



PIMS, PETITION FRAUD AND EB-2 UNAVAILABILITY

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During my recent trip to Mumbai, India, the media that covers US immigration matters was very interested in knowing more about the new Petition Information Management System (PIMS) and the likely delays that it could cause to visa applicants.

On Friday, January 11, 2008, I met with Michael J. Carver, Vice Consul, at the American Consulate General in Mumbai to discuss more about PIMS and related issues.

According to an advisory of the American Immigration Lawyers Association posted on its private website, AILA Infonet:

"Under PIMS, I-129 petitions requesting consular notification as the procedural benefit are sent to KCC (Kentucky Consular Center) after approval. KCC enters key data from the petition into PIMS and scans in key documents such as I-129 form, employer support letter, and identification documents of beneficiary. KCC also performs some database checks looking for evidence of fraud, violations, or other adverse history and records (including from SEVIS) and records its findings in PIMS. When a post is ready to grant a visa based on a petition (and apparently this includes derivatives), it must confirm the petition in PIMS before issuance. DOS knows that USCIS has not been sending change of status or extension of stay petitions to KCC at all, and we expect that interagency discussions are underway about changing that. We know also that even some consular notification petitions have not been sent to KCC. Any petition not sent to KCC will not show up in PIMS, and there may be other reasons why a petition sent to KCC does not show up in PIMS. When a post does not find a petition in PIMS, it must email to KCC, which unlike posts has direct access to USCIS'

CLAIMS3 system where USCIS records petition approvals. KCC will record the fact of the petition approval and any other information it chooses, and when posts check PIMS they can find the information on which visa approval can be based. But until the post sees the petition in PIMS, the visa cannot be granted."

Mr. Carver confirmed that the PIMS record is now the sole source for a consul to review information on a petition before issuing the visa. In the past, the consul would request the applicant to submit a copy of the petition, or in his or her discretion, issue the visa upon the submission of the Form I-797 approval notice. This is no longer the case since PIMS was introduced in early December 2007 without any advance warning. Mr. Carver also indicated that not all the petitions have been recorded on the PIMS system as yet, which would result in delays. One of the reasons for the institution of PIMS, according to Mr. Carver, was to detect fraud,

In the context of fraud, Mr. Carver further indicated that one of the main areas of concern are companies filing a number of H-1B petitions for beneficiaries without any idea of where they would work in the United States. These companies then "bench" the H-1B worker and do not pay the salary as indicated in the H-1B petition, according to Mr. Carver. He also noted that some H-1B visa applicants are not qualified for the position, as stated in the petition. This hurts legitimate users of the H-1B visa due to the limited number of H-1B visas each year. The annual limit is 65,000 H-1B visas with an additional 20,000 H-1B visas allocated to those who obtain masters' degrees from US educational institutions. Last year, the USCIS received more than the number allotted against the annual cap on the first two days of filing.

Given that companies are all scrambling to file H-1B petitions by April 1, 2008, it is important to ensure that the H-1B petitions state where the beneficiary will work, especially in the IT industry where it is usual to assign him or her to a client site. If a company is unable to yet confirm where the beneficiary will work, but does have several possibilities for the beneficiary with regards to its existing or prospective clients, it must state so in the H-1B petition. At the time of the consular interview, the applicant should submit evidence of the end user client of his/her specialized services, and if necessary, submit a new Labor Condition Application to cover the area of intended employment, along with the required wage, if not covered in the original LCA.

Finally, 2008 does not bode too well for India with respect to the Employment-

based Second Preference (EB-2) as it will become "unavailable" on February 1, 2008. This month, January 2008, the EB-2 cut-off date for India is January 1, 2000. The commentary accompanying the Visa Bulletin for February 2008 states, "Despite two retrogressions of the India Employment Second preference cut-off date, demand for numbers by CIS Offices for adjustment of status cases has remained high in recent months. As a result the annual limit for the India Employment Second preference category has been reached, and the category has become 'unavailable' effective immediately." The Employment-based Third Preference (EB-3) for India moved slightly from May 1, 2001 to May 8, 2001. It is indeed ironical that the EB-3 is doing better than the EB-2! The bulletin can be found at http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.html.

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