CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

FEBRUARY 2007 IMMIGRATION UPDATE

Posted on February 4, 2007 by Cyrus Mehta

Headlines:

1. **CDMA Issues H-1B Application Alert** - The FY 2008 cap is expected to be met quickly; CDMA advises clients to begin preparing well in advance of the April filing start date.
2. **USCIS Proposes Large Fee Increases** - Business immigration forms will cost a lot more to file under USCIS's proposal.
3. **ABIL Invites Companies to Sign Letter to Congress Urging Innovation Measures** - ABIL invites leaders of American business and higher education to sign on to a letter calling on Congress to act quickly on an innovation agenda that will ensure U.S. competitiveness.
4. **Change of Address Function Introduced on Web** - USCIS has launched a new Web-based service allowing most noncitizens to submit change-of-address information online.
5. **H-1C Nursing Relief Program Reauthorized** - USCIS recently released guidance on the reauthorization for an additional three years of the Nursing Relief for Disadvantaged Areas Act of 1999.
6. **Colorado Passes Law Requiring Employers to Verify Work Authorization** - Employers who fail to maintain the required documentation will be subject to fines.
7. **USCIS Clarifies P-1 Expansion** - USCIS recently released a memorandum on P-1 admission for minor league professionals, entertainers, and teams under the COMPETE Act of 2006.
8. **New Naturalization Test Pilot Emphasizes Civics, History** - USCIS has released details about its pilot naturalization exam beginning in February.
9. **USCIS Releases TPS Details for Honduras, Nicaragua, El Salvador** - USCIS has approved a majority of temporary protected status applications received from Hondurans, Nicaraguans, and Salvadorans.

10. **Foreign Entrepreneurs Start 25 Percent of New U.S. Technology Companies, Study Estimates** - A new study estimates that one out of every four U.S. technology start-ups over the past 10 years has at least one senior executive who was born outside the U.S.
11. **Small Businesses Agree That Undocumented Immigration is a Problem, But Are Divided on Solution; Lawsuits Filed** - Ninety percent of small business owners surveyed agreed that undocumented immigration is a problem, but differed on solutions; some are choosing to sue rivals for immigration violations.
12. **Wired Editor Wins US-VISIT FOIA Case** - A California court has ordered U.S. Customs and Border Protection to release documents revealing that US-VISIT computers malfunctioned because of a common computer "worm."
13. **Google Tools Allow Custom Searches** - Google has a variety of search tools and tips.

Details...

1. **CDMA Issues H-1B Application Alert**
   Cyrus D. Mehta & Associates, P.L.L.C. (CDMA) advises graduating students and their employers to contact the firm now to help them identify potential H-1B candidates and prepare H-1B paperwork. H-1B applications to be filed under the fiscal year 2008 cap will be accepted by U.S. Citizenship and Immigration Services (USCIS) no earlier than April 2, 2007, and the cap is expected to be met quickly.

   It is possible that a gap will occur between H-1B workers' employment authorization granted under Optional Practical Training (OPT) and their H-1B work start date. The 60-day grace period at the end of OPT allowing the student to remain in the U.S. does not include H-1B work that may not start before October 1, the beginning of the 2008 fiscal year. Employers are encouraged to contact CDMAfor advice in specific situations, and to contact their representatives in Congress to address the problem and the shortage of skilled professionals.

   For H-1B filings not subject to the annual cap, it is still possible to obtain

H-1B status with an immediate start date for new employees who currently maintain H-1B status with another employer or have been in H-1B status in the past six years and subsequently have been absent from the U.S. for less than one year. In addition, institutions of higher education, nonprofits related or affiliated to such institutions, and nonprofit or governmental research organizations are exempt from the cap and may continue to obtain H-1B status for new employees.

USCIS also will continue to process H-1B petitions filed to: (1) extend the period of time a current H-1B worker may remain in the U.S.; (2) change the terms of employment for current H-1B workers; (3) allow current H-1B workers to change employers; or (4) allow current H-1B workers to work concurrently in a second H-1B position.

