

Business Immigration Weekly for April 15, 2016

4/15/2016

Practices: Immigration

H-1B QUOTA FOR FISCAL YEAR 2017 REACHED

USCIS COMPLETES RANDOM SELECTION PROCESS "LOTTERY"

The U.S. Citizenship and Immigration Services (USCIS) has begun issuing receipt notices for cases filed under premium processing indicating that it has completed the random selection process or "lottery." The USCIS received a total of 236,000 H-1B petitions during the initial filing period. Last year, the USCIS received approximately 233,000 H-1B petitions for the regular and U.S. Master's Degree exemption caps.

When the USCIS receives more H-1B quota petitions than allowed in a fiscal year, it conducts a computer-generated random selection process to choose which petitions it will accept and adjudicate. This is a random process with no preference given to the type of position, the beneficiary's country of birth, etc. The USCIS completes two random selection processes. The first is for petitions filed under the U.S. Master's Degree or higher exemption, which is limited to 20,000. The petitions claiming this exemption that are not selected in the first random selection process are added to the other regular quota petitions. A second random selection process is then completed on all of the petitions.

After the USCIS completes the two random selection processes, it begins to issue receipt notices for the petitions that were selected and proceeds to adjudicate them. The USCIS will not process the petitions that are not selected and will return the unprocessed petition with uncashed checks to the employer (or its attorney of record). Due to the estimated large volume of H-1B quota petitions filed against this fiscal year's quota, it generally takes the USCIS a few weeks to begin to issue receipt notices. Premium processing receipt notices are emailed first with the normal processing receipt notices being mailed a few weeks later. We assume that it may take the USCIS several months to return the petitions that were not selected in the random selection process.

E-PASSPORTS NOW REQUIRED FOR ALL VISA WAIVER PROGRAM TRAVELERS

Effective April 1, 2016, all Visa Waiver Program (VWP) travelers are now required to use electronic passports (e-passports). VWP travelers that do not have an e-passport, will not be allowed to enter the United States under the VWP. They will have to apply for and obtain a visitor visa (B1/B2) from their local US Embassy or Consulate before entering the United States. An e-passport increases security because of the electronic microchip that includes the holders name, date of birth and other personal information.

The Visa Waiver Program allows certain nonimmigrants to enter the United States as a Visitor for Business or Pleasure for 90 days without having to previously secure a B-1/B-2 visa at their local U.S. Embassy or Consulate. Prior to entry, the traveler must register with ESTA online and pay a nominal fee. Citizens and nationals of the following countries are eligible to participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and United Kingdom. In the last few months, additional restrictions have been placed on VWP travelers. These can be reviewed: <http://www.masudafunai.com/showarticle.aspx?Show=8767>

STUDENT VISA FRAUD UNCOVERED – 21 CHARGED

Twenty-one individuals were arrested and charged last week for allegedly conspiring in a "pay-to-stay" program through a university that was created and run by Department of Homeland Security agents. The University of Northern New Jersey, appeared to be a real and legitimate university. It had its own website, Facebook page and several storefront locations. However, the university was run by Immigration Customs Enforcement (ICE) and Homeland Security Investigation (HSI) officers who created the university in 2013. The university held no classes and conducted no academic activities. The university made it known that it was authorized to issue Forms I-20, Certificates of Eligibility for Nonimmigrant Student Status for Academic and Language Students. The Form I-20 allows a nonimmigrant to enter the United States as a student.

Through recruiting companies and businesses, the twenty-one defendants allegedly recruited approximately 1,070 foreign nationals, mainly from China and India, as their clients. The defendants then solicited the university administrators to issue Forms I-20 to their clients knowing that their clients would not attend classes, earn credits or a degree. The defendants helped in the creation of fraudulent academic records, which included transcripts and diplomas. These fake records were then purchased by their foreign national clients. In this way, the foreign nationals appeared to be enrolled in a legitimate university and appeared to maintain their nonimmigrant status. In other cases, the defendants coordinated the issuance of fraudulent documents from the university for their clients who then submitted these documents to other immigration agencies to apply for work authorization documents (Employment Authorization Documents) and work visas. Some defendants coordinated fake IT projects through the university, which involved the drafting of fake contracts, employment confirmation letters and transcripts. These fake documents were then submitted to the US Citizenship and Immigration Services (USCIS) to apply for work visas. In most cases, the visas were not issued because officials alerted the USCIS of the ongoing investigation.

The foreign national students allegedly knew that the defendants were engaging in fraudulent activity. They also allegedly knew that they would not have to attend classes and that they were not enrolling in an actual academic program. Starting on April 5th, HSI, in coordination with the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU) and SEVP, will begin to terminate the 1,076 foreign national students' status. They will also, if applicable, be administratively arrested and placed into removal proceedings. For a full list of all the defendants, their charges and for more information: <https://www.ice.gov/news/releases/21-charged-fraudulently-enabling-hundreds-foreign-nationals-remain-us-through-fake->

ANOTHER SCHOOL IS REMOVED FROM SEVIS

The Student and Exchange Visitor Program (SEVP) published this week that the Universal English Center Corporation (UEC), a language school in New York City will be terminated from the Student and Exchange Visitor System (SEVIS) on May 13, 2016. This will render the school unable to issue Forms I-20, Certificate of Eligibility for Nonimmigrant Student Status, for foreign students to attend their school. Foreign students that are current enrolled at UEC have the following options: 1) enroll in another SEVP approved school; 2) change their status from foreign student to another valid nonimmigrant status; or 3) leave the United States. If the foreign students do not take any of these actions, they will be no longer considered in valid status. Foreign students that had received a Form I-20, but had not yet entered the United States, will not be admitted using the Form I-20 issued by UEC.

VISA BULLETIN FOR MAY 2016

The Department of State (DOS) released the monthly Visa Bulletin and below is a summary of green card Final Action Dates and Dates For Filing dates for employment-based immigrant visa categories for the month of May.

PLEASE NOTE: Per a new USCIS policy, a week after the Department of State (DOS) issues its monthly Visa Bulletin indicating immigrant visa availability for the next month, the USCIS will make its own separate determination on green card availability. If green cards are available for a certain category, the USCIS will post its own notice on its website at: www.uscis.gov/visabulletininfo to alert immigrants applying in those categories with more availability, that they may use the Dates for Filing chart and not the Final Action Date chart. Thus immigrants may no longer rely on the DOS Visa Bulletin, but must wait one week after its publication and then look to the USCIS to see whether a green card is available to them.

GREEN CARD "DATES FOR FILING" AVAILABILITY DATES

Individuals with priority dates prior to the dates listed in the chart below are eligible to file their green card applications during the month of May.

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	CURRENT	CURRENT	CURRENT	CURRENT	CURRENT
2nd	CURRENT	01SEP12	CURRENT	22NOV08	CURRENT

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
3rd	15FEB16	15AUG13	15FEB16	01SEP04	15FEB16
Other Workers	15FEB16	22APR07	15FEB16	01SEP04	15FEB16
4th	CURRENT	CURRENT	01JAN10	CURRENT	CURRENT
Certain Religious Workers	CURRENT	CURRENT	01JAN10	CURRENT	CURRENT
5th Non-Regional Center (C5 and T5)	CURRENT	08FEB14	CURRENT	CURRENT	CURRENT
5th Regional Center (I5 and R5)	CURRENT	08FEB14	CURRENT	CURRENT	CURRENT

GREEN CARD APPROVAL "FINAL ACTION DATES"

Individuals with priority dates prior to the dates listed in the chart below have a green card available to them during the month of May, therefore, the US government may take final action on their case.

Employment- Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	CURRENT	CURRENT	CURRENT	CURRENT	CURRENT
2nd	CURRENT	01JUN13	01JUL09	CURRENT	CURRENT
3rd	CURRENT	01MAY15	01JUL05	CURRENT	01JAN10
Other Workers	CURRENT	01APR08	01JUL05	CURRENT	01JAN10
4th	CURRENT	CURRENT	CURRENT	CURRENT	CURRENT
Certain Religious Workers	CURRENT	CURRENT	CURRENT	CURRENT	CURRENT
5th Non-Regional Center (C5 and T5)	CURRENT	01MAY15	CURRENT	CURRENT	CURRENT
5th Regional Center (I5 and R5)	CURRENT	01MAY15	CURRENT	CURRENT	CURRENT

BELOW IS A SUMMARY OF CHANGES FROM THE VISA BULLETIN FOR LAST MONTH FOR FINAL ACTION DATES:

- The EB-2 China category has stalled at September 1, 2012.
- The EB-2 India category has advanced several weeks from November 8, 2008 to November 22, 2008.
- The EB-3 World and Mexico categories have stalled at February 15, 2016.
- The EB-3 China category has stalled at August 15, 2013.
- The EB-3 India category advances several weeks from August 8, 2004 to September 1, 2004.
- The EB-3 Philippines category advances several months from May 1, 2008 to August 8, 2008.
- The EB-5 China advances a few days from February 1, 2014 to February 8, 2014.
- Cap on nationals from El Salvador, Guatemala and Honduras in the following categories: EB-3, Other Workers, EB-4 and Certain Religious Workers.

Month-to-month availability of immigrant visas varies and depends on many factors. The entire Visa Bulletin can be viewed at: <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-may-2016.html>

MFEM NEWS

Ms. Esther Contreras speaks at National Hispanic Bar Association Conference and in May will speak at the Illinois Department of Employment Security/IL workNet Business Employer Workshop Seminar and the South Suburban Cook Human Resources Association.

Ms. Contreras, a Principal in our firm's Immigration Practice Group, spoke at the National Hispanic Bar Association (HNBA) Corporate Counsel Conference in Las Vegas in March. The conference draws over 1,000 participants, including attorneys, judges, and law students from across the country, public officials, business leaders, and in-house counsel from many Fortune 100 and other corporations. Ms. Contreras spoke on a panel titled, "W-2 or 1099? Employee and Independent Contractor Issues in the Uber Age" providing a perspective on immigration issues affecting companies such as misclassification of employees for Form I-9 purposes and special considerations when working with PEO's and staffing companies.

In May, Ms. Contreras will be the main presenter at the Illinois Department of Employment Security/IL workNet Business Employer Workshop Seminar in Arlington Heights and the South Suburban Cook Human Resources Association (HRA) monthly meeting in Matteson, IL. The Business Employer Workshop is hosted by Business & Career Services, Inc. and features topics affecting employers. The South Suburban Cook HRA is an organization for human resources professionals in Chicago's southern suburbs and is affiliated with the Society for Human Resource Management (SHRM). Ms. Contreras will speak to both groups about Form I-9 compliance, providing a basic overview of the completion process, reviewing common mistakes, best practices, and will focus on recently issued government guidance and the latest version of form, the "Smart" I-9.