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

APRIL 2010 IMMIGRATION UPDATE

Posted on April 4, 2010 by Cyrus Mehta

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- **1.** **ABIL Meets With USCIS, Proposes Immigration Reforms** - ABIL said it believes that employment-based immigration reforms should encompass changes in both nonimmigrant and immigrant visa categories so that the U.S. becomes the most attractive global destination for highly skilled and essential workers.
- **2.** **USCIS To Accept FY 2011 H-1B Petitions Beginning April 1** - USCIS will begin accepting H-1B petitions subject to the FY 2011 cap on April 1, 2010.
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- **7.** **DOS Provides Information on 'Frequently Misunderstood Points'** - Topics include fluctuations in demand for visa numbers; per-country limits; and oversubscription.
- **8.** **DOL Updates Filing Locations for Certain Prevailing Wage and Labor Cert Programs** - The Department of Labor announced a technical change to the filing location address for prevailing wage determination requests in the H-1B, H-1B1 (Chile/Singapore), H-1C, H-2B, E-3 (Australia),

and permanent labor certification programs, as well as for prevailing wage determination requests for use in the Commonwealth of the Northern Mariana Islands.

- **9.** **USCIS Changes Filing Location for Advance Parole Application** - The change of filing location for the Application for Travel Document is part of an overall effort to transition the intake of some USCIS forms from local offices and Service Centers to USCIS Lockbox facilities.
- **10.** ***DOS Eliminates Nonimmigrant Visa Reciprocity Fees for Mexicans, Updates Schedule*** *- The Department of State has eliminated all nonimmigrant visa reciprocity fees for Mexican citizens and updated the reciprocity schedule; TN and TD visa validity is now limited to 12 months.*
- **11.** **DOL Reopens H-2A Regulations E-Mailbox** - The Department of Labor's Office of Foreign Labor Certification has reopened its H-2A regulations e-mailbox for public inquiries.
- **12.** **DOL Implements Nursing Relief Act** - This legislation allows certain health care facilities to file, and authorizes the Department to review, approve, and enforce, attestation applications to employ foreign workers as registered nurses in health professional shortage areas on a temporary basis under the H-1C visa.
- **13.** **USCIS Extends Deferred Enforced Departure for Liberians** - The sixth-month automatic extension of existing Employment Authorization Documents (EADs) will permit eligible Liberians to continue working while they file their applications for new EADs that will cover the full 12 months of the DED extension.
- **14.** **DHS Adds Greece to VWP** P Greek nationals can travel under the VWP beginning April 5, 2010.
- **15.** **USCIS Releases TPS Application Tips** P USCIS provided information and tips about common mistakes in temporary protected status applications.
- **16.** **USCIS Reminds Chilean Nationals of Available Benefits** P In light of the recent natural catastrophes in Chile, USCIS reminded Chileans of U.S. immigration benefits available to eligible Chilean nationals upon request.
- **17.** **USCIS Releases Guidance on Adjudicating P-2 Petitions** P In particular, the memo amends previous policy guidance stating that the Service Centers must contact USCIS Headquarters before adjudicating reciprocal exchange agreements that have not been approved previously.
- **18.** **USCIS Releases Q&A on Northern Marianas Employment**

Authorization, Verification P The Q&A addresses employment authorization and verification under federal immigration law, particularly with respect to "umbrella permits."

- **19. ABIL Global: Temporary Foreign Workers - An Important Source of Labor Supply in Canada** P Canada's Temporary Foreign Worker Program enables Canadian employers to hire eligible foreign nationals to work for them in Canada for a specified duration, provided they can demonstrate that the employers cannot find a suitable Canadian/permanent resident to do the job and that the entry of the foreign national will not have a negative impact on the Canadian labor market.

Details...

