card. USCIS processes approximately 36,000 immigrant visa packages each month.

The new fee is in addition to fees charged by DOS associated with an individual's immigrant visa application. Prospective adoptive parents whose child will enter the United States under the Orphan or Hague processes are exempt from the new fee.

## **ICE Announces Removal Numbers, Issues New National Detainer Guidance, Discontinues State/Local 287(g) Partnership Agreements**

U.S. Immigration and Customs Enforcement (ICE) Director John Morton announced on December 21, 2012, the agency's fiscal year (FY) 2012 year-end removal numbers, highlighting trends that underscore the administration's focus on removing from the country convicted criminals and other individuals that fall into priority areas for enforcement.

Overall in FY 2012, ICE's Office of Enforcement and Removal Operations removed 409,849 individuals. Of these, approximately 55 percent, or 225,390, of the people removed were convicted of felonies or misdemeanors. This was almost double the number of criminals removed in FY 2008. The convictions included 1,215 for homicide; 5,557 for sexual offenses; 40,448 for crimes involving drugs; and 36,166 for driving under the influence.

In an effort to further focus ICE resources on the most serious criminal offenders, ICE issued new national detainer guidance on the same day. This guidance limits the use of detainers to individuals who meet the department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses, such as traffic offenses and other petty crimes, to ensure that available resources are focused on apprehending felons, repeat offenders, and other ICE priorities. ICE priorities include identifying and removing those who have committed crimes, pose threats to national security, have crossed the border recently without authorization, and/or repeatedly violate immigration law.

ICE has also decided to discontinue any of its agreements with state and local law enforcement agencies that operate task forces under the 287(g) program as ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases. The 287(g) program allowed a state or local law enforcement entity to enter into a partnership with ICE to receive delegated authority for immigration enforcement within its jurisdiction. As of October 16, 2012, there were 57 such agreements.

### **Provisional Unlawful Presence Waivers**

Effective March 4, 2013, certain immediate relatives of U.S. citizens who are physically present in the U.S. are allowed to request provisional unlawful presence waivers prior to departing from the U.S. for consular processing to become permanent residents.

The process change permits certain immediate family members of U.S. citizens (spouses, parents of citizens at least 21 years of age, and minor children) to apply for a provisional waiver of unlawful presence while remaining in the U.S., thereby cutting down on the lengthy waits-sometimes a year or more-during which these citizens are separated from their families during the process. To obtain the waiver, applicants would still need to meet the strict letter of the law which requires them to prove that family separation will cause their American citizen spouse or parent extreme hardship.

If the waiver is granted, the foreign national must still leave the U.S. and apply for and receive an immigrant visa abroad before returning to the U.S. However, the length of time that American families are forced to remain separated should be lessened considerably.

### **New USCIS Policy Manual (Vol 12)**

Volume 12 of the Policy Manual replaces some of the naturalization and citizenship policy guidance of the Adjudicator's Field Manual (AFM).

Some of highlights of this citizenship and naturalization policy guidance are as follows:

- Clarifies that officers administer any portion of the English and/or civics tests that an N-336 applicant previously failed. Officers provide only one opportunity to pass the failed portion of the tests at the hearing.
- Clarifies that admission to the United States as a lawful permanent resident is not just a procedural matter but requires substantive eligibility.
- Clarifies that certain spouses and military members who are conditional residents are not required to remove their conditions prior to naturalization.
- Establishes that days of travel to and from the United States will count as days of physical presence in the United States.
- Clarifies that applicants who passed the English and civics testing at the time of legalization will not be retested at naturalization examination.
- Clarifies that while spouses are required to live in marital union with the citizen spouse

preceding the filing of the naturalization application, only a valid marriage is required from the date of filing until the time of naturalization.

- Clarifies that USCIS calculates the early 90-day filing period for spouses in the United States by counting back 90 days from the day before the applicant reaches three years as an LPR.
- Clarifies that the period of good moral character for spouses of U.S. citizens employed abroad is at least three years prior to filing the application until the time of naturalization.
- Clarifies that USCIS waives the Oath of Allegiance requirement for children under the age of 14.

### **DOJ Settles with South Carolina Food Service Provider to Resolve Immigration-related Unfair Employment Practices**

Centerplate Inc., engaged in a pattern or practice of treating work-eligible non-U.S. citizens differently from U.S. citizens during the INA's employment eligibility verification processes, including E-Verify, by requiring specific documents issued by the DHS from non-U.S. citizens, while not making similar requests of U.S. citizens.

