



## JUNE 2009 IMMIGRATION UPDATE

*Posted on June 1, 2009 by Cyrus Mehta*

### Headlines:

- **1. [USCIS Updates Progress Toward H-1B Cap](#)** - USCIS has received approximately 45,700 H-1B petitions toward the H-1B cap for FY 2010.
- **2. [USCIS Announces Extension of J-1 Entry Date for International Medical Graduates to Qualify for "Conrad 30"](#)** - The date by which international medical graduates must have been granted J-1 nonimmigrant status to later qualify for "Conrad 30" has been extended to September 30, 2009.
- **3. [DOL Keeping Pre-iCERT LCA System Operational Through June 30](#)** - The Department of Labor says it has remedied some problems with the new iCERT online labor condition application system.
- **4. [USCIS Extends Non-Minister Special Immigrant Religious Worker Program](#)** - The non-minister special immigrant religious worker program is extended through September 29, 2009.
- **5. [State Dept. Updates Visa Availability for Remainder of Year](#)** - Visa availability during the final fiscal quarter could become limited as categories approach their annual numerical limits.
- **6. [USCIS Revises Filing Instructions and Direct Mail Program for Application to Replace Green Card](#)** - The revised filing instructions require applicants to submit supporting documentation with their applications.
- **7. [New Border Document Requirements in Effect June 1](#)** - New document requirements went into effect on June 1, 2009, for entry into the U.S. at land or sea ports.
- **8. [Supreme Court Rules Fake IDs Not Necessarily 'Identity Theft'](#)** - The Supreme Court ruled that using counterfeit identification cards to gain employment does not necessarily constitute identity theft.

- **9. [Federal Court Finds Surviving Spouses Are Entitled to Immediate Relative Status](#)** - The court found that plaintiffs residing in the Ninth and Sixth Circuits are entitled to immediate relative classification as surviving spouses of deceased U.S. citizens.

## Details...

### 1. USCIS Updates Progress Toward H-1B Cap

U.S. Citizenship and Immigration Services (USCIS) announced that as of May 22, 2009, it has received approximately 45,700 H-1B petitions toward the congressionally mandated 65,000 H-1B cap for the fiscal year (FY) 2010 program. The agency continues to accept petitions subject to the general cap.

Additionally, the agency said it has received approximately 20,000 petitions for those with advanced degrees; however, it continues to accept advanced degree petitions "since experience has shown that not all petitions received are approvable." Congress mandated that the first 20,000 of these types of petitions are exempt from any fiscal year cap on available H-1B visas.

For cases filed for premium processing during the initial five-day filing window, the 15-day premium processing period began April 7. For cases filed for premium processing after the filing window, the premium processing period begins on the date USCIS takes physical possession of the petition.

USCIS will provide regular updates on the processing of FY 2010 H-1B petitions. The updates are available on the USCIS Web site at [http://www.uscis.gov/h-1b\\_count](http://www.uscis.gov/h-1b_count).

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### 2. USCIS Announces Extension of J-1 Entry Date for International Medical Graduates to Qualify for "Conrad 30"

U.S. Citizenship and Immigration Services (USCIS) issued a reminder that the date by which international medical graduates must have been granted J-1 nonimmigrant status to later qualify for the "Conrad 30" program has been extended to September 30, 2009. Before this latest extension was granted, the most recent sunset date for qualifying J-1 admission was March 6, 2009.

Under the Conrad 30 program, each state health department may submit a request directly to the Department of State (DOS) to initiate the waiver process for a J-1 medical doctor. This request enables J-1 doctors to obtain a waiver of

the two-year foreign residence requirement, if the DOS submits a favorable recommendation to USCIS, and generally will be granted "as long as there are no underlying concerns." Once the waiver is granted, J-1 doctors must practice medicine for at least three years in a medically underserved shortage area or areas. The Department of Health and Human Services designates the medical shortage areas.

The Conrad 30 (originally Conrad 20) program was established in 1994 to address the shortage of qualified doctors in medically underserved areas, and has been extended several times since then. In 2004, Congress amended the program to exempt J-1 doctors who received a Conrad 30 waiver from the annual H-1B cap, because these doctors must complete their required three-year period of service as H-1B nonimmigrants.

