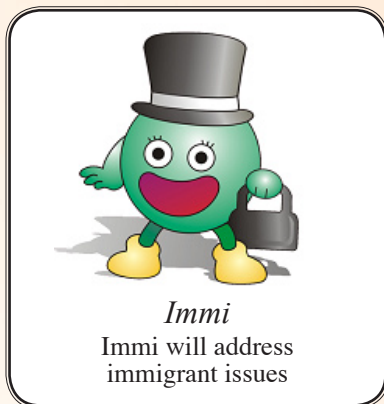
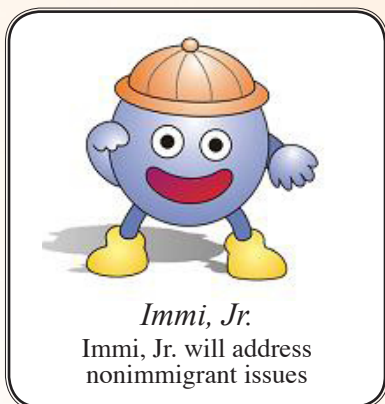


The Olsen Law Firm IMMIGRATION *WATCH*

• VOLUME 4
• APRIL / MAY 2007

We welcome you to meet the Immis! They help us simplify the immigration process for you. The Immis are in every issue of our newsletter and act as your personal guides to various immigration topics.



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Immi, Jr. says:

Look! U.S visitors are no longer required to biometrically “Check Out” at select airports and seaports using the US-VISIT exit kiosks.

US-VISIT MOVES OUT OF BIOMETRIC EXIT PILOT PHASE

Source: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

The U.S. Department of Homeland Security (DHS) announced that it intends to integrate biometric exit procedures into the existing international visitor departure process. The change will make the process of departing the United States more convenient and accessible for international visitors.

DHS will take a number of steps in the next year toward full implementation of biometric exit procedures at airports. The first step will be the completion of the three-year pilot program that required international visitors to biometrically check out at select airports and seaports. Effective May 6, 2007, international visitors will no longer be required to use the US-VISIT exit kiosks when they leave the United States. International visitors who received a U.S. Customs and Border Protection (CBP) Form I-94, Arrival-Departure Record, upon arrival must still return the form to an airline or ship representative when departing the United States.

DHS recently submitted an exit plan to Congress as part of the US-VISIT 2007 Expenditure Plan that incorporates lessons learned from the biometric exit pilot program. While the program demonstrated that the technology works, it also revealed low traveler compliance. DHS has determined that US-VISIT air exit procedures should be incorporated into the existing international visitor departure process to minimize the effect on visitors and to ensure seamless biometric collection regardless of the visitor’s departure point.

DHS, Congress and the 9/11 Commission have consistently recognized biometric exit control as a

priority in order to fully secure our nation’s borders. Development of an automated exit capability is one of the department’s congressional mandates. Since 2003, DHS has systematically tackled technical and operational challenges and deployed a biometrics-based entry process through US-VISIT.

DHS is now prepared to begin implementing exit procedures in the commercial air environment, where the significant majority of those subject to US-VISIT depart the United States. The department recently began discussing the air exit strategy with the airline industry and will be working with air carriers to implement it.

DHS will publish a regulation in the future outlining its plans for implementing an integrated air exit strategy. The following locations tested biometric exit procedures:

Atlanta, Ga. (Hartsfield-Jackson Atlanta International Airport)
Baltimore, Md. (Baltimore/Washington International Airport)
Chicago, Ill. (Chicago O’Hare International Airport)
Dallas/Fort Worth, TX (Dallas/Fort Worth International Airport)
Denver, Colo. (Denver International Airport)
Detroit, Mich. (Detroit Metropolitan Wayne County Airport)
Fort Lauderdale, Fla. (Fort Lauderdale-Hollywood International Airport)
Los Angeles, Calif. (San Pedro and Long Beach Seaports)
Miami, Fla. (Miami International Cruise Line Terminal)
Newark, N.J. (Newark Liberty International Airport)
Philadelphia, Pa. (Philadelphia International Airport)
San Juan, Puerto Rico (Luis Muñoz Marín International Airport)
San Francisco, Calif. (San Francisco International Airport)
Seattle, Wash. (Seattle-Tacoma International Airport)



Immi says:

You need to be aware the H-1B Master's Degree cap has been reached for the Fiscal Year 2008.

