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News & Types: Immigration Update

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Practices: Immigration

By Robert S. White

DOS RELEASES OCTOBER 2013 VISA BULLETIN – NO RETROGRESSIONS IN THE EMPLOYMENT-BASED IMMIGRANT VISA CATEGORIES

The U.S. Department of State ("DOS") recently released its October 2013 Visa Bulletin. This is the first Visa Bulletin for the government's Fiscal Year 2014 which commences on October 1, 2013. In previous years, the DOS has retrogressed the employment-based visa categories at the beginning of a fiscal year to ensure that a sufficient number of immigrant visas remain available throughout the fiscal year. However, in the October 2013 Visa Bulletin, the DOS does not retrogress the employment-based immigrant visa categories. It was assumed that the DOS would be retrogressing many of the categories because the DOS has rapidly advanced most of the employment-based immigrant visa categories within the previous few months. Although the DOS does not retrogress any categories in the October 2013 Visa Bulletin, it advances very few categories. Additionally, although the DOS has not retrogressed any of the categories in the October 2013 Visa Bulletin, the DOS may retrogress some categories in the future if demand in the categories greatly increases due to the rapid advancement of the categories within the previous few months.

The following is a comparison of the movement of the employment-based visa categories since the inception of current retrogression:

	Dec 2007	Jun 2008	Aug 2009	Mar 2010	Nov 2012	Sept 2013	Oct 2013
EB-3 World	09/01/02	03/01/06	U	12/15/02	11/22/06	07/01/10	07/01/10
EB-2 China	01/01/03	04/01/04	10/01/03	07/08/05	09/01/07	08/08/08	09/15/08
EB-3 China	10/15/01	03/22/03	U	12/15/02	04/15/06	07/01/10	07/01/10
EB-2 India	01/01/02	04/01/04	10/01/03	02/01/05	09/01/04	06/15/08	06/15/08

								Addition al
EB-3 India	05/01/01	11/01/01	U	07/01/01	10/22/02	09/22/03	09/22/03	informati on about
EB-3 Other Workers	10/01/01	01/01/03	U	06/01/01	11/22/06	07/01/10	07/01/10	the moveme nt of the

employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

USCIS ENHANCES E-VERIFY SYSTEM

On September 9, 2013, the U.S. Citizenship & Immigration Services (USCIS) introduced a new set of E-Verify enhancements to the Tentative Nonconfirmation (TNC) process. The USCIS will be replacing the TNC notice and Referral Letter with a Further Action Notice (FAN). The USCIS stated that the FAN simplifies the TNC communication process by combining the employee's biographical information, the reason for the TNC, the employee's decision to contest and the employee's instructions for contesting a TNC into a single document.

The new TNC process may involve two documents, namely the FAN and a Referral Date Confirmation. The FAN appears when an employee receives a TNC. The employer must then select the language of the notice, print and give notice to the employee. If the employer prints the notice in a language other than English, the employer must also print the notice in English. The USCIS stated that the non-English version should be used as a type of translation form. However, all action regarding the TNC must be completed on the English version of the FAN and Referral Date Confirmation document. The employer must retain the English versions of these documents to evidence their compliance with the TNC process, even though it may also give the employee a copy of the non-English version for translation purposes in addition to the English version. If the employee decides to contest the TNC, the employer must refer the case, print the Referral Date Confirmation and give it to the employee. Again, if the employer prints the Referral Date Confirmation in a language other than English, the employer must also print the English version and give a copy of both the English and non-English versions to the employee. The Referral Date Confirmation gives the date by which the employee must visit the Social Security Administration (SSA) or contact the Department of Homeland Security (DHS) to begin resolving the TNC.

Approximately three months ago, E-Verify launched another new customer service enhancement that will allow e-mail notification to employees of a TNC at the same time it notifies the employer. If the employee provides an e-mail address in Section 1 of the current Form I-9, the employer is required to enter this information into the E-Verify system. The e-mail notification process does not replace the current TNC process. Employers are still required to notify employees of the TNC, provide them with the FAN which explains their right to contest the TNC. There are four possible e-mails an employee may receive from E-Verify if he/she provides his/her e-mail address in Section 7 of Form I-9:

1. If a TNC is issued, the employee will be notified automatically by E-Verify.

2. An e-mail will be sent to the employee when the case is referred to SSA or DHS during the TNC process.

3. An e-mail will be sent when an employee has not contacted DHS or SSA within four days of the date that the case was referred during the TNC process, even though the employee has up to eight federal working days to contest a TNC.

4. If E-Verify confirms employment eligibility for a nationalized citizen of the United States according to DHS records but also finds that records with SSA have not been updated since the employee naturalized, an e-mail will advise the employee to visit a SSA field office to update the record as a courtesy reminder.

