



## JANUARY 2007 IMMIGRATION UPDATE

*Posted on January 5, 2007 by Cyrus Mehta*

1. [USCIS Issues Guidance on Periods of Admission for H and L Workers](#) - USCIS has released guidance on determining periods of admission for certain H and L workers.
2. [DOL Issues FAQ For RIR Conversions](#) - The DOL has introduced a "hold harmless" policy when requesting a conversion.
3. [SSA Explains How Foreign Workers Can Get Social Security Numbers](#) - The Social Security Administration has listed the documentation a foreign worker must have to obtain a Social Security number for work purposes.
4. [No Progress on Immigration Reform in 109<sup>th</sup> Congress; Report Released on Immigration Legislation and Issues](#) - The 109<sup>th</sup> session of Congress ended in December with no progress on major immigration reform legislation.
5. [Dallas Suburb Sued Over Anti-Illegal Immigration Law](#) - Several groups sued a suburb of Dallas, Texas, over an ordinance requiring that apartment renters show proof of U.S. residence and penalizing landlords who rent to undocumented persons.
6. [Chamber of Commerce Asks for Clarification of WHTI Language](#) - U.S. Chamber of Commerce officials sent a letter urging clarification of Western Hemisphere Travel Initiative language.
7. [H-2B Cap Reached for First Half of FY 2007](#) - USCIS has received a sufficient number of H-2B petitions to reach the cap for the first six months of fiscal year 2007.
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- [Requirement Waivers Under 212\(e\)](#) - USCIS outlined processing changes for new filings based on claims of exceptional hardship or persecution.
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  15. [New OIG Report Assesses USCIS's Progress](#) - A new USCIS Inspector General report concludes that USCIS "remains entrenched in a cycle of continual planning, with limited progress toward achieving its long-term transformation goals."
  16. [Gov't Agencies Release Info on Upcoming Regs](#) - DHS recently summarized upcoming employment-related immigrant and nonimmigrant regulations.

## Details...

### 1. **USCIS Issues Guidance on Periods of Admission for H and L Workers**

U.S. Citizenship and Immigration Services (USCIS) released guidance on determining periods of admission for those previously in H-4 or L-2 status, those applying for additional periods of admission beyond the H-1B six-year maximum, and those who have not exhausted the six-year maximum but who have been absent from the U.S. for over one year. Specifically, the memorandum:

- clarifies that time spent as an H-4 or L-2 dependent does not count against the maximum allowable period of stay available to principals

in H-1B or L-1 status;

- clarifies that H-1B workers, who qualify under section 106(a) and (c) of the American Competitiveness in the Twenty-First Century Act of 2000 need not be in H-1B status when requesting an additional period of stay beyond the six-year maximum; and
- clarifies how to determine the maximum period of admission in H-1B status for a beneficiary who was in the U.S. in valid H-1B status for less than the six-year maximum period of admission, but who has since been outside the U.S. for more than one year.

USCIS noted that a worker seeking H-1B or L-1 status (or corresponding derivative status) in light of these clarifications still must meet all of the substantive requirements for those classifications and is subject to the normal maintenance-of-status requirements.

For a full analysis, see [H-1B SPOUSE'S DEPENDENT TIME DOES NOT COUNT TOWARDS THE 6-YEAR H-1B LIMIT.](#)

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## 2. **DOL Issues FAQ On RIR Conversions**

Labor certification applications that were filed prior to the PERM regulations of March 28, 2005, under the traditional method, can now be converted into fast-track Reduction in Recruitment applications. The FAQ addresses the concept of the "held harmless" period, which allows for a conversion even if the DOL has initiated the processing of the traditional application. The final date to make a request to "hold harmless" a traditional application is January 20, 2007.