USCIS REACHES H-1B EXEMPTION CAP FOR FISCAL YEAR 2008

*20,000 Slots Reserved for Aliens with Master's
Degrees or Higher Exhausted*

Source: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

U.S. Citizenship and Immigration Services (USCIS) announced that it has received enough H-1B petitions requesting exemptions from the fiscal year 2008 (FY 2008) H-1B cap for "foreign workers who have earned a master's degree or higher from a U.S. institution of higher education" to meet the congressionally mandated exemption limit of 20,000. USCIS has determined that the "final receipt date" for these exempt H-1B petitions is April 30, 2007. USCIS will reject petitions requesting a FY 2008 cap exemption for "workers with a master's or higher degree earned from a U.S. institution of higher education" that are received on or after May 1, 2007 unless the petition is otherwise eligible for a separate cap exemption.

Cap Procedures: In accordance with USCIS regulations, USCIS has implemented the following process for handling H-1B petitions filed on behalf of workers with a master's or higher degree earned from a U.S. institution of higher education seeking an exemption from the FY 2008 cap:

- USCIS has determined that as of April 30, 2007, it had received a sufficient number of H-1B petitions requesting a FY 2008 cap exemption on behalf of "foreign worker who has earned a master's degree or higher from a U.S. institution of higher education" to reach the 20,000 limit. The "final receipt date" is April 30, 2007.
- USCIS will subject H-1B petitions received on the "final receipt date" that request an exemption from the

H-1B cap based on the worker holding a U.S. Master's or higher degree to a computer generated random selection process. USCIS will reject those filings not randomly selected and return them along with the filing fee(s) unless another basis for an H-1B cap exemption exists.

- USCIS will reject H-1B petitions requesting this exemption for FY 2008 received on or after May 1, 2007 unless another basis for an H-1B cap exemption exists.
- The earliest date for which a petitioner may file a petition requesting cap subject FY 2009 H-1B employment or an exemption from the H-1B cap based on the worker holding a U.S. Master's degree or higher with an employment start date of October 1, 2008, is April 1, 2008.

Petitions for current H-1B workers generally do not count towards the congressionally mandated H-1B cap. Accordingly, USCIS will continue to process H-1B petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers.
- Allow current H-1B workers to work concurrently in a second H-1B position.



Citizen Immi says:

Watch out!! The USCIS has flexible response times for Notices of Intent to Deny and Requests For Evidence. The deadlines will depend on the complexity of cases and types of applications/petitions filed.

USCIS ANNOUNCES FLEXIBLE RESPONSE TIMES FOR NOTICES OF INTENT TO DENY AND REQUESTS FOR EVIDENCE

Source: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

On April 12, 2007, the Department of Homeland Security (DHS) transmitted the final rule Removal of the Standardized Request for Evidence Processing Timeframe to the Federal Register (FR). The rule will take effect on **June 16, 2007**. This rule amends DHS regulations to give U.S. Citizenship and Immigration Services (USCIS) flexibility in setting the time allowed for immigration benefit applicants and petitioners to respond to a Request for Evidence (RFE) or to a Notice of Intent to Deny (NOID). This change does not apply to asylum cases, to which a separate set of regulations apply.