The new sunset date of September 30, 2009, applies to the date the medical doctor originally entered the U.S. in J-1 status or received a change of status to J-1 to complete a residency program in the U.S. Doctors who acquired J-1 status before that date may pursue a waiver of the two-year foreign residence requirement under the Conrad State 30 program if they meet all the eligibility requirements.

The USCIS reminder is available at

<http://www.uscis.gov/files/article/conrad-30-5-11-09.pdf>.

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### **3. DOL Keeping Pre-iCERT LCA System Operational Through June 30**

On May 9, 2009, during a conference call, the Department of Labor recently told several organizations that it has remedied some problems with the new iCERT online labor condition application system, but will keep the old LCA system operational through June 30, 2009, to allow sufficient transition time to the new online system for filing LCAs using the new ETA-9035.

The iCERT portal is at <http://icert.doleta.gov/>. Technical issues should be raised via [oflc.portal@dol.gov](mailto:oflc.portal@dol.gov).

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### **4. USCIS Extends Non-Minister Special Immigrant Religious Worker Program**

U.S. Citizenship and Immigration Services (USCIS) has extended the non-

minister special immigrant religious worker program through September 29, 2009. The program had expired on March 6, 2009.

The extended category covers special immigrant religious workers in professional or non-professional capacity within a religious vocation or occupation. The extended date also applies to accompanying spouses and children of these non-ministers. Workers entering the U.S. only to continue the vocation of a religious minister are not affected by the expiration date.

USCIS will receive and process Petitions for Amerasian, Widow(er), or Special Immigrant (Forms I-360) for those religious workers affected by the expiration of the program. USCIS also will process Applications to Register Permanent Residence or Adjust Status (Forms I-485) based on approved I-360 petitions for non-minister special immigrant religious workers.

Applications for Action on an Approved Application or Petition (Forms I-824) requesting "following-to-join" individuals whose basis for the adjustment was an approved I-360 SR petition for a non-minister category, or requesting an approved I-360 SR petition to be sent to the State Department's National Visa Center, will continue to be accepted and processed as well, USCIS said.

Unless Congress extends the expiration date of the program, beginning September 30, 2009, USCIS will suspend processing of any pending Forms I-360, I-485, and I-824 affected by the expiration, and will reject all petitions and applications for this program received on or after that date.

The USCIS notice is available at

[http://www.uscis.gov/files/article/NonMinister\\_Religious\\_Worker\\_Program%20Extended.pdf](http://www.uscis.gov/files/article/NonMinister_Religious_Worker_Program%20Extended.pdf).

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## **5. State Dept. Updates Visa Availability for Remainder of Year**

The Department of State's Visa Bulletin for June notes that applicant demand for visa numbers, primarily for adjustment of status cases at U.S. Citizenship and Immigration Services offices, has been extremely heavy throughout the year. As a result, visa availability during the final fiscal quarter could become limited as categories approach their annual numerical limits. Therefore, the Department said, visa availability throughout the remainder of the year cannot be guaranteed and the establishment of cut-off dates, or retrogression of existing cut-off dates, cannot be ruled out. The employment-based third

preference and "Other Workers" categories are unavailable for June, and are expected to remain that way until October 1, when the new federal fiscal year begins.

All other employment-based categories are Current, except for China-mainland born second preference, which has a cut-off date of February 15, 2005, and India second preference, which has a cut-off date of January 1, 2000. The Department noted that it was necessary to retrogress the India employment second preference cut-off date more than four years, from February 15, 2004, in the May Bulletin to January 1, 2000, in the June Bulletin, to keep visa issuances within the annual category numerical limit. The Department said it is unsure whether this retrogression will apply throughout the remainder of the fiscal year.

The Visa Bulletin for June is available at

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4497.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4497.html).

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## **6. USCIS Revises Filing Instructions and Direct Mail Program for Application to Replace Green Card**

U.S. Citizenship and Immigration Services (USCIS) has changed the filing location and filing instructions for the Application to Replace Permanent Resident Card (Form I-90). The revised filing instructions require applicants to submit supporting documentation with their applications. Before this change, applicants were instructed to bring their supporting documentation to their biometrics appointments. The notice also revises the Direct Mail address for the I-90. Applicants must now file their I-90s and supporting documentation with the USCIS Lockbox facility in Phoenix, Arizona.