1. ABIL Meets With USCIS, Proposes Immigration Reforms

On March 3, 2010, the Alliance of Business Immigration Lawyers (ABIL), including Cyrus D. Mehta, met with Alejandro Mayorkas, Director of U.S. Citizenship and Immigration Services (USCIS), and several members of his leadership team. ABIL said it believes that employment-based immigration reforms should encompass changes in both nonimmigrant and immigrant visa categories so that the U.S. becomes the most attractive global destination for highly skilled and essential workers.

ABIL noted inconsistent application of regulations from office to office and recent sudden changes announced by USCIS, such as the delay in the I-9 effective date, which have resulted in companies struggling to meet moving targets and comply with the law. Mr. Mayorkas noted USCIS' successes but also acknowledged some mistakes. He said USCIS is reviewing policies and field guidance and will determine what should be reaffirmed, withdrawn, or revised in light of input from stakeholders and best practices. He said the agency is developing a system for receiving comments from stakeholders before any new policy change.

ABIL emphasized that H-1B employers should have the right to an attorney during site visits. Moreover, ABIL requested that USCIS reconsider its determination that an individual does not continue to be in lawful status while a case is on appeal.

Among other things, ABIL proposed legitimate avenues under the immigration laws for entrepreneurs to start U.S. businesses, large and small, and thereby

obtain work visas and permanent residence. ABIL also proposed administrative solutions of legalizing the status of the undocumented in the U.S. so that they may be employed lawfully and contribute to the growth of the economy and the welfare and well-being of the U.S. and its citizens. Mr. Mehta also proposed administrative solutions for providing ameliorative relief for those caught in the crushing employment and family quota backlogs, *see PROPOSALS FOR AGENCY ACTION TO AMELIORATE THE PRIORITY DATES CRISIS*, http://cyrusmehta.com/perseus/news.aspx?Main_Idx=ocyrus200591724845&SubIdx=&Page=2&Year=All&Month , March 09, 2010.

ABIL's membership includes 20 of the top U.S. business immigration law firms, each led by a prominent member of the U.S. immigration bar. ABIL member firms employ over 200 attorneys (400+ total staff) devoted to business immigration in 22 major U.S. cities, plus Brussels, Cologne, Hong Kong, Istanbul, Lima, London, Mexico City, Montreal, Monterrey, Mumbai, Sao Paulo, Shanghai, Sydney, Tokyo, Toronto and Vancouver.

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2. USCIS To Accept FY 2011 H-1B Petitions Beginning April 1

U.S. Citizenship and Immigration Services (USCIS) will begin accepting H-1B petitions subject to the fiscal year (FY) 2011 cap on April 1, 2010. Cases will be considered accepted on the date that USCIS takes possession of a properly filed petition with the correct fee, not the date the petition is postmarked.

The fiscal year cap (numerical limitation on H-1B petitions) for FY 2011 is 65,000. The first 20,000 H-1B petitions filed on behalf of individuals who have earned a U.S. master's degree or higher are exempt from the H-1B cap.

USCIS said it will monitor the number of petitions received and will announce the date on which the agency receives the necessary number of petitions to meet the H-1B cap. If needed, USCIS will randomly select the petitions required to reach the numerical limit from those received on the final receipt date. USCIS will reject cap-subject petitions that are not selected, as well as those received after the final receipt date.

Petitions for new H-1B employment are exempt from the annual cap if the beneficiaries will work at institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations, or governmental research

organizations. Petitions filed on behalf of beneficiaries who will work only in Guam or the Commonwealth of the Northern Marianas Islands are exempt from the H-1B cap until December 31, 2014. Employers may continue to file petitions for these cap-exempt H-1B categories seeking work dates starting in FYs 2010 or 2011.

Petitions filed on behalf of current H-1B workers who have been counted previously against the cap also do not count toward the H-1B cap. Accordingly, USCIS will continue to process petitions filed to:

- extend the amount of time a current H-1B worker may remain in the U.S.;
- change the terms of employment for current H-1B workers;
- allow current H-1B workers to change employers; or
- allow current H-1B workers to work concurrently in a second H-1B position.