The amended rule makes the following key changes and clarifications:

Flexible Response Times to RFEs Permitted

Regardless of the type of evidence requested, the old regulation required USCIS to set an inflexible 12 week period for applicants or petitioners to respond to an RFE. The new regulation permits USCIS to set flexible deadlines. Deadlines will depend on the complexity of cases and types of applications or petitions filed. For example, when requesting readily available or missing initial evidence, USCIS can set a response time much shorter than 12 weeks. On the other hand, USCIS can provide the full 12 week response period for more difficult to obtain evidence.

No Extensions to Submit Responses to RFEs or NOIDs

Regardless of the evidence requested, USCIS has never allowed extensions beyond the maximum 12 week deadline for RFEs and the 30 day deadline for NOIDs. That bar does not change, even though the new rule allows USCIS to set deadlines shorter than those maximums. For example, under the new regulation, USCIS may issue an RFE that gives an applicant 30 days to submit a photo. USCIS will not grant an extension of that 30 day period. Failure to timely respond to the RFE may lead to denial of the application or petition.

When Evidence Submitted With The Application or Petition Does Not Show Eligibility

When initially submitted evidence does not show eligibility, the new regulation allows USCIS to deny the application or petition. As always, USCIS may request that the applicant or petitioner submit additional evidence within a specified time period or may notify the applicant or petitioner that USCIS intends to deny the application or petition. To avoid denial, USCIS urges applicants and petitioners to file complete applications with all of the required initial evidence. The initial evidence for each application and petition type is clearly listed on the form instructions and in the regulations.

Reasons for Issuing a NOID

USCIS may issue a NOID when there is evidence of ineligibility for immigration benefits and is required to issue a NOID when there is negative evidence that the applicant or petitioner does not know about. An applicant or petitioner may respond to the NOID by submitting evidence to disprove the negative information.

If There Is No Response to an RFE or a NOID

The new regulation provides USCIS three options if it does not receive a response to an RFE or a NOID.

USCIS may: find that the application or petition has been abandoned and, if so, deny it; deny the application or petition based on the evidence already received; or deny the application or petition for both reasons.

When an Applicant or Petitioner Does Not Appear for a Required Appointment

If an applicant or petitioner fails to appear for biometrics capture, interview or any other required in-person process, USCIS may deny the application or petition as abandoned. However, USCIS may not do so if, prior to the scheduled appointment time, it receives a timely-filed change of address or request to reschedule and decides that the failure to appear is excusable. In such cases, USCIS will reschedule the appointment. USCIS reminds applicants and petitioners that they are required to file an AR-11 change of address form within ten days of their move.



Immi, Jr. says:

Good News!!! The USCIS is giving more time to bring foreign workers for “O” and “P”. The employers may now request “O” and “P” workers up to one year in advance.

USCIS ANNOUNCES EXTENSION OF FILING TIME FOR Os and Ps

Employers May Now Request “O” and “P” Workers Up To One Year in Advance

Source: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

U.S. Citizenship and Immigration Services (USCIS) is giving employers and agents more time to bring foreign workers with extraordinary abilities to the United States. Petitioners can now file “O” and “P” nonimmigrant petitions under normal processing procedures up to one year before a scheduled event, competition or performance. USCIS is making the change through a final rule that was transmitted to the Federal Register for publication on April 16, 2007.

Before the change, employers and agents were only allowed to file petitions six months in advance of their events. The short filing period often meant that case processing wasn’t completed until on or after the date the individual was needed. Many petitioners seeking alien performers or athletes must schedule and plan for events a year in advance.

The “O” nonimmigrant visa provides admission to persons with extraordinary ability in the arts, sciences, education, business or athletics, or those persons with extraordinary achievement in motion picture or television production. The “P” onimmigrant visa provides admission to persons who are internationally recognized as athletes or entertainers, and those who perform as artists or entertainers in culturally unique programs.

The decision to extend the timeline results from comments received after USCIS first proposed the rule in April 2005. Those comments, from performing arts organizations, educational institutions, the sports industry, members of Congress and the general public,

overwhelmingly supported the proposal to extend the petition filing time from six months to a year.

