

Business Immigration Weekly for June 23, 2014

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Practices: Immigration

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) RENEWAL PROCESS

Effective immediately, the US Citizenship and Immigration Services (USCIS) will accept applications for the renewal of benefits for Deferred Action for Childhood Arrivals (DACA) recipients for an additional two years. Although it does not confer lawful status, DACA is a discretionary measure that grants eligible undocumented individuals who entered the United States as children protection from removal actions and the ability to apply for employment authorization. DACA was intended to protect children who through no fault of their own were brought to and raised in the United States, but remain on the fringes of society due to their lack of lawful status, in light of the failure of Congress to pass comprehensive immigration reform. The first DACA recipients' protections will begin to expire in September 2014. For this reason, the USCIS' announcement of the renewal process is a welcome one and will ensure that DACA recipients continue to receive protection as well as employment authorization after their current benefits expire.

As part of the renewal process, the USCIS has issued a new Form, I-821D, Consideration of Deferred Action for Childhood, which applicants will submit with the Form I-765, Application for Employment Authorization, and the Form I-765W, Worksheet. Applicants should not file the current version of the Form I-821D as this will result in a rejection of the application. The USCIS has indicated that applicants can submit their materials 120 days prior to the expiration of their current DACA period. Individuals who meet the DACA eligibility requirements, but who have not previously applied, are welcome to apply at this time.

For Form I-9 purposes, employers are reminded that they should monitor the expiration of those employees whose employment authorization will expire and make a timely request to the employee to provide a new document evidencing a new period of employment authorization. This must be done by providing the employee with the most recent version of the Form I-9 Instructions which includes the List of Acceptable Documents. Employers must re-verify employment authorization before the employee's current authorization expires. Please contact us if you have any questions regarding the Form I-9, the employment eligibility verification process or the DACA renewal process.

U.S. CONSULAR POSTS IN CANADA ADVISE NON-CANADIAN NATIONALS TO NOT APPLY FOR NONIMMIGRANT VISAS IN CANADA

Due to heavy demand, the U.S. consulates processing nonimmigrant visas in Canada will have limited visa availability for applicants that are nationals of countries other than Canada (Third Country Nationals). The Department of State (DOS) which administers the embassy and consulates has indicated that this peak period

will last from June through August. During this period, Third Country Nationals will not be able to apply for a nonimmigrant visa at Canadian posts. Although the public was informed that Canadian posts would continue to honor visa appointments already scheduled by Third Country Nationals, we have received word that Canadian posts are not processing visa applications for Third Country Nationals and that appointments are being cancelled.

Nonimmigrants should note that if they are only traveling to Mexico or Canada for a period of 30 days or less, they are eligible to travel using an expired visa under the Automatic Visa Revalidation provisions. The requirements include:

1. Travel to Mexico or Canada (no other country may be traveled to from Mexico or Canada before re-entering the United States). Students in F and J classification are eligible to travel to adjacent islands in addition to Mexico and Canada (except Cuba);
2. Trip is of 30 days or less;
3. Valid passport (Nationals of Iran, Syria, Sudan and Cuba are ineligible to take advantage of this law);
4. If the nonimmigrant was issued a paper I-94 Arrival/Departure Record they must not surrender it upon departing the United States (students must show a Form I-20 or DS-2029);
5. Not apply for a new visa while abroad;
6. Maintenance of status and intention to resume the nonimmigrant status upon their return to the United States; and
7. Does not require a waiver for admission.

Nonimmigrants who choose to use the Automatic Visa Revalidation provisions are also reminded that unfortunately this law is not as widely known and understood as we would like. In our experience, airline staff and even Custom and Border Protection officers themselves are not aware of it or do not understand it. For this reason, we recommend that you contact us to discuss the risks entailed with your international travel so that we may help you anticipate any issues.

DEPARTMENT OF LABOR RELEASES LATEST STATISTICS FOR THIRD QUARTER FYTD 2014

The Department of Labor (DOL) recently issued its statistics for the third quarter of fiscal year 2014 for the Permanent Labor Certification Program. The DOL received 10,773 applications, certified 12,519, denied 942 and had 687 applications withdrawn. In evaluating the DOL trends from fiscal year 2012 to the present, the denial rate has dropped to around 7% and the appeals rate has more than tripled from 3% to 10%. Audit rates have decreased from 45% at the end of fiscal year 2012 to 25% for this first quarter, but now rose again to 28%.

The majority of PERM applications continue to be filed in the Computer and Mathematical fields followed by the following fields: Architecture and Engineering, Management, Business and Financial Operations, and Education, Training and Library. The states that list the most work sites in decreasing order are: California, Texas, New York, New Jersey and Washington. The Professional, Scientific and Technical Services remains

the top industry, followed by Manufacturing, Information, Educational Services and Finance and Insurance. The overwhelming majority of sponsored individuals are in H-1B classification (83%). The five top countries of citizenship which are sponsored are: India (55%), China (7%), Canada (5%), South Korea (4%) and Philippines (2%). Currently most individuals are being sponsored in positions requiring an advanced degree (55%) followed by bachelor's degrees (38%).