H-1B petitioners should follow all statutory and regulatory requirements as they prepare petitions to avoid delays in processing and possible requests for evidence. USCIS has developed detailed information, including a checklist, to assist in the completion and submission of a FY 2011 H-1B petition.

Contact CDMA for help in filing H-1B petitions.

The announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543 f6d1a/?vgnextoid=5b29dd1d5fd37210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. The checklist is available at http://www.uscis.gov/files/form/m-735.pdf. Additional information about the FY 2011 H-1B program is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543 f6d1a/?vgnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD.

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3. USCIS Stops Allowing H-1B Filings With Uncertified LCAs

U.S. Citizenship and Immigration Services (USCIS) announced on March 10, 2010, that it will not extend the period in which it temporarily accepted H-1B

petitions filed with uncertified labor condition applications (LCAs). USCIS explained that due to processing delays associated with the Department of Labor's (DOL) "iCERT" online filing system, USCIS had responded to requests from the public by temporarily allowing H-1B petitions to be filed with uncertified LCAs. This temporary measure went into effect on November 5, 2009, and expired on March 9, 2010.

USCIS said that as of March 10, 2010, it is rejecting any H-1B petition filed without an LCA certified by the DOL.

The announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543 f6d1a/?vgnextoid=f73a042a31a47210VgnVCM100000082ca60aRCRD&vgnextchannel=c94e6d26d17df110VgnVCM1000004718190aRCRD.

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4. DHS Announces E-Verify Initiatives

The Department of Homeland Security (DHS) announced a trio of E-Verify initiatives on March 17, 2010, including (1) a new agreement with the Department of Justice intended to streamline the adjudication process in cases of E-Verify misuse and discrimination; (2) an informational telephone hotline for workers seeking E-Verify information; and (3) new training videos in English and Spanish on E-Verify procedures and policies, employee rights, and employer responsibilities.

The Memorandum of Agreement signed between USCIS and the Department of Justice's Office of Special Counsel for Unfair Immigration-Related Employment Practices establishes a streamlined process for addressing potential cases of discrimination and employer misuse of E-Verify and establishes a protocol between USCIS and the Department of Justice for referring matters that fall within the agencies' respective jurisdictions.

The USCIS E-Verify help line will offer employees information about the E-Verify process, as well as assistance in completing the Form I-9 (Employment Eligibility Verification). Callers can also use the help line to file complaints about possible discrimination or employer misuse of the E-Verify program. The hotline number is (888) 897-7781. It is expected to be active beginning April 5, 2010.

The two new educational training videos were created by the DHS Office for Civil Rights and Civil Liberties and are viewable at http://www.dhs.gov/e-verify and http://www.youtube.com/ushomelandsecurity.

DHS reports that more than 192,000 participating employers currently use E-Verify at more than 705,000 worksites nationwide to electronically verify their workers' employment eligibility. Since October 1, 2009, E-Verify has processed more than six million queries.

The announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c7ddadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. A related fact sheet is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=70beadd907c67210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. The Memorandum of Agreement between USCIS and the Department of Justice is available at http://www.uscis.gov/USCIS/Native%20Docs/USCIS_DOJ%20MOA_(signed)_17Mar10.pdf.

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5. Office of Foreign Labor Certification Releases Application for Temporary Employment Certification in Fillable PDF Format

To support implementation of the new H-2A regulations and current H-2B regulations, the Department of Labor's Office of Foreign Labor Certification (OFLC) is making available the ETA Form 9142, Application for Temporary Employment Certification, in a fillable PDF format. The OFLC said the new format provides users with the option to save and reuse the information on the form for future applications.

The fillable form is available at http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142.pdf.

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6. DOS Proposes Increase in Passport Fees

The Department of State has proposed an increase in fees for passport application services:

- From $100 to $135 for a first-time U.S. passport book for adults (age 16 and over)
- From $75 to $110 for passport renewal (age 16 and over only)
- From $85 to $105 for a passport for minors (under age 16)

The fee for expedited service will remain $60.