[DOL RIR CONVERSION FAQ](#)

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## 3. **SSA Explains How Foreign Workers Can Get Social Security Numbers**

The Social Security Administration (SSA) lists the following documentation required of a foreign worker to obtain a Social Security number (SSN) for work purposes:

- Department of Homeland Security (DHS)-stamped work-authorized status on an I-94 (e.g., L-1 is work-authorized inherent in status), or

- I-551 Permanent Resident Card ("green card"), or
- Machine-readable immigrant visa with temporary work authorization language embedded on the face of the visa (upon endorsement, this serves as a temporary I-551 evidencing permanent residence for one year), or
- Employment Authorization Document (EAD): I-766 or I-688B

B-2 temporary visitors for pleasure (tourists) are not authorized by DHS to work in the U.S. so they cannot be assigned SSNs for work. The only other way for a B-2 to get an SSN, which a spokesperson for the SSA said is rare, is if he or she qualifies for a non-work SSN. The only valid non-work reasons are:

- a federal statute or regulation requires that the individual provide his or her SSN to get a particular benefit or service to which he or she has otherwise established entitlement;
- a state or local law requires the individual, who is legally in the U.S., to provide his or her SSN to get public assistance benefits to which entitlement has been established otherwise and for which all other requirements have been met.

For more information, see "Foreign Workers and Social Security Numbers," <http://www.socialsecurity.gov/pubs/10107.html>, and "Social Security Numbers for Noncitizens," <http://www.socialsecurity.gov/pubs/10096.html>.

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#### 4. **No Progress on Immigration Reform in 109<sup>th</sup> Congress; Report Released on Immigration Legislation and Issues**

The 109<sup>th</sup> session of Congress ended in December with no progress on major immigration reform legislation or on the Securing Knowledge, Innovation, and Leadership (SKIL) Act of 2006, which was intended to provide visa shortage relief for key foreign nationals working in the U.S. As noted by the Congressional Research Service (CRS) in a detailed report, security concerns figured prominently in congressional debates this past year, and immigration enforcement remains on Congress's agenda. Additional action is possible early in 2007 when appropriations bills will be considered.

The CRS's report discusses limited provisions that were enacted on temporary and permanent employment-based immigration and other issues.

The report is available at

<http://fpc.state.gov/documents/organization/76318.pdf>.

However, on January 4, 2007, Majority Leader Harry Reid (D-NV) announced that comprehensive reform is on the Democrats' top-ten list of legislative priority for the 110<sup>th</sup> Congress, and Minority Leader Mitch McConnell (R-KY) also declared that "Immigration is one the most pressing issues of our day. We should be daring about immigration reform – and act on it soon. The voters demand it. We have a duty to deliver." There appears to be a bipartisan commitment to enact immigration reform legislation in 2007. We will keep you updated on further developments.

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#### 5. **Dallas Suburb Sued Over Anti-Illegal Immigration Law**

The American Civil Liberties Union of Texas and the Mexican American Legal Defense and Education Fund have sued Farmer's Branch, a suburb of Dallas, Texas, over an ordinance requiring that apartment renters show proof of U.S. residence and penalizing landlords who rent to undocumented persons. The groups argue that the law is impermissibly vague and that federal immigration law preempts state and local law. Some local landlords are also against the ordinance because they say they are not trained to detect immigration document forgeries.

The complaint is available at

<http://jurist.law.pitt.edu/pdf/texasimmigrationcomplaint.pdf>.

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#### 6. **Chamber of Commerce Asks for Clarification of WHTI Language**

On December 20, 2006, several U.S. Chamber of Commerce officials sent a letter to interested parties urging clarification of Western Hemisphere Travel Initiative (WHTI) language.

Angelo Amador and Kelly Hunt, the Chamber's director and manager,

respectively, of immigration policy, noted that Congress made legislative changes in September 2006 to the WHTI. The changes, among other things, required that the land and sea deadlines be synchronized and that the Departments of State and Homeland Security meet certain requirements before the deadlines are implemented, which could be as early as January 1, 2008, and as late as June 1, 2009.