Back to Top

---

2. **USCIS Proposes Large Fee Increases**
   U.S. Citizenship and Immigration Services (USCIS) has proposed large filing fee increases for many immigration-related forms. In addition to raising fees, the rule proposes to merge the fees for certain applications so applicants will pay a single fee rather than paying several fees for related services. There is a 60-day comment period on the proposed rule, and the increases are not expected to take effect until at least six months after publication.

   USCIS said the rule would permit the agency "to devote certain revenues to broader investments in a new technology and business process platform to improve substantially its capabilities and service levels." Among other things, the rule also proposes to eliminate fees for interim benefits, duplicate filings, and premium processing by "consolidating and reallocating costs among the various fees."

   Some of the business-related forms that will be affected by the proposed increases, and their current and proposed fees, include:

   - I-129, Petition for a Nonimmigrant Worker: current, $190; proposed, $320.
   - I-140, Immigrant Petition for Alien Worker: current, $195; proposed, $475.

- I-485, Application to Register Permanent Residence or Adjust Status: current, $325; proposed, $905 for applicants 14 years of age or older (except certain refugees).
- I-765, Application for Employment Authorization: current, $180; proposed, $340.
- N-400, Application for Naturalization: current, $330; proposed, $595.

Sens. Patrick Leahy (D-Vt.), Ted Kennedy (D-Mass.), John Conyers (D-Mich.), and Zoe Lofgren (D-Cal.) sent a letter on January 22, 2007, expressing their concern about the proposed fee increases to USCIS Director Emilio Gonzalez. They said they want to review the "extraordinary circumstances that could justify such a massive increase." Their letter is posted at http://www.aila.org/content/default.aspx?docid=21505.

Comments on the proposed rule (Docket No. USCIS-2006-0044), which was published in the Federal Register on February 1, 2007, should be sent to USCIS by April 2, 2007. Supporting documentation and any comments received will be posted on http://www.regulations.gov. An advance copy of the regulation circulated on January 31, 2007, is posted at http://bibdaily.com/pdfs/FeeRule.pdf. Related announcements and fact sheets are posted at http://www.uscis.gov/files/pressrelease/PRBuilding1.pdf, http://www.uscis.gov/files/pressrelease/FSbuilding.pdf, http://www.uscis.gov/files/pressrelease/QABuilding1.pdf, and http://www.uscis.gov/files/pressrelease/FSmethod.pdf.

Back to Top

---

3. **ABIL Invites Companies to Sign Letter to Congress Urging Innovation Measures**

The Academy of Business Immigration Lawyers (ABIL), of which Cyrus D. Mehta is a member, invites leaders of American business and higher education to sign on to a letter calling on Congress to act quickly on an innovation agenda that will ensure U.S. competitiveness. The letter recommends that Congress act to double the basic research budgets at the National Science Foundation, the National Institute of Standards and Technology, the Department of Energy's Office of Science, and the Department of Defense; increase funding of proven programs and

incentives for science and math teacher recruitment and professional development; reform U.S. visa policies to welcome highly educated foreign professionals, particularly those holding advanced science, technology, engineering, or mathematics degrees, especially from U.S. universities; and make permanent a strengthened research and development tax credit.

The sign-on letter is available on the American Electronics Association's Web site at http://www.aeanet.org/GovernmentAffairs/gajl_proclamation0107.asp.

Back to Top

---

4. **Change of Address Function Introduced on Web**
U.S. Citizenship and Immigration Services (USCIS) announced on January 12, 2007, that it has launched a new Web-based service allowing most noncitizens to submit change-of-address information online. USCIS noted that all noncitizens in the U.S. are legally required to keep USCIS informed of any change of address within 10 days of a move by completing an Alien Change of Address Card (Form AR-11). USCIS processes more than one million change-of-address requests each year.