Over the last five years, the Department noted, demand for passports has increased to an average of 15 million per year. In fiscal year (FY) 2005, the Department issued 10.1 million passports; issuances peaked at 18.4 million in FY 2007.

The U.S. Passport Book and U.S. Passport Card for adults are valid for 10 years. Passports for minors under age 16 are valid for five years.

The proposed rule is available at http://edocket.access.gpo.gov/2010/pdf/2010-2816.pdf.

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7. DOS Provides Information on 'Frequently Misunderstood Points'

The Department of State's April 2010 Visa Bulletin, section D, contains information on "frequently misunderstood points." Topics include the reasons behind fluctuations in demand for visa numbers; per-country limits; and oversubscription.

Among other things, the bulletin notes that there is a significant amount of demand each month from applicants who have priority dates earlier than the applicable cut-off dates. In addition, fluctuations in demand can cause cut-off date movement to slow, stop, or even retrogress. Retrogression is particularly possible near the end of the fiscal year as visa issuances approach the annual limitations.

Further, the bulletin notes, the annual per-country limitation of 7 percent is a cap that visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation, the bulletin states, "serves to avoid monopolization of virtually all the annual

limitation by applicants from only a few countries," but notes that "his limitation is not a quota to which any particular country is entitled, however."

The April 2010 Visa Bulletin is available at http://www.travel.state.gov/visa/frvi/bulletin/bulletin_4747.html.

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8. DOL Updates Filing Locations for Certain Prevailing Wage and Labor Cert Programs

The Department of Labor announced on March 12, 2010, a technical change to the filing location address for prevailing wage determination requests in the H-1B, H-1B1 (Chile/Singapore), H-1C, H-2B, E-3 (Australia), and permanent labor certification programs, as well as for prevailing wage determination requests for use in the Commonwealth of the Northern Mariana Islands.

The notice is available at http://edocket.access.gpo.gov/2010/pdf/2010-5443.pdf.

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9. USCIS Changes Filing Location for Advance Parole Application

On March 19, 2010, U.S. Citizenship and Immigration Services (USCIS) announced revised filing instructions and addresses for applicants filing an Application for Travel Document (Form I-131), which is used to apply for a travel document, reentry permit, or advance parole. The agency said the change of filing location is part of an overall effort to transition the intake of some USCIS forms from local offices and Service Centers to USCIS Lockbox facilities.

Beginning March 19, 2010, applicants will file their applications at the USCIS Vermont Service Center or at one of the USCIS Lockbox facilities.

The USCIS Service Centers will forward incorrectly filed I-131 applications to the USCIS Lockbox facilities until Monday, April 19, 2010. After that date, incorrectly filed applications will be returned to the applicant, with a note to send the application to the correct location.

Those who are currently in removal proceedings or have been previously removed from the U.S. should submit requests to the Department of Homeland Security/Immigration and Customs Enforcement, Office of International Affairs, Attn: Section Chief, Law Enforcement Parole Branch, 800

North Capitol Street, Washington, DC 20536.

The USCIS announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543 f6d1a/?vgnextoid=81c55ddca7977210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. Information about the form and links to the form and instructions are available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543 f6d1a/?vgnextoid=b11747a55773d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

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10. *DOS Eliminates Nonimmigrant Visa Reciprocity Fees for Mexicans, Updates Schedule*

As of February 22, 2010, the Department of State eliminated all nonimmigrant visa reciprocity fees for Mexican citizens and updated the reciprocity schedule. Under the previous schedule, a provision for Mexican TN and TD visa holders allowed them to pay for up to three years of visa validity at the time of the first issuance. The new schedule no longer includes that provision, and TN and TD visa validity is now limited to 12 months, the same period of time permitted U.S. citizens working in Mexico before they must renew their FM3 work permits. There is no fee for the TN and TD visas. All applicants must still pay the application fee, however.

