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Seyfarth Shaw Events and News

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For other news about Seyfarth Shaw, visit seyfarth.com/ImmigrationPress.
1. H-1B Cap Reached for FY 2011

U.S. Citizenship and Immigration Services (USCIS) announced on January 26, 2011, that it has received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2011.

USCIS noted that January 26, 2011 is the “final receipt date” for new H-1B specialty occupation petitions requesting an employment start date in FY 2011. The final receipt date is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 65,000. Properly filed cases will be considered received on the date that USCIS physically receives the petition, not the date that the petition was postmarked. USCIS said it will reject cap-subject petitions for new H-1B specialty occupation workers seeking an employment start date in FY 2011 that arrive after the final receipt date.

USCIS will apply a computer-generated random selection process to all petitions that are subject to the cap and were received on January 26, 2011. USCIS will reject all remaining cap-subject petitions not randomly selected and will return the accompanying fee.

For more information, please see our January 28, 2011 One Minute Memo, available here.

The USCIS announcement is available here.

2. Visa Numbers Move Slowly

The Department of State has released the Visa Bulletin for March 2011. Priority dates in several employment-based (EB) categories moved ahead, although not by much overall. For example, the third preference “Other Workers” worldwide category advanced from May 1, 2003 to June 15, 2003. Many categories remain Current.

It had been initially reported that the India EB-2 category was Current, but the Visa Office corrected that erroneous information. The India second preference priority date remains at May 8, 2006.

The March 2011 Visa Bulletin is available here.
3. USCIS Releases H-2B Cap Count

For the H-2B temporary nonagricultural category, the cap is 66,000 per fiscal year, with 33,000 allocated in the first half of the year and 33,000 in the second half. As of February 11, 2011, USCIS had approved 37,293 beneficiaries (with 2,539 pending) for the first half of FY 2011, and had approved 8,588 so far for the second half (with 4,281 pending). USCIS noted that the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap will always be higher than the actual cap, to allow for withdrawals, denials, and revocations.

The H-2B cap count and related information is available [here](#).

4. DHS Adds New Countries to H-2A, H-2B Programs; Drops Indonesia

The Department of Homeland Security (DHS), in consultation with the Department of State (DOS), has identified 53 countries whose nationals will be eligible to participate in the H-2A (temporary agricultural) and H-2B (temporary nonagricultural) programs for the coming year. Of those countries, 15 were designated for the first time this year.

With limited exceptions, USCIS approves petitions only for nationals of countries designated to participate in the H-2A and H-2B programs.

Effective January 18, 2011, nationals from the following countries are eligible to participate in the H-2A and H-2B programs: Argentina, Australia, Barbados, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Guatemala, Honduras, Hungary, Ireland, Israel, Jamaica, Japan, Kiribati, Latvia, Lithuania, Macedonia, Mexico, Moldova, Nauru, The Netherlands, Nicaragua, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Samoa, Serbia, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Tonga, Turkey, Tuvalu, Ukraine, United Kingdom, Uruguay, and Vanuatu.

DHS and DOS have determined that Indonesia does not warrant a renewed designation as a participating country in the H-2A and H-2B programs for 2011.

The USCIS notice is available [here](#).

5. USCIS Releases Pending Employment-Based Adjustment of Status Inventory

U.S. Citizenship and Immigration Services (USCIS) has released a report of the agency’s total pending inventory of applications for employment-based green cards (Form I-485, Application to Register Permanent Residence or Adjust Status). USCIS also has posted five other reports by country of chargeability (China, India, Mexico, Philippines, and All Other Chargeability).

The “Pending Employment-Based Form I-485 Report” shows how many pending adjustment of status (green card) applications in each preference classification have priority dates in a given month and year.
Because of historically higher demand for visas from China, India, Mexico, and the Philippines, each of those countries has its own separate report.

The January 2011 report is available here.

For more information, see the USCIS Q&A here.

6. USCIS Issues Policy Memo Disallowing Concurrent Filings for Special Immigrant Religious Workers

In January 2011, U.S. Citizenship and Immigration Services released a policy memorandum dated November 9, 2010, which states that any Form I-485 (Application to Register Permanent Residence or Adjust Status) where the underlying basis for adjustment is an I-360 petition for a special immigrant religious worker must be filed based on an approved I-360 petition. The new guidance was issued pursuant to a decision by the U.S. Court of Appeals for the Ninth Circuit (Ruiz-Diaz v. United States, No. 09-35734 (9th Cir. Aug. 20, 2010)).

The new memo is available here.

1. USCIS Revises I-9 Manual for Employers

U.S. Citizenship and Immigration Services (USCIS) revised its Handbook for Employers: Instructions for Completing Form I-9 (M-274). Issued January 5, 2011, the handbook includes expanded guidance on lawful permanent residents, refugees and asylees, and acceptable documents for employees in temporary protected status (TPS).

Key changes in the revised handbook also address the following:

- J-1 Exchange Visitors and F-1 Students, including F-1s Changing to H-1B Status (“The Cap Gap”)
- H-1B Employees Changing Employers (Portability)
- Extensions of Status
- Interruptions in Employment
- Electronic Retention of Forms I-9 and Documentation of Electronic Storage Systems
- E-Verify and Federal Contractors
The revised handbook for employers is available here.

