



UPDATES FROM THE AMERICAN IMMIGRATION LAWYERXS ASSOCIATION (AILA) CONFERENCE IN ORLANDO, FLORIDA

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by

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Representatives from our firm recently participated in the AILA Annual Conference on Immigration Law in Orlando Florida from June 13 – 16, 2007. The following provides updates on some of the “hot topics” addressed at the Conference.

1. Legislation Update

While the Comprehensive Immigration Law Reform Bill was removed from the Senate floor, it appears as if it will return after a push by President Bush. The Senate will revisit the bill either during the week of June 25, 2007 or after the completion of the Energy Bill debate. The controversial provisions of the Senate bill include the elimination of four out of five of the family based categories and the replacement of our current employment system with a merit based point system. The message that we are getting from Washington is that there will be an all or nothing approach to immigration reform. There will either be a complete overhaul or nothing at all.

If passed in the Senate, then the House will take it up. 218 votes will be needed for the bill to pass. If passed, it will go to the Conference Committee and then return to the House and the Senate.

2. USCIS Filing Fee Increase

New filing fees take place **ON** July 30, 2007 and not after. The key date is July 29, 2007. All application and petitions sent on July 29, 2007 can take advantage of

the current filing fees. See <http://www.uscis.gov/files/nativedocuments/FinalUSCISFeeSchedule052907.pdf> for the fee increase.

Applications or petitions mailed, postmarked, or otherwise filed, on or after July 30, 2007 must include the new fee.

3. I-140 Substitutions

As of July 16, 2007, Labor Certification/I-140 substitutions will not be accepted. The rule does not affect cases in progress as of the July 16, 2007. However, the regulations do not explicitly state that. It seems as if any substitution, even pending on the 16th might not be acknowledged. Specifically, the regulation states, "approved prior to July 16." Nonetheless, the USCIS has given us some hope that they will adjudicate substitutions requested before July 16, 2007. The preamble makes it clear that the intent is that the request is filed before the July 16, 2007.

4. Labor Certification Validity

Currently, Labor certifications (Form ETA 750) are valid indefinitely. This will no longer be the case. As of July 16, 2007 Labor Certifications (LC) will be valid for ONLY 180 days. The time of validity begins from the date the Department of Labor (DOL) certifies or approves the LC. This can be problematic because the DOL has been waiting weeks or months to send certifications after approving cases.

While a LC may expire for I-140 purposes, we have been given the impression that the USCIS may still allow the expired LC to be used for purposes of taking advantage of AC21 benefits.

5. PERM Fees

The Regulations and the preamble are inconsistent with respect to who must bear the cost of employment based permanent employment applications (ETA Form 9089/PERM). The preamble makes it seem like certain attorney fees can be covered by the employee; however, the Regulations state that if there is dual representation, the employee must pay for everything. Attorneys should take the conservative route and have the employer pay for all fees incurred in the labor certification process.

6. Visa Number Advancements

USCIS's goal is to adjudicate adjustment applications within six months. If the volume of cases is more than they can handle (which is expected), then it may be longer. As of July 1, 2007, all visa numbers for EB-1, EB-2 and EB-3 cases will be current. There is likely to be an onslaught of filings in July. The numbers will likely retrogress again in September. It is important to get cases in so that individuals can take advantage of the ancillary benefits of adjustment filings (e.g. advance parole and work authorization). Although the numbers are current, we have been given the impression that it will likely take the same amount of time to get the actual green card. Retrogression will likely return in August or September of this year.

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