Mr. Amador and Ms. Hunt stated that there has been much confusion surrounding the deadlines and requirements. The Chamber and other stakeholders have been meeting with relevant agencies to ensure that the government's and private sector's messages are accurate and consistent. To that end, the Chamber officials reviewed the language and plan to recommend clarifying changes. They suggest that the private sector adopt the new language as well.

Below is the proposed language drafted by the Chamber and reviewed by other groups in the travel and tourism industry:

#### CHANGE FROM PRIOR TRAVEL REQUIREMENTS

All persons, including U.S. citizens, entering the United States from the Americas, Canada, Mexico, the Caribbean, and Bermuda will soon be required to have a passport or other accepted document that establishes the bearer's identity and citizenship.

The change will be implemented in two phases:

1. Beginning January 23, 2007, all air travelers, including U.S. citizens, entering the U.S. will need a passport.
2. As early as January 1, 2008, and no later than June 1, 2009, all persons, including U.S. citizens, traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, and Bermuda by land or sea (including ferries), may be required to present a valid passport or other documents as determined by the Department of Homeland Security. A new law requires that an economical passport alternative be designed and tested before implementation of this second phase. Ample advance notice will be provided to enable the public to obtain the economical passport alternative for land/sea entries when they become available.

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## 7. H-2B Cap Reached for First Half of FY 2007

U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of H-2B petitions to reach the cap for the first six months of fiscal year (FY) 2007. USCIS will reject new petitions for H-2B workers seeking employment start dates before April 1, 2007. The agency will continue to accept petitions for new H-2B workers seeking employment start dates on or after April 1, 2007, only if such petitions are supported by a valid temporary labor certification.

Petitions for workers currently in H-2B status and returning H-2B workers do not count toward the H-2B cap. To qualify as a returning worker, the worker must have counted against the H-2B numerical cap between October 1, 2003, and September 30, 2006. Petitions received after the "final receipt date" (November 28, 2006) that contain a combination of returning workers and workers subject to the cap will be rejected with respect to the non-returning workers.

USCIS will continue to process petitions filed to extend the stay of a current H-2B worker; change the terms of employment for a current H-2B worker; allow a current H-2B worker to change or add an employer; and request eligible H-2B returning workers.

The notice is available at [http://www.uscis.gov/files/pressrelease/H2BCapReleaseFY2007\\_5dec06.pdf](http://www.uscis.gov/files/pressrelease/H2BCapReleaseFY2007_5dec06.pdf).

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## 8. State Dept. Changes Personal Appearance Requirements for Interviews

The Department of State issued a final rule amending guidance to consular officers for the waiver of personal appearances of applicants for nonimmigrant visas. The most significant change is that a consular officer must now interview persons in the same age ranges as persons covered by biometric collection requirements. In addition to the existing list of situations in which an interview may not be waived, the personal interview requirement may not be waived for nonimmigrant visa applicants from third countries and applicants who have been refused visas previously or

found ineligible for visas, where that ineligibility was not overcome.

The final rule is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-21492.pdf>.

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## 9. **USCIS Announces Processing Changes for J-1 Foreign Residence Waivers Under 212(e)**

U.S. Citizenship and Immigration Services (USCIS) issued a public notice on December 19, 2006, outlining processing changes for new filings, based on claims of exceptional hardship or persecution, of the Application of Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration and Nationality Act. Among other things, USCIS's Nebraska, Texas, and Vermont Service Centers have begun forwarding to the California Service Center any such new filings. USCIS noted that it is not necessary for those who filed an I-612 previously to file a new application. New applicants seeking such a waiver should file their I-612s with the Service Center having jurisdiction over the applicant's place of residence.

USCIS also noted that all 212(e) waiver recommendations received by the agency from the Department of State (DOS) based on a "no objection" statement from the individual's home country, a request by an interested U.S. government agency, or a request by a state health department (State Conrad 30) are being forwarded to the Vermont Service Center (VSC) for processing. Waiver recommendations based on these three eligibility categories are transmitted electronically from the DOS to the VSC and are included in USCIS's electronic case management system as an I-612. Following the review of DOS's recommendation and completion of requisite security checks, the Service Center will issue a decision on the waiver request.

