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News & Types: Immigration Update

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Practices: Immigration

DEPARTMENT OF STATE PROPOSED RULE WOULD INCREASE FEES

The Department of State has announced that it will change fees for certain types of applications. These fee changes will take effect on September 12, 2014. The most important changes include a reduction in the E Treaty Investor/Treaty Trader fees from $270 to $205 and an increase in the fee for a K Fiancé Visa from $240 to $265. Other significant changes include an increase in the processing fees for immigrant visa applications for the immediate relative family-based preference (from $230 to $325) and a decrease in the fee for employment-based preference categories (from $405 to $345). Application fees will be grandfathered for applicants that paid their visa fee before September 12, 2014 and will have their visa interview on or before December 11, 2014. Applicants who paid their fees before September 12, 2014, but with visa appointments after December 12, 2014 will have to pay any increase in fees. There will be no refunds for visa application fees that were paid before September 12, 2014 where the new fee has decreased.

DUPLICATE APPLICATION SUPPORT CENTER (ASC) NOTICES ISSUED

The U.S. Citizenship and Immigration Services announces that duplicate ASC notices were issued by mistake when the agency was transitioning to a new computer system. Notices that had previously been issued under the old system were sent again under the new system. Applicants who have already attended their ASC appointments and for whom the USCIS has successfully captured their biometric information should not have to attend the second interview. However, the USCIS does caution that applicants may want to respond to the duplicate ASC notice by indicating that the applicant has already attended an appointment.

CHINA EB-5 PREFERENCE CATEGORY BECOMES UNAVAILABLE

As of August 23, 2014, the EB-5 employment-based preference category for China has become unavailable. The Department of State has indicated that the maximum amount of immigrant visas for this category has been reached for fiscal year 2014. This is the first time that the annual cap of 10,000 has been met in the 24 years that the category was created. All applicants who have an immigrant visa scheduled based on priority dates in August and September have already been allotted an immigrant visa and therefore will be able to continue with the process and be issued an immigrant visa. The US Citizenship and Immigration Services will continue to accept and process adjustment of status applications for EB-5 Chinese applicants and will hold them until October 1, 2014 when it will count them against the 2015 fiscal year annual immigrant visa quota. The

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Department of State has also indicated that this category may be cut-off during the next fiscal year as early as May 2015 due to the continued increase in immigration in this category.

NEW SECURE INK BEING USED FOR IMMIGRATION RELATED STAMPS

The US Citizenship and Immigration Services began using a new secure blue ink on the following stamps: Department of Homeland Security Parole Stamp, ADIT Stamp – Temporary I-551 Alien Documentary Identification and Telecommunication, Refugee Stamp, Asylum Stamp and Initial/Replacement Form I-94 Stamp. This new secure blue ink will replace the red ink that was previously used. The new blue secure ink began to be used on July 1, 2014.

H-1B EMPLOYER FOUND PERSONALLY LIABLE FOR VIOLATING INA

A doctor who ran several clinics in Tennessee and Florida was held personally liable for violating the wage violations under the Immigration and Nationality Act relating to the H-1B nonimmigrant category. Dr. Mohan Kutty employed eighteen foreign physicians through various corporate entities. The foreign physicians were employed pursuant to H-1B status in medically underserved areas which served as the basis for waivers of their J-1 foreign residence requirement. The clinics experienced financial troubles and Dr. Kutty began withholding the foreign workers' pay until they began seeing more patients. An immigration attorney for several of the foreign physicians contacted Dr. Kutty to remind him of his obligations under the Labor Condition Applications that he had signed as part of the H-1B petition process. Subsequently, Dr. Kutty ceased salary payments to the foreign physicians. The foreign physicians lodged a complaint with the Department of Labor the agency that administers and that is responsible for enforcing the Labor Condition Application provisions. The Department of Labor began an investigation which resulted in several charges being brought against Dr. Kutty. The Administrative Law Judge found that Dr. Kutty had willfully failed to pay the foreign workers pay, failed to maintain Public Access Files for the Labor Condition Applications, did not keep payroll records and had illegally retaliated against the physicians for their actions which were protected under the Immigration and Nationality Act. The Administrative Law Judge found Dr. Kutty personally liable for over $1 million in back pay and fined him $108,000 in civil penalties. Subsequent appeals to the Administrative Review Board, U.S. District Court and to the U.S. Court of Appeals for the Sixth Circuit were unsuccessful and all courts upheld the finding that Dr. Kutty was personally liable. It is clear that the Department of Labor wished to make an example of this case to other H-1B employers. All H-1B employers should take special care and note that even though a corporate entity may serve as the employer on an H-1B petition and on the Labor Condition Application tied to that petition, if the violations of the Immigration and Nationality Act are willful that employer may be held personally liable for back pay and fines.

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