For more information on the updated employer handbook or on potential changes to your I-9 policies and procedures, contact your Seyfarth attorney.

2. E-Verify Update: USCIS Updates Web Interface, Launches Newsletter; House Hearings Soon

U.S. Citizenship and Immigration Services (USCIS) has made the following changes to its E-Verify Web interface:

- Added U.S. Passport Photo Matching, a new feature that uses data and photos from the U.S. passport system to assist in the verification process
- Changed the title “Designated Agent” to “E-Verify Employer Agent”
- Updated the following USCIS publications:
  - E-Verify User Manual for Employers
  - E-Verify User Manual for Federal Contractors
  - E-Verify User Manual for E-Verify Employer Agent
  - E-Verify Quick Reference Guide for Employers
  - E-verify Quick Reference Guide for E-Verify Employer Agent

USCIS has also launched E-Verify Connection, a newsletter on E-Verify developments. The first issue is available here.

You may join the newsletter distribution list by e-mailing “subscribe” to E-VerifyOutreach@dhs.gov.

For more information on these developments, click here.

In related news, Florida recently began requiring certain state agencies and contractors to use E-Verify, while Rhode Island has rescinded its E-Verify requirement for state contractors.

3. ICE Announces New I-9 Compliance Inspection Center; Audits Increase

On January 20, 2011, U.S. Immigration and Customs Enforcement (ICE) announced the creation of an employment compliance inspection center in Crystal City, Virginia. At the center, 15 auditors will support ICE’s worksite enforcement strategy by helping agency field offices around the country expedite employment authorization verification (Form I-9) audits of businesses selected for inspection by ICE. Currently, ICE employs 137 full-time auditors. The 15 additional auditors will focus their efforts on major investigations of the largest companies, ICE Director John Morton said.
From fiscal year 2009 to the present, ICE initiated I-9 inspections of 3,769 businesses across the U.S. Last year, ICE audited 2,200 companies, the largest number of audits the agency has conducted in a year.

4. House Holds Hearing on Worksite Enforcement Issues

On January 26, 2011, the House of Representatives’ Subcommittee on Immigration Policy and Enforcement held a hearing on worksite enforcement issues. Kumar Kibble, Deputy Director of U.S. Immigration and Customs Enforcement (ICE) noted that in fiscal year 2010, ICE initiated a record 2,746 worksite enforcement investigations, more than doubling the number of cases initiated in FY 2008. He said ICE is prioritizing the criminal prosecution of employers “who knowingly hire undocumented workers, abuse and exploit their workers, engage in the smuggling or trafficking of their alien workforce, or facilitate document or benefit fraud.” He noted that over the past two years, the Department of Homeland Security “has engaged in record enforcement” and has removed more people in 2009 and 2010 “than in any point in the history of our country, including more than 195,000 criminal aliens last year.”

The full hearing testimony is available here.

5. IRS Publishes W-4 Instructions for Nonresident Aliens

The Internal Revenue Service has revised “Supplemental Form W-4 Instructions for Nonresident Aliens.” The IRS has modified the instructions on the W-4 for nonresidents to reflect restrictions on their filing status, the limited number of exemptions allowed, and the standard deduction. Nonresident aliens must follow special instructions when completing Form W-4, Employee’s Withholding Allowance Certificate, available here, for compensation paid to such individuals as employees performing dependent personal services in the U.S. Compensation for dependent personal services includes amounts paid as wages, salaries, fees, bonuses, commissions, compensatory scholarships, fellowship income, and similar designations for amounts paid to an employee.

The revised Notice 1392 is available here.

1. Hong Kong Makes Changes to Capital Investment Entrant Scheme (CIES)

The Hong Kong Capital Investment Entrant Scheme has been extremely popular. Successful applicants can benefit from one of the premier financial centers of the world with a robust economy and a low, simple and predictable tax regime. Initially launched by the Hong Kong Special Administrative Region (SAR) government in October 2003 to attract investments from qualifying individuals who wished to obtain Hong Kong residency through making a capital investment without the need to establish or join in a business in Hong Kong, as of the end of 2010, 16,600 applications had been received and 8,924 applicants had invested a total of $63.31 billion, representing an average of HKD $7.09 million per entrant.
On October 14, 2010, responding to Hong Kong’s Chief Executive Donald Tsang’s concerns about surging property prices in Hong Kong expressed in his annual policy address, the government temporarily removed real estate from the permissible investment asset classes under the CIES because 40% of the investments in the first half of 2010 had been in real estate.

The government believes that despite the amendments, the scheme remains competitive compared with the investment programs of other jurisdictions, and promised that the investment threshold (and net assets/net equity requirement) will be reviewed once every three years. With respect to the temporary suspension of real estate as a class of PIA, this decision will be assessed at the next regular review, or earlier as necessary.

In the short term, the beneficiary of these changes is the United States’ EB-5 program, which has become relatively “cheap” at USD $500,000, since Canada’s investment threshold is currently CDN $800,000. Effective January 1, 2011, the Singapore Monetary Authority’s Financial Investor Scheme (FIS) requires applicants to place S $10 million in assets for a continuous period of five years, up from a minimum of S $5 million previously.