The notice is available at

[http://www.uscis.gov/files/pressrelease/I612\\_121906PN.pdf](http://www.uscis.gov/files/pressrelease/I612_121906PN.pdf).

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## 10. **Over 6 Million Apply for DV-2008 Green Card Lottery**



Over 6.4 million entries for the 2008 Diversity Visa (DV) green card lottery were received during the two-month electronic registration period, from October 4, 2006, through December 3, 2006. This was an increase from the more than 5.5 million applications received in the 2007 DV lottery.

Most of the applications were from Africa and Asia, with 41 percent of the total from Africa, 38 percent from Asia, 19 percent from Europe, and two percent from South America, Central America, and the Caribbean. The largest number of applicants were from Bangladesh (more than 1.7 million), followed by Nigeria (684,735) and Ukraine (619,584). The number of winning entries by country will be released after the random lottery process is conducted in 2007.

Winners will be notified by letter from the Kentucky Consular Center between April and July 2007. The letter will provide further instructions.

The Department of State noted that there have been attempts to defraud DV Lottery entrants. Those selected as winners in the random drawing are notified only by the Department of State's Kentucky Consular Center. No other organization or company is authorized by the Department to contact winning entrants. The DV 2009 lottery registration period has not yet been opened and no applications are being accepted electronically now. The Department's notice is available at

<http://www.state.gov/r/pa/prs/ps/2006/77895.htm>.

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## 11. **USCIS Issues Notice Launching Pilot Test for New Naturalization Exam**

U.S. Citizenship and Immigration Services (USCIS) has published a notice in the Federal Register confirming its announcement last month that it will be conducting a pilot of a redesigned naturalization test. USCIS plans to revise the naturalization testing process to ensure that the process is uniform; currently, test content varies among USCIS district offices. Based on the evaluation of the pilot, the final test is expected to be implemented nationally beginning in 2008.

USCIS said it plans to retain the current U.S. history and government test format but will replace the "trivia-based content" of the questions with

new questions that will test applicants on the fundamentals of American democracy, such as the rule of law, separation of powers, and rights.

The notice, published on December 19, 2006, lists the sites where the pilot test will be conducted beginning in early 2007. The notice is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-21548.pdf>.

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## 12. **California Fence Company to Pay Fines for Illegal Hiring; Gov't Raids Meatpacking Plants in Six States**

Golden State Fence Company has been fined \$5 million for hiring undocumented workers, and two company officials may receive jail time. The company had received a warning in 1999 but follow-up checks in 2004 and 2005 revealed that up to a third of the company's workers remained unauthorized. One of the company's projects included construction of a portion of a 14-mile border fence in San Diego, California, in the late 1990s.

In another enforcement action, federal agents raided meatpacking plants in six states. Raids against the Colorado-based Swift & Company's plants were the largest-ever immigration enforcement action, Secretary of Homeland Security Michael Chertoff said. Some observers were skeptical about the impact of the action. Frank Sharry, executive director of the National Immigration Forum, noted that "e've been doing raids for 20 years, and the immigration problem is soaring. You can't restore the rule of law until you respond to the law of supply and demand."

Meanwhile, under a new state law, Colorado employers will have 20 days to verify the work authorization status of a new employee. Employers who fail to maintain the required documentation will be subject to fines of up to \$5,000 for the first offense and \$25,000 for subsequent offenses.

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## 13. **GAO Says Data on J-1 Waivers is Needed to Better Address Physician Shortages**

The U.S. Government Accountability Office (GAO) has released a report

discussing the use of J-1 visa waivers as a major means of providing physicians to practice in underserved areas of the U.S. As the report notes, over 1,000 waivers were requested in each of fiscal years 2003 through 2005 by states and three federal agencies. In contrast to a decade ago, when federal agencies requested the vast majority of waivers, states have become the primary source of J-1 visa waiver requests.