The Department of Justice (DOJ) reached an agreement with Centerplate Inc., resolving allegations that the company violated the anti-discrimination provision of the INA. Under the terms of the agreement, Centerplate has agreed to pay \$250,000 in civil penalties, the third highest amount paid through settlement since enactment of the INA's anti-discrimination provision in 1986. Centerplate has also agreed to fully compensate any victims who lost wages as a result of Centerplate's practices, undergo DOJ training on the anti-discrimination provision of the INA, and be subject to monitoring of its employment eligibility verification practices for a period of three years.

Centerplate, based in Spartanburg, S.C., is one of the largest hospitality companies in the world. With over 10,000 employees nationwide, Centerplate provides food service to over 250 stadiums, convention centers and entertainment venues across the country.

### **Permanent Legal Immigration to the United States: Policy Overview**

Congressional Research Service (CRS) report from 12/17/12 called "Permanent Legal Immigration to the United States: Policy Overview" showing that nearly 65% of legal permanent residents (LPRs) entered the United States on the basis of family ties during FY2011.

### **A Decade of Rising Immigration Enforcement**

The Immigration Policy Center recently released a new fact sheet: *A Decade of Rising Immigration Enforcement*. With roughly 11 million unauthorized immigrants living in the United States, some question whether the nation's immigration laws are seriously enforced. DHS has reported record numbers of removals during the Obama Administration. Meanwhile, fewer

noncitizens are trying to enter the country illegally, and those caught by the Border Patrol are now regularly charged with federal crimes. These trends reflect a sweeping and punitive transformation in U.S. immigration enforcement. For example:

- The number of annual removals has more than doubled over the past decade. In total, there have been more removals during the last ten years than during the previous 110 years combined.
- The number of annual removals now exceeds the number of border apprehensions, suggesting that more noncitizens are being deported from the country than are caught trying to illegally enter in the first place.
- In fiscal 2011, nearly 70% of removals involved noncitizens who were given no opportunity to appear before an immigration judge.
- The number of apprehensions along the border has fallen to levels not seen since the early 1970s, and authorities now regularly prosecute noncitizens for illegally entering and re-entering the country.
- The Secure Communities program is now resulting in more than 40,000 fingerprint matches per month.

### February 2013 Visa Bulletin

DOS has released its August 2012 Visa Bulletin. The Visa Bulletin sets out per country priority date cutoffs that regulate the flow of adjustment of status (AOS) and consular immigrant visa applications. Foreign nationals may file applications to adjust their status to that of permanent resident, or to obtain approval of an immigrant visa application at an American embassy or consulate abroad, provided that their priority dates are prior to the cutoff dates specified by the DOS.

Priority date cutoffs are assessed on a monthly basis by the DOS, based on anticipated demand. Cutoff dates can move forward or backward, or remain static and unchanged. Employers and employees should take the immigrant visa backlogs into account in their long-term planning, and take measures to mitigate their effects.

### FAMILY SPONSORED CATEGORIES

Family-Sponsored	All Charge-ability Areas Except Those Listed	CHINA-born mainland	INDIA	MEXICO	PHILIPPINES
F1	15JAN06	15JAN06	15JAN06	15JUL93	08MAR98
F2A	22OCT10	22OCT10	22OCT10	08OCT10	22OCT10
F2B	15JAN05	15JAN05	15JAN05	15DEC92	15MAY02
F3	08JUL02	08JUL02	08JUL02	08MAR93	22AUG92
F4	15APR01	15APR01	15APR01	01AUG96	01JUN89

**First (F1):** Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference

numbers:

**A. (F2A)** Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

**B. (F2B)** Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

**Third (F3):** Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth (F4):** Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

#### EMPLOYMENT BASED CATEGORIES

Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	15JAN08	01SEP04	C	C
3rd	15MAR07	15NOV06	15NOV02	15MAR07	22AUG06
Other Workers	15MAR07	01JUL03	15NOV02	15MAR07	22AUG06
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	C	C	C	C

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

#### Global Immigration: China

The following types of visas are available for foreign nationals who plan to visit China:

- X (Student) Visa
- F (Student/Business) Visa
- Z (Employment/Work) Visa
- G (Visa-free entry and Transit) Visa
- D (Resident) Visa
- J (Journalist) Visa

There are a few situations where a visa is exempted to enter China including diplomatic, or official passport holders (less than 30 days); direct transient travelers (within 24 hours); APEC Business Travel Cards holders (less than 2 months); and visitor of the Pearl River Delta Region (up to 6 days).

Applications for visas should be submitted at overseas Chinese visa authorities, including Chinese embassies, consulates, visa offices and the consular department of the Office of the Commissioner of the Ministry of Foreign Affairs of China.

A visa is issued with the number of times the visa holder is permitted to enter China within the visa's period of validity ("number of entry"). When the entries are all used, the visa is not valid anymore even if the period of validity is not expired. Short-term visas are generally valid for three months from the date of issuance.

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