The final rule, effective **May 16, 2007**, does not revise any other requirements related to the Form I-129, Petition for a Nonimmigrant Worker, or the evidentiary standards that establish eligibility for the “O” or “P” nonimmigrant classifications. This rule does not change the filing timeframes for other nonimmigrant classifications that use Form I-129.



Immi says:

Religious Workers!! The USCIS proposes new rules for R-1s. For example, the initial period of admission for non-immigrant R1s may change from three years to one year.

USCIS PROPOSES REVISIONS FOR RELIGIOUS WORKER VISA CLASSIFICATIONS

Source: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

U.S. Citizenship and Immigration Services (USCIS) is proposing significant revisions to its regulations related to the special immigrant (SR/SD) and nonimmigrant (R-1) religious worker visa classifications. The proposed rule highlights ways to ensure the integrity of the religious worker program while at the same time streamlining the process for legitimate petitioners.

“USCIS remains committed to seeking out and eliminating fraud and misrepresentation in the immigration system,” said USCIS Director Emilio Gonzalez. “We recognize the importance of the religious worker program and the valuable service it provides to genuine religious organizations. Part of our effort to ensure a secure and efficient immigration system is detecting and combating deception that, in this instance, ultimately deprives legitimate organizations from participating in a worthwhile program. We’re confident that this rule will go a long way to eliminate the opportunities for fraud in the program.”

Currently, non-immigrants may request a religious worker visa at a consular post or a port-of-entry without any prior, stateside review of the petition. One of the key changes to the regulations include an across the board petition requirement that will allow USCIS to verify the legitimacy of the petitioner and the job offer before a visa is issued or the worker is admitted into the United States.

The rule also reduces the initial period of admission for a non-immigrant from three years to one, giving the agency an opportunity to review whether or not

the terms of the visa have been met during the initial year before extending the worker’s stay in the U.S

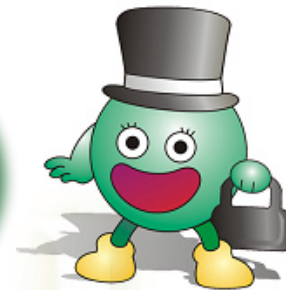
USCIS is also proposing to add new definitions, or amend current ones, to better describe the statutory eligibility criteria. The rule streamlines the petition process by requiring an attestation and requesting less supporting evidence. The rule includes detailed interpretations of the statutory requirements and clear guidelines for supporting documentation aimed at making the process easier to understand.

QUICK INFORMATION BYTES

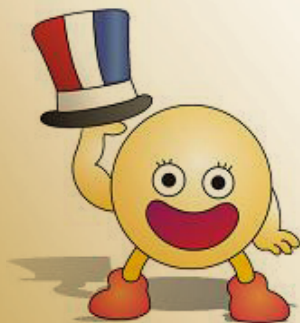


Immi, Jr. says: Extensions of B-2 status may be difficult to obtain if a six month extension is applied for. Remember, you must have concrete evidence to prove the underlying reasons for all extensions of stay.

Immi says: Before going to an interview, it is best to understand that all statements--both written and oral--will be reviewed by the USCIS for consistency.



Citizen Immi says: During a naturalization interview, the USCIS agent is not only reviewing the applicant's knowledge of U.S. government/history, and the English language, but is also reviewing the applicant's moral character.



QUESTIONS AND ANSWERS

Explanation:

If you have questions concerning immigration related issues or concerns and are of a non-advice and pure general interest nature, please e-mail them to tolsen@tlolaw.com

IMPORTANT IMMIGRATION RELATED WEB SITES

- US Citizenship and Immigration Services
<http://www.uscis.gov/portal/site/uscis>
- Department of Labor
<http://www.dol.gov/>
- Department of State
<http://www.state.gov/>
- Embassies in Washington D.C.
<http://www.embassy.org/>
- Visa Bulletin
http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html



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