Finally, the USCIS continues to expand the E-Verify RIDE program. The RIDE program allows E-Verify to verify driver's license and state identification data. This program was initially launched in June 2011. Currently, four states are participating in the E-Verify RIDE program, namely Mississippi, Florida, Idaho and Iowa. Iowa was just added to the RIDE program on September 9, 2013. The USCIS indicated that it is currently negotiating with several other states to participate in the RIDE program. If an employee provides a driver's license or state identification from one of the states participating in the RIDE program, E-Verify will ask for information from the driver's license or state identification card. If the E-Verify system is not able to verify the information from the driver's license or a state identification card, the system will generate a DHS TNC.

Additional information about the continued expansion and enhancements of the E-Verify program will be contained in our firm's future Immigration Updates when it becomes available.

DOS ANNOUNCES DIVERSITY VISA LOTTERY RESULTS
The DOS recently announced the results of the fiscal year 2014 (October 1, 2013 through September 30, 2014) Diversity Visa ("DV") lottery. According to the DOS, 9.3 million entries (14.6 million with derivatives) were entered into the DV-2014 program. The DOS has notified approximately 140,660 applicants that they have been selected in the DV-2014 program. There are 50,000 "green cards" available in the DV-2014 program. The DOS indicated that it selected close to triple the number of available "green cards" in order to ensure that all of the green cards available were used by the program. The DOS indicated that once the 50,000 available "green card" are used, the program for fiscal year 2014 will end. All "winning" applicants have been assigned a number. When their number becomes available, they will be able to apply for a "green card" as long as "green cards" remain available in the program. The DOS announces "green card" availability two months prior to the "green card" becoming available. In the past, applicants who were eligible to apply for adjustment status in the United States had to wait until the "green card" became available to apply for adjustment of status. However, the USCIS recently announced a change in policy. The USCIS will now accept adjustment of status applications from DV lottery "winners" when the DOS announces that the "winners'" number will be available in the future.

The DOS indicated that it has not yet announced the registration dates for the DV-2015 program. However, for the past few years, the lottery program was held for 30 days in the month of October. Additional information

about the DV-2015 visa lottery will be contained in our firm's future Immigration Updates when it becomes available.

DOL Processing Times in the PERM Program Escalate and the Number of Audits and Denials in the PERM Program Significantly Increase

The processing times in the U.S. Department of Labor's (DOL) PERM program have significantly increased over the past few months. In the past, the DOL was completing the initial review of PERM applications within approximately three months. However, the DOL is currently taking approximately six months to complete the initial review of PERM applications. The DOL has indicated that the increased processing time has been due to an increase in the number of PERM applications it has been receiving. The increased processing time may also be due to the U.S. government's overall sequestration which has forced government employees to take furlough days.

Additionally, the number of audits and denials in the PERM program has significantly increased. In the first quarter of fiscal year 2013 (October 1, 2013 through December 31, 2013), the denial rate in the PERM program was approximately 16%. This denial rate close to doubled to approximately 30% in the third quarter of fiscal year 2013. Furthermore, the processing times of audits have significantly increased. The DOL is still reviewing audits of some PERM applications initially filed during August of 2012.

SCHOOL'S DSO PLEADS GUILTY TO STUDENT VISA FRAUD
A Designated Student Official (DSO) recently pled guilty to widespread foreign student visa fraud and conspiring to conceal and harbor illegal aliens for private financial gain. According to court documents, the DSO was an owner of PCTech Learning with campuses in Iselin and Jersey City, New York. The court documents indicated that he conspired to obtain F-1 student visas for foreign nationals who were not eligible for the visas. The DSO admitted that he never terminated student SEVIS record as long as the students paid the required tuition fees even though students were not making proper progress in their studies. Immigration and Customs Enforcement's (ICE) Student Exchange Visitor Program (SEVP) issued a Withdraw on Notice (WON) to PCTech Learning Center on August 9, 2012. As a result of this WON, the school was no longer certified to enroll F-1 students and all F-1 nonimmigrant students had their SEVIS records terminated on that date. The DSO of PCTech faces up to 15 years in prison and a $250,000 fine.

OSC ISSUES OPINION ABOUT THE PRE-POPULATION OF SECTION 1 OF THE FORM I-9 BY ELECTRONIC I-9 PROGRAMS
The U.S. Department of Justice's (DOJ) Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) recently released guidance about whether it believes that the pre-population of Section 1 of the Form I-9 is permissible. Within the past year, both ICE and USCIS have indicated that the pre-population of Form I-9 by an employer is not permissible. Instead, employees are required to complete and sign Section 1 of Form I-9. The OSC indicated that it discourages the practice of employers pre-populating Section 1 of the Form I-9 with previously obtained employee information because it stated that this practice increases the likelihood of including inaccurate or outdated information. The OSC stated that outdated or inaccurate information in Section 1 may lead an employer to reject documents presented or demand specific documents for Section 2 Form I-9 purposes. The OSC stated that this is particularly true if an employer does not provide

an opportunity for the employee to review information that was pre-populated and does not build in a method for making corrections. Finally, the OSC stated that if an employer uses outdated or inaccurate information to submit their E-Verify query, a mismatch may result unnecessarily to a TNC.
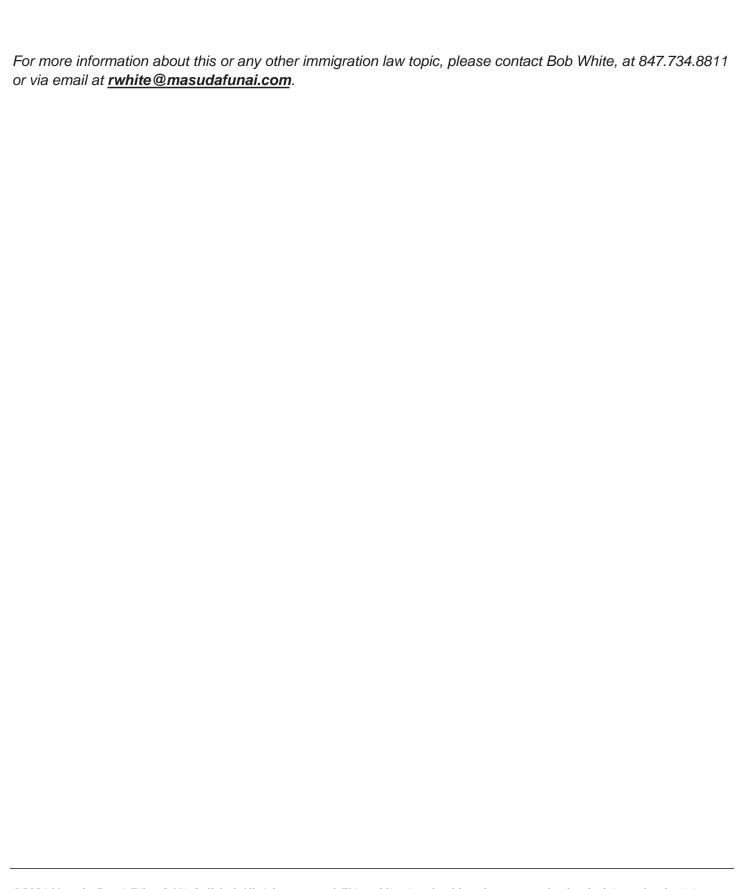
DHS OIG ISSUES REPORT ON THE L-1 VISA PROGRAM

The DHS' Office of Inspector General (OIG) recently released a report about the implementation of the L-1 program. The report focused on the implementation of the L-1B specialized knowledge program. As part of its investigation, the OIG interviewed USCIS officers and managers, DOS consular officials at the DOS posts in India, and Customs and Border Protection (CBP) officers. Some of the highlights from the report are as follows:

1. The USCIS currently has a policy memorandum under review which will provide more guidance to USCIS and CBP officers about the interpretation of the L-1B specialized knowledge category. This memo was developed in conjunction with the DOS consular officials in India. The USCIS may also consider issuing precedential decisions from its Administrative Appeals Office (AAO) to further clarify the category.

2. The USCIS Fraud Detection and National Security ("FDNS") will expand and begin conducting post-adjudication L-1 compliance site visits during the first quarter of fiscal year 2014 (which commences on October 1, 2013). Similar to the H-1B compliance program, FDNS officers will visit L-1 companies to verify that the information provided in the L-1 process was accurate. If an FDNS officer determines that accurate information was not provided to the USCIS with the initial adjudication, the USCIS may issue a Notice of Intent to Revoke (NOIR) the petition.

3. CBP officers will be reviewing information contained in the USCIS VIBE system as part of its adjudication of L-1 applications on the U.S. northern border.

4. The USCIS will include additional guidance in its policy memorandum about the proper implementation of the L-1 Visa Reform Act "Anti-Job-Shop" provisions. The USCIS indicated that it may also release AAO precedential decisions further implementing this provision.

ICE SEVP PROVIDES UPDATE ABOUT SEVIS PROGRAM

ICE SEVP recently provided an update about the SEVIS program. SEVP stated that as of July 1, 2013, approximately 9,522 schools were approved in the SEVIS program to admit F-1 and M-1 students. 36% of all SEVP approved schools are located within the States of California, New York, Florida, Texas and Pennsylvania. Illinois has between 201 and 400 SEVP approved schools. Approximately 1,418 J-1 exchange visitor programs were active. Additionally, as of July 1, 2013, SEVIS contained records for approximately 1.2 million F, M and J nonimmigrants and their dependents. In Illinois, the school with the most F-1 active students is the University of Illinois with approximately 8,320 F-1 students. The University of Illinois is ranked number 4 in the top 5 schools with the most F-1 active students. California, New York, Texas, Massachusetts, Illinois, Florida and Pennsylvania have the highest number of F-1 and M-1 active students and account for approximately 54% of all active students in the SEVIS system. The country which has the highest number of active students in the SEVIS system is China. The leading major for international students is Business.

*For more information about this or any other immigration law topic, please contact Bob White, at 847.734.8811 or via email at **rwhite@masudafunai.com**.*