This change in filing location affects all I-90 applicants filing a paper form, including those applicants filing the I-90 because their previously issued card was never received or because their existing card has incorrect data due to a USCIS error. This notice does not affect applicants filing an I-90 electronically or whose place of residence is outside the U.S.

As noted above, applicants now must submit their I-90s and supporting documentation to the USCIS Lockbox facility in Phoenix for initial processing, using the following addresses:

USCIS  
P.O. Box 21262  
Phoenix, AZ 85036

For USPS Express Mail and Courier Service deliveries, use the following address:

USCIS  
Attn: I-90  
1820 Skyharbor Circle S Floor 1  
Phoenix, AZ 85034

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a>. The updated I-90 instructions are available at <http://www.uscis.gov/portal/site/uscis/menuitem>. and <http://www.uscis.gov/files/form/i-90instr.pdf>. The form is available at <http://www.uscis.gov/files/form/i-90.pdf>. A related Q&A is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5>. The Federal Register notice is available at <http://edocket.access.gpo.gov/2009/E9-9620.htm>.

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## **7. New Border Document Requirements in Effect June 1**

U.S. Customs and Border Protection (CBP) issued a reminder to U.S. and Canadian citizens that new document requirements took effect on June 1, 2009, for entry into the U.S. at land or sea ports under the Western Hemisphere Travel Initiative (WHTI). CBP said it is committed to working with travelers to ensure that they have access to, and can obtain, appropriate travel documents. Those who lack WHTI-compliant documents but are otherwise admissible "will not be denied entry into the United States on June 1, and are encouraged to continue with their travel plans and to obtain facilitative and secure WHTI travel documents as soon as possible," CBP said.

WHTI-compliant documents include:

- U.S. or Canadian passports
- Trusted Traveler Cards (NEXUS, SENTRI, or FAST/EXPRES);
- U.S. Passport Cards
- State or province-issued Enhanced Driver's Licenses (when and where available)

Children under age 16 arriving by land or sea from Canada, Mexico, or the Caribbean need only present proof of citizenship, such as an original copy of a birth certificate, a consular report of birth abroad, a naturalization certificate, or a Canadian citizenship card. Document requirements for permanent residents of the U.S. remain unchanged, and such persons should continue to present their Permanent Resident Card (Form I-551).

The CBP notice is available at

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/05202009.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/05202009.xml).

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### **8. Supreme Court Rules Fake IDs Not Necessarily 'Identity Theft'**

On May 4, 2009, the Supreme Court ruled that using counterfeit identification cards to gain employment does not necessarily constitute aggravated identity theft.

In 2000, to secure employment, Ignacio Flores-Figueroa, a Mexican citizen, gave his employer counterfeit Social Security and green cards that showed his name but included other people's identification numbers. He was arrested and charged with two immigration offenses, along with aggravated identity theft. The government noted that the applicable law imposes a mandatory prison term on certain offenders if they "knowingly...use, without lawful authority, a means of identification of another person." Mr. Flores-Figueroa argued that the government could not prove that he knew the numbers on the counterfeit documents were assigned to other people, but the government responded that it need not prove such knowledge.

The Supreme Court said it had granted certiorari to consider the knowledge issue, a matter about which the Circuits have disagreed. The Court, extensively citing English grammar, concluded that the law requires the government to show that the defendant knew that the means of identification at issue belonged to another person. The Court reversed the judgment of the Court of Appeals and remanded the case "for further proceedings consistent with this opinion."

The case is available at

<http://www.supremecourtus.gov/opinions/08pdf/08-108.pdf>.

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### **9. Federal Court Finds Surviving Spouses Are Entitled to Immediate**

## **Relative Status**

On May 1, 2009, a California federal court ruled on a national class action lawsuit challenging the "widow penalty." The court found that plaintiffs residing in the Ninth and Sixth Circuits are entitled to immediate relative classification as surviving spouses of deceased U.S. citizens. The court said the "defendants are cautioned that they may not use factors arising from their improper denial of plaintiffs' applications to again deny the petition and application upon reopening them...Defendants are hereby ordered to reopen the immediate relative petitions and applications for adjustment of status and immigrant visas of plaintiffs in the Sixth and Ninth Circuits, and to adjudicate them in a manner consistent with the holding of the Court."

The case is available at

[http://ssad.org/images/Hootkins\\_Order\\_Final\\_SJ.pdf](http://ssad.org/images/Hootkins_Order_Final_SJ.pdf).

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