   The new change-of-address Web tool is at http://www.uscis.gov/AR-11. Before using the online system, users should have available their USCIS receipt number (if their case is pending before USCIS), their new and old addresses, the names and biographical information of family members for whom the applicant has filed a petition, and the date and location (port of entry) of the applicant's last entry into the U.S.

   In May, USCIS plans to include allowing applicants with pending naturalization applications to report their change of address online. Until then, those individuals should continue to call USCIS at 1-800-375-5283 to report their changes of address.

   The notice is posted at http://www.uscis.gov/files/pressrelease/OnlineCoA.pdf.

Back to Top

5. **H-1C Nursing Relief Program Reauthorized**
   U.S. Citizenship and Immigration Services (USCIS) recently released guidance to the field on the reauthorization for an additional three years of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA). Specifically, USCIS noted that all I-129 petitions for H-1C classification will be adjudicated exclusively at the Vermont Service Center, in accordance with previous practice.

   The NRDAA established the H-1C program to reduce the shortage of qualified nurses in health professional shortage areas by allowing qualified hospitals to employ temporary foreign workers as registered nurses for up to three years. NRDAA expired on June 13, 2005; the reauthorization, enacted on December 20, 2006, took effect immediately and expires on December 20, 2009. Regulations will follow, USCIS said.

   The notice is posted at http://www.uscis.gov/files/pressrelease/H1CReauth122606.pdf.

   Back to Top

6. **Colorado Passes Law Requiring Employers to Verify Work Authorization**
   The Colorado General Assembly recently passed a law requiring Colorado employers, effective January 1, 2007, to verify the employment authorization status of new employees within 20 days. Employers who fail to maintain the required documentation will be subject to fines. An "Affirmation of Legal Work Status" is required to be attached with supporting documents to the federally mandated I-9 work authorization verification form.

   The full text of the legislation is posted at http://www.leg.state.co.us/Clics2006B/csl.nsf/fsbillcont3/C25514D38E296.

   Back to Top

7. **USCIS Clarifies P-1 Expansion**
   U.S. Citizenship and Immigration Services (USCIS) recently released a

memorandum to the field on P-1 admission for minor league professionals, entertainers, and teams under the COMPETE Act of 2006, which expanded the P-1 nonimmigrant visa classification to include certain athletes who were admitted formerly as H-2B nonimmigrants.

The following types of athletes and performers who seek admission for the purpose of performing in a competition or theatrical ice skating production fall under the P-1 nonimmigrant visa classification:

An individual who performs as an athlete, individually or as part of a group, at an internationally recognized level of performance.

A professional athlete employed by: (1) a team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10 million per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage, or (2) any minor league team that is affiliated with such an association.

Individual coaches or athletes performing with teams or franchises located in the U.S. that are part of an international league or association of 15 or more amateur sports teams if: (1) the foreign league is operating at the highest level of amateur performance in the relevant foreign country; (2) participation in that foreign league renders the players ineligible, whether on a temporary or permanent basis, to earn a scholarship or participate in the sport at a college or university in the U.S. under the rules of the National Collegiate Athletic Association; and (3) where a significant number of players who play in the foreign leagues are drafted by major league or minor league affiliates of such sports leagues in the U.S.

Amateur or professional ice skaters who perform, individually or as part of a group, in theatrical ice skating productions or tours.

USCIS noted that the COMPETE Act excludes any foreign athlete (professional or amateur) , or coach, from countries deemed state sponsors of international terrorism. Revised P-1 regulations will follow, USCIS said. The notice is posted at http://www.uscis.gov/files/pressrelease/COMPETEAct122806.pdf.

Back to Top

8. **New Naturalization Test Pilot Emphasizes Civics, History**
   On January 22, 2007, U.S. Citizenship and Immigration Services (USCIS) released details about its pilot naturalization exam. The new exam is intended, USCIS said, to "encourage civic learning and patriotism among prospective citizens." USCIS noted that studies have shown nationwide inconsistencies in the way the test was administered and there was no assessment of whether applicants had a meaningful understanding of U.S. history and government. The new test will emphasize the fundamental concepts of American democracy and the rights and responsibilities of citizenship.

   The reading and writing portions of the pilot naturalization exam are similar to those in the current test, except the new exam contains more civics-based vocabulary. Applicants will still have up to three chances to read and write a sentence correctly in English. In the writing section of the test, the testing officer will dictate a sentence and ask the applicant to write everything the officer reads. During the reading portion of the test, the testing officer will ask the applicant to read each word out loud in that sentence. The proposed format for the new civics exam will still require applicants to answer correctly six out of 10 questions chosen from a master list of 100 civics questions and answers. The difference is that the new questions will focus on civics and history topics rather than on the general range of topics on the current test.

   The pilot testing program will begin in 10 cities beginning in February 2007 and will last two to three months. The 10 cities are Albany, NY; Boston, MA; Charleston, SC; Denver, CO; El Paso, TX; Kansas City, MO; Miami, FL; San Antonio, TX; Tucson, AZ; and Yakima, WA. USCIS will administer about 6,000 tests under the pilot, and will use 142 U.S. history and government questions and approximately 36 reading and 36 writing items. Topic areas include principles of American democracy, system of government, rule of law, rights and responsibilities, American history, and geography. Citizenship applicants in the 10 pilot areas who are scheduled for their naturalization tests during the pilot will receive advance copies of the civics questions and the reading and writing vocabulary lists for self-study. Applicants may decline participation in the pilot.

USCIS has posted the two vocabulary lists and other study materials at http://www.uscis.gov/natzpilot. The announcement, which includes a fact sheet, is posted at http://www.uscis.gov/files/pressrelease/natztestfs.pdf.

Back to Top

---

9. **USCIS Releases TPS Details for Honduras, Nicaragua, El Salvador**
On January 26, 2007, U.S. Citizenship and Immigration Services (USCIS) announced that it has received approximately 80,000 temporary protected status (TPS) applications from nationals of Honduras and Nicaragua, and approved nearly 70,000 of those cases. USCIS has received approximately 236,000 TPS applications from nationals of El Salvador and has approved nearly 196,000. Approved individuals should have already received, or will be receiving, an approval notice and notice of appointment to report to an Application Support Center for issuance of an extension sticker to extend their Employment Authorization Documents (EADs) through July 2007, or a new EAD "very shortly." Those who have been denied have either already received their denial notices or will be receiving them shortly.

   USCIS noted that re-registrants who have already had their biometrics appointment but are still awaiting a final decision on their application will either receive an interim card valid through July 2007, for Hondurans and Nicaraguans, or through September 2007, for Salvadorans, or have a hold on their case because of "some as yet unresolved issue." Cases on hold should have received, or will be receiving, written notification from USCIS regarding any outstanding issues.

   USCIS noted that applicants who fail to comply with the biometrics collection requirements risk denial of their TPS re-registration and the withdrawal of TPS.

   The notices are posted at http://www.uscis.gov/files/pressrelease/TPSMitch012607FS.pdf (Honduras and Nicaragua) and http://www.uscis.gov/files/pressrelease/TPSElSal_012607FS.pdf (El Salvador).

Back to Top

10. **Foreign Entrepreneurs Start 25 Percent of New U.S. Technology Companies, Study Estimates**
A new study by Duke University researchers has estimated that one out of every four U.S. technology start-ups over the past 10 years has at least one senior executive who was born outside the U.S. The study's lead researcher, Vivek Wadhwa, who was born in India and founded two technology companies, noted, "It's one thing if your gardener gets deported. But if these entrepreneurs leave, we're really denting our intellectual property creation." The most likely niches that immigrant entrepreneurs entered were semiconductors, communications, and software; least likely was defense. Mr. Wadhwa called the new study "the most comprehensive study to date on the contribution of skilled U.S. immigrants."

    The study is posted at http://memp.pratt.duke.edu/downloads/americas_new_immigrant_entrepreneurs.pdf. Mr. Wadhwa has authored a related article that recommends lifting the H-1B cap, among other things. The article, "Keeping Research and Leadership at Home," is posted at http://www.businessweek.com/smallbiz/content/jan2007/sb20070118_135378.htm.

    Back to Top

11. **Small Businesses Agree That Undocumented Immigration is a Problem, But Are Divided on Solution; Lawsuits Filed**
In a National Federation of Independent Business (NFIB) survey, 90 percent of small business owners agreed that undocumented immigration is a problem. "Like most Americans, small-business owners are troubled by the problem of illegal immigration," said Dan Danner, NFIB's executive vice president of NFIB. "As Congress debates this issue, it is important that they take into account how any legislation will affect small-business owners and the economy. A thoughtful and deliberate process is the best path for lawmakers as they consider this contentious issue."

    The survey respondents have a mixed view on "amnesty" proposals, however. NFIB reported that 63 percent oppose amnesty for

undocumented individuals if they only need to prove that they have been living in the U.S. for at least three years, but members are split on amnesty if the individuals are employed and not dependent on government services (45 percent in favor and 45 percent opposing). When asked who should be considered first priority for legal immigration, 43 percent said those who have job skills or qualifications that are in short supply, followed by 23 percent choosing those with family ties, and 20 percent preferring a "first-come, first-serve" system. Fifty-six percent of NFIB members support admitting foreign workers to fill skilled jobs where shortages exist, and 62 percent favor allowing people to enter the U.S., work for a specified period, and return home.

Increasing penalties for employers who knowingly hire undocumented workers was supported by 78 percent of the survey respondents. Small-business owners consider verification of identification documents used by an employee to prove eligibility to work a moderate burden that could be reduced by a single location verification/authorization system that would certify document authenticity, NFIB reported.

The survey announcement is posted at http://www.nfib.com/object/immigrationsurvey.html.

Meanwhile, some entrepreneurs and workers are not waiting for action in Congress. A variety of lawsuits have been filed to compel employers to meet their obligations under the law. For example, when Munger Bros., a California blueberry farm, decided to use a rival labor supplier instead of Global Horizons, Global filed a suit claiming that Munger Bros. hired the rival supplier (J&A Contracting) because it provides cheaper, illegal workers. Specifically, Global alleges that Munger Bros. and J&A "engaged in an illegal trust to restrict trade or commerce and conspired to restrain trade or commerce and lessen competition by Defendants' use of illegal immigrant labor and violation of California wage and hour laws to those workers, the effect of which restrains and directly affects Plaintiff's ability to compete in the marketplace." The full text of the complaint is posted at http://www.fearnotlaw.com/gallery/download.php?id=34

And in a suit against Zirkle Fruit in Washington, a $1.3 million settlement was recently reached. That suit, based on anti-racketeering laws, was filed by Zirkle's employees, who claimed that their employer depressed wages

by hiring undocumented workers. A similar suit has been filed by workers against Mohawk Industries in Georgia.

Back to Top

---

12. **Wired Editor Wins US-VISIT FOIA Case**
Last year, Wired News editor Kevin Poulsen sued U.S. Customs and Border Protection (CBP) under the Freedom of Information Act, because he had asked CBP to disclose documents related to a US-VISIT computer failure. CBP refused, and a California court recently ordered the agency to release the documents, which revealed that the computers had been infected with a common worm. The court also granted Mr. Poulsen $66,000 in attorney's fees.

Back to Top

---

13. **Google Tools Allow Custom Searches**
Google Custom Search Engine allows a user to create a customized search engine using Google technology and the user's own customized index; see http://google.com/coop/cse/overview. At Google Scholar, the user can search using any language or a specified language: http://scholar.google.com/scholar_preferences. Google search tips can be found at http://www.googleguide.com/advanced_operators_reference.html, and a listing of special features and what they can be used for is posted at http://www.google.com/help/features.html.

Back to Top