The visa reciprocity table is available at http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3733.html.

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11. DOL Reopens H-2A Regulations E-Mailbox

After publication of the H-2A final rule addressing temporary agricultural employment in the U.S., the Department of Labor's Office of Foreign Labor Certification has reopened its H-2A regulations e-mailbox for public inquiries. General queries regarding the H-2A program should be e-mailed to H-2A.Regulations@dol.gov. Case-specific inquiries should be e-mailed to the Chicago National Processing Center e-mailbox, TLC.Chicago@dol.gov. The Foreign Labor Certification Contacts List is available at

http://www.foreignlaborcert.doleta.gov/contacts.cfm.

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12. DOL Implements Nursing Relief Act

The Department of Labor's Employment and Training Administration (ETA) and Wage and Hour Division have published a final rule, effective April 5, 2010, to implement the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 (NRDARA), which reauthorized the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), finalizing these rules "for enforcement purposes." This legislation allows certain health care facilities to file, and authorizes the Department to review, approve, and enforce, attestation applications to employ foreign workers as registered nurses in health professional shortage areas on a temporary basis under the H-1C visa. Facilities filed these forms with the Department as a condition for petitioning U.S. Citizenship and Immigration Services for H-1C nurses.

The NRDAA created a new temporary visa program for nonimmigrant foreign workers to work as registered nurses for up to three years in certain facilities that serve Health Professional Shortage Areas (HPSAs). Although the application period for H-1C visa petitions has now expired, H-1C nurses are allowed to work in the U.S. until the expiration of their authorized stay, which may be as much as three years after the petition was authorized. The Department said the final rule is intended to ensure that worker protections are in place for nurses currently employed in H-1C status, whose stays may extend beyond December 20, 2009.

The final rule is available at
http://edocket.access.gpo.gov/2010/pdf/2010-4475.pdf.

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13. USCIS Extends Deferred Enforced Departure for Liberians

On March 19, 2010, U.S. Citizenship and Immigration Services (USCIS) automatically extended employment authorization for Liberian nationals covered under Deferred Enforced Departure (DED) through September 30, 2010, following President Barack Obama's announcement of his decision to extend DED through September 30, 2011, for qualified Liberians and those persons without nationality who last habitually resided in Liberia. USCIS said

that the sixth-month automatic extension of existing Employment Authorization Documents (EADs) will permit eligible Liberians to continue working while they file their applications for new EADs that will cover the full 12 months of the DED extension and for USCIS to complete processing and issuance of those new EADs.

Although DED was scheduled to end for Liberian nationals on March 31, 2010, President Obama determined that there are compelling foreign policy reasons to continue deferring enforced departure from the U.S. for eligible Liberian nationals presently living in the U.S. under the existing grant of DED for 18 additional months.

Certain individuals are ineligible for DED, USCIS noted, including Liberians who did not have temporary protected status (TPS) on September 30, 2007, and are therefore not covered under current DED; certain criminals; persons subject to the mandatory bars to TPS; and persons whose removal is in the interest of the U.S.

In addition to automatically extending the validity of employment authorization documents for Liberian nationals covered under DED, USCIS published a notice in the Federal Register on March 30, 2010, with instructions on how to obtain employment authorization for the remainder of the DED extension. The automatic extension covers EADs issued on Form IP766, Employment Authorization Document, bearing an expiration date of March 31, 2010. These EADs must also bear the notation "AP11" on the face of the card under "Category."

The USCIS announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f47a88eecf777210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD and the Federal Register notice concerning work authorization is available at http://edocket.access.gpo.gov/2010/pdf/2010-7115.pdf. A related Q&A is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f11b88eecf777210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD.

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14. DHS Adds Greece to VWP

On March 9, 2010, the Department of Homeland Security designated Greece as a member of the Visa Waiver Program (VWP). Greek nationals can travel under the VWP beginning April 5, 2010. Potential Greek travelers may apply for travel authorization approval under the Electronic System for Travel Authorization (ESTA) beginning immediately. ESTA approval is now required for all VWP travelers wishing to enter the U.S. DHS published a final rule on the designation of Greece on March 31, 2010.

For more information on the VWP and a list of participating countries, see http://travel.state.gov/visa/temp/without/without_1990.html. The final rule is available at http://edocket.access.gpo.gov/2010/pdf/2010-7211.pdf.

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15. USCIS Releases TPS Application Tips

On U.S. Citizenship and Immigration Services' new blog, *The Beacon*, the agency has provided information and tips about common mistakes in temporary protected status (TPS) applications. Specifically, USCIS said, it has received thousands of applications since the designation of Haiti for TPS, and has noticed the following problems that may cause delays or rejections:

1. Not including the appropriate filing fee. Those who cannot afford to pay the filling fee may request a fee waiver.
2. Not completing every question on the form.
3. Not including the applicant's A-number (if he or she has one).
4. Not signing the application.
5. Using an incorrect form to apply for TPS. Use only forms I-821 and I-765 to apply for TPS.
6. The tips were provided on March 5, 2010, at http://www.uscis.gov/blog/.

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16. **USCIS Reminds Chilean Nationals of Available Benefits**

In light of the recent earthquakes in Chile, U.S. Citizenship and Immigration Services (USCIS) recently reminded Chileans of U.S. immigration benefits available to eligible Chilean nationals upon request. Options may include the grant of an application for change or extension of nonimmigrant status on

behalf of a Chilean national who is currently in the U.S., "even in cases where the request is submitted after the individual's authorized period of admission has expired"; expedited adjudication and approval, where possible, of requests for off-campus employment authorization due to severe economic hardship for F-1 students; and expedited issuance of employment authorization where appropriate, among others.

For more information on immigration-related benefits available to Chileans, see http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c618d0438c947210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD.

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17. **USCIS Releases Guidance on Adjudicating P-2 Petitions**

U.S. Citizenship and Immigration Services (USCIS) issued a memorandum to the field to provide guidance on processing and adjudicating Form I-129, Petition for Nonimmigrant Worker, filed on behalf of P-2 nonimmigrants. In particular, the memo amends previous policy guidance stating that the Service Centers must contact USCIS Headquarters before adjudicating reciprocal exchange agreements that have not been approved previously.

The memo states that a petitioner must submit evidence that an appropriate labor organization in the U.S. was involved in negotiating, or has concurred with, the reciprocal exchange of the U.S. and foreign artists or entertainers. Given that the Service Centers possess the entire record, USCIS said, they are capable of determining if the reciprocal agreement meets the regulatory requirements. Effective immediately, Service Centers are not required to contact Headquarters if they encounter a reciprocal agreement not previously approved.

Because there is no requirement that P-2 entertainers be of exceptional ability, supporting documents are limited to basic items: the consultation, a copy of the reciprocal agreement, and evidence that the beneficiaries are subject to the reciprocal exchange.

Four P-2 reciprocal agreements have been negotiated: (1) between the American Federation of Musicians (U.S.) and the American Federation of Musicians (Canada); (2) between Actors' Equity Association (U.S.) and the Canadian Actors' Equity Association; (3) between Actors' Equity Association

(U.S.) and the British Actors' Equity Association; and (4) between the International Council of Air Shows and the Canadian Air Show Association. If a reciprocal agreement is submitted other than these four, USCIS said, the adjudicator must review the agreement to determine if the agreement adheres to the regulatory standard. A list of any new reciprocal agreements is maintained at Headquarters.

The memo is available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2010/p-2-memo-03-11-10.pdf.

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18. **USCIS Releases Q&A on Northern Marianas Employment Authorization, Verification**

During the last weeks of immigration control by the Commonwealth of the Northern Mariana Islands (CNMI) government, the CNMI government issued two-year transition conditional permits, commonly referred to as "umbrella permits," to many people holding CNMI alien permits. