

LitwinLaw Update

February 1, 2008

Headlines:

- **1. Naturalization Processing Times Increase Drastically** - The average processing time for naturalization applications has increased to approximately 18 months. It appears that it will take longer to become a United States citizen.
- **2. H-2B Cap Reached** - USCIS has received a sufficient number of petitions to reach the H-2B cap for the second half of fiscal year 2008. (H-2Bs are non-professional, temporary employees)
- **3. DHS Begins Collecting 10 Fingerprints at Logan** - DHS has begun collecting additional fingerprints from international visitors arriving at Boston Logan International Airport. This will soon be coming to San Francisco.
- **4. India Employment Second Preference Becomes Unavailable** - The annual limit for the India employment second preference category has been reached. No foreign nationals from India will be able to obtain permanent residence under EB2 until at least October 2008.
- **5. State Dept. Issues Travel Documentation Reminder** - All persons traveling by air between the U.S. and Canada, Mexico, Bermuda, and the Caribbean region are required to present a passport or other valid travel document to enter or re-enter the U.S.
- **6. Marriott Speaks Out on Immigration** - Bill Marriott, chief executive officer of Marriott International, Inc., recently spoke about critical issues facing the hospitality industry. Another big name expresses the need for Congress to allow more workers to legally come to the United States to fill jobs where U.S. workers cannot be found.

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Details...

1. Naturalization Processing Times Increase Drastically

Because of a surge in applications over the summer and resulting massive backlogs, partly in anticipation of fee increases, the average processing time for naturalization applications has increased for applications filed after June 1, 2007, from the current average of seven months or less to approximately 18 months, U.S. Citizenship and Immigration Services (USCIS) said. Family-based adjustment of status applications increased from the current average of six months or less to 12 months.

Specifically, USCIS noted that in July and August of 2007, the agency received nearly 2.5 million applications and petitions, which was double the number typically received in a two-month period. In fiscal year (FY) 2007, USCIS received 1.4 million applications for naturalization, more than the totals from FYs 2006 and 2005 combined. Forty percent of those, or 562,000, were filed in the fourth quarter. Applications for employment- and family-based adjustment of status increased by 76 percent, from 497,000 in FY 2006 to 875,000 in FY 2007.

USCIS said it plans to reduce processing times to six months by the third quarter of fiscal year 2010. USCIS Director Emilio Gonzalez noted that up to several thousand new employees are being hired and trained to deal with the "deluge." This is in addition to about 700 retired federal government employees who are being hired back without having to sacrifice their pensions, under a plan proposed by Sen. Charles Schumer (D-N.Y.).

A sign-on letter expressing deep concern about the delays notes, among other things, that "[m]any of the undersigned organizations opposed fee increases of the magnitude that USCIS proposed and warned that if USCIS were to proceed with the fee increases, it must prepare for a surge in applications from immigrants wishing to avoid the fee increases. In fact, USCIS did move forward with the fee increases, but did not adequately prepare to handle such a surge." The sign-on letter is available at <http://www.aila.org/content/default.aspx?docid=24331>.

An announcement about processing times and case status is available on page 5 of USCIS' December 2007 newsletter at http://www.uscis.gov/files/nativedocuments/USCIS_Monthly_Dec07.pdf. Related testimony from Mr. Gonzalez on January 17, 2008, before the House of Representatives' immigration subcommittee is available at http://www.uscis.gov/files/testimony/testimony_ETG_17jan08.pdf.

2. H-2B Cap Reached

U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the second half of fiscal year (FY) 2008. USCIS stated that January 2, 2008, is the "final receipt date" for new H-2B worker petitions requesting employment start dates before October 1, 2008. The final receipt date is defined as the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of FY 2008.

USCIS said it is rejecting any petitions for new H-2B workers seeking employment start dates before October 1, 2008, that arrive after January 2, 2008. The agency will apply a computer-generated random selection process to all petitions subject to the cap that were received on January 2, 2008, to select the number of petitions needed to meet the cap. USCIS will reject, and return the fee, for all cap-subject petitions not randomly selected.

Petitions for workers who are currently in H-2B status do not count toward the congressionally mandated biannual H-2B cap. USCIS will continue to process petitions filed to extend the stay of a current H-2B worker in the U.S.; change the terms of employment for current H-2B workers and extend their stay; or allow current H-2B workers to change or add employers and extend their stay.

Kathleen Campbell Walker, President of the American Immigration Lawyers Association (AILA), said, "This continuing failure to connect the dots between meeting valid labor needs and our immigration laws is inexcusable. Placing America at a competitive disadvantage is unacceptable. Maxing out on a cap four months before the applicable period even begins shows how little relation there is between immigration policy and the needs of the economy." AILA said that service industries such as hospitality, including restaurants and hotels, landscaping, construction, and seafood processing are among those most damaged by Congress's inaction.

The USCIS announcement is available at http://www.uscis.gov/files/pressrelease/H-2B_3jan08.pdf. AILA's press release is available at <http://www.aila.org/content/default.aspx?docid=24215>.

3. DHS Begins Collecting 10 Fingerprints at Logan

The Department of Homeland Security (DHS) announced on January 22, 2008, that it has begun collecting additional fingerprints from international visitors arriving at Boston Logan International Airport (Logan). The change is part of the DHS' upgrade from two- to 10-fingerprint collection.

For more than four years, U.S. Department of State (DOS) consular officers and U.S. Customs and Border Protection (CBP) officers have been collecting biometrics—digital fingerprints and a photograph—from all non-U.S. citizens between the ages of 14 and 79, with some exceptions, when they apply for visas or arrive at U.S. ports of entry.

The department's US-VISIT program includes checks of a visitor's fingerprints against DHS records of immigration violators and Federal Bureau of Investigation (FBI) records of criminals and known or suspected terrorists. The DHS said that collecting 10 fingerprints improves fingerprint matching accuracy and the agency's ability to compare a visitor's fingerprints against latent fingerprints collected by Department of Defense (DOD) and the FBI from "known and unknown" terrorists. Additionally, visitors' fingerprints are checked against the FBI's Criminal Master File.

On an average day at Logan, almost 2,000 international visitors complete US-VISIT biometrics procedures. Visitors from the United Kingdom, Ireland, Germany, and France comprise the largest numbers of international visitors arriving at Logan.

Washington Dulles International Airport began 10-fingerprint collection on November 29, 2007, and Hartsfield Jackson Atlanta International Airport began 10-fingerprint collection on January 6, 2008. Seven other ports of entry will soon begin collecting additional fingerprints: Chicago O'Hare International Airport, San Francisco International Airport, George Bush Houston Intercontinental Airport, Miami International Airport, Detroit Metropolitan Wayne County Airport, Orlando International Airport, and John F. Kennedy International Airport in New York. The remaining air, sea, and land ports will transition to collecting 10 fingerprints by the end of 2008, the DHS said.

The announcement is available at

<http://netmail.verizon.net/webmail/servlet/HttpNimletDriver?nimlet=ManageEmailDetailNimlet&requestAction=showEmail&folderName=INBOX&messageID=1006>.

4. India Employment Second Preference Becomes Unavailable

Despite two retrogressions of the India employment second preference cut-off date recently, demand for numbers by U.S. Citizenship and Immigration Service offices for adjustment of status cases has remained extremely high in recent months, the Department of State reported in the February 2008 Visa Bulletin. As a result, the annual limit for the India employment second preference category has been reached, and the category has become "unavailable."

The latest Visa Bulletin is available at
http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.html.

5. State Dept. Issues Travel Documentation Reminder

The Department of State issued a reminder that effective January 23, 2007, all persons traveling by air between the U.S. and Canada, Mexico, Bermuda, and the Caribbean region are required to present a passport or other valid travel document to enter or re-enter the U.S. Beginning January 31, 2008, U.S. and Canadian citizens need to present either a Western Hemisphere Travel Initiative (WHTI)-compliant document, or a government-issued photo ID, such as a driver's license, plus proof of citizenship, such as a birth certificate.

At a later date, to be determined, the Departments of State and Homeland Security will implement the full requirements of the land and sea phase of WHTI. Proposed rules require most U.S. citizens entering the U.S. at sea or land ports of entry to have either a U.S. passport; a U.S. passport card; a trusted traveler card such as NEXUS, FAST, or SENTRI; a valid Merchant Mariner Document (MMD) when traveling in conjunction with official maritime business; or a valid U.S. Military identification card when traveling on official orders. Members of the U.S. Armed Forces on active duty traveling on orders are exempt from the passport requirement. The passport requirement does not apply to U.S. citizens traveling to or returning directly from a U.S. territory.

U.S. citizens may begin applying in advance for the new, limited-use, wallet-size passport card beginning February 1, 2008. The Department said it expects that the cards will be available and mailed to applicants in spring 2008. When available, it will only be valid for land and sea travel between the U.S. and Canada, Mexico, the Caribbean region, and Bermuda.

A related 23-page letter on the WHTI from Richard Stana, Director of Homeland Security and Justice Issues for the Government Accountability Office, to the House of Representatives' Subcommittee on Border, Maritime and Global Counter-terrorism, is available at <http://www.aila.org/content/default.aspx?docid=24355>.

Among other things, Mr. Stana noted that the GAO "acknowledge[s] that DHS has taken a number of actions to prepare for testing and deploying technologies and managing the implementation of other WHTI activities. However, as key elements of planning for program management and execution remain uncertain, we continue to believe that DHS faces challenges deploying technology, and staffing and training officers to use it."

More information on the WHTI is available at http://travel.state.gov/travel/cbpmc/cbpmc_2223.html.

6. Marriott Speaks Out on Immigration

Bill Marriott, chief executive officer of Marriott International, Inc., recently spoke at the National Press Club on January 17, 2008, about critical issues facing the hospitality industry. Mr. Marriott is an advocate of immigration reform and creating an efficient visa system. "This country is powered really by immigrant labor," he said, noting that about 300,000 new workers will be needed over the next several years in his industry and that U.S. visa policies are discouraging foreign workers and visitors from coming. "It's too tough to visit America. Here in the U.S. we need to put out the welcome mat."

Mr. Marriott has also sounded off about immigration issues on his blog: "Without hard-working, law-abiding immigrants to the United States - many who come from Mexico - the hospitality industry could not function. It's just that simple." He said his company "continues to support changes in the U.S. laws that not only create a path to legal status for immigrants, but also protect the integrity of our U.S. borders." Mr. Marriott noted that "[r]emoving 12 million undocumented workers from our economy with near full employment would be an absolute disaster for us. We'd like to see a fast, efficient and accurate employment verification system so when we hire someone, we know they are legal." He said that "[a]t Marriott we firmly believe that the diversity of our workforce makes us great because it's a reflection of our ever-diversifying global customer base. We value our associates - it doesn't really matter where they're born."

Mr. Marriott's comments on immigration are available on his blog, which also includes audio links, at

<http://www.blogs.marriott.com/employment/default.asp?item=704047> and
<http://www.blogs.marriott.com/employment/default.asp?item=499434>.

New Publications and Items of Interest

USCIS ombudsman hosts teleconferences. The U.S. Citizenship and Immigration Services (USCIS) Ombudsman is hosting teleconferences to discuss interactions with the agency. Questions and answers from previous teleconferences have been posted recently to the Web site. Topics available include N-648 medical waivers, the new naturalization test, the USCIS receipting delay, and temporary worker visas. See http://www.dhs.gov/xabout/structure/gc_1171038701035.shtm.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:

<https://egov.uscis.gov/cris/jsps/ptimes.jsp>

Department of Labor processing times and information on backlogs:

<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html