States and federal agencies have requested waivers for physicians to work in a variety of practice specialties, settings, and locations. More than three-quarters of the waiver requests were for physicians to work in hospitals or private practices, and about half were for physicians to practice in rural areas.

The Department of Health and Human Services (HHS) does not have the information needed to account for waiver physicians in its efforts to address physician shortages, the GAO noted, recommending that HHS collect and maintain data on waiver physicians and use these data when identifying areas experiencing physician shortages and placing physicians in these areas.

The report, "Foreign Physicians: Data on J-1 Waivers Needed to Better Address Physician Shortages," is available at <http://www.gao.gov/new.items/d0752.pdf>.

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#### 14. **GAO Says US-VISIT Exit Program Does Not Meet Statutory Requirements**

The U.S. Government Accountability Office (GAO) concluded in a new report that biometric US-VISIT exit monitoring cannot now be implemented without having a major impact on land POE facilities. An interim nonbiometric exit technology being tested does not meet the statutory requirement and cannot ensure that visitors who enter the U.S. are the same as those who leave.

The GAO noted that the Department of Homeland Security (DHS) has not yet reported to Congress on a required plan describing how it intends to fully implement a biometric entry/exit program or to use nonbiometric solutions. Until this plan is finalized, the GAO said, neither DHS nor

Congress is in a good position to prioritize and allocate program resources or plan for POE facility modifications. DHS also has not yet articulated how US-VISIT will align with other emerging land border security initiatives and mandates, and thus cannot ensure that the program will meet strategic program goals and operate cost-effectively at land POEs.

The GAO recommends that DHS improve existing management controls for US-VISIT, develop performance measures to assess the impact of US-VISIT at land POEs, and ensure that a statutorily mandated report describes how DHS will move to a biometric entry-exit capability and align US-VISIT with other emerging land border security initiatives.

The GAO report, "Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry," is available at <http://www.gao.gov/new.items/d07248.pdf>.

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#### 15. **New OIG Report Assesses USCIS's Progress**

A new U.S. Citizenship and Immigration Services (USCIS) Inspector General report concludes that USCIS "remains entrenched in a cycle of continual planning, with limited progress toward achieving its long-term transformation goals." Overcoming hindrances to moving from planning to implementation "is critical to addressing longstanding USCIS process and systems issues and realizing a more effective benefits processing environment."

Specifically, the report states, obtaining the funding needed to support implementation of USCIS's business transformation program is a continual concern. Establishing a clearly defined strategy, including funding plans, goals, and performance measures, is fundamental, the Inspector General said. Linking information technology (IT) objectives to this transformation strategy and ensuring sufficient internal and external stakeholder involvement in IT and process improvement initiatives also will be key. Until USCIS addresses these issues, the Inspector General noted, the agency will not be in a position to either manage existing workloads effectively or handle the potentially dramatic increase in immigration benefits processing workloads that could result from

proposed immigration reform legislation.

The report, "U.S. Citizenship and Immigration Services' Progress in Modernizing Information Technology," is available at

[http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_07-11\\_Nov06.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-11_Nov06.pdf).

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#### 16. **Gov't Agencies Release Info on Upcoming Regs**

Several agencies recently released their semiannual regulatory agendas, which summarize planned upcoming proposed, interim, and final rules intended for publication. If past history is any indication, timetables often change and rules are frequently postponed, but the agencies' semiannual regulatory agendas provide a good overview of what changes can be anticipated in the foreseeable future regarding implementation of processes and requirements.

Selected immigrant and nonimmigrant employment-related highlights of the lengthy semiannual regulatory agenda of the Department of Homeland Security (DHS) follow.

Eliminating substitution of beneficiaries on permanent labor certification applications. DHS will propose to eliminate the current practice of allowing the substitution of beneficiaries on permanent labor certifications, among other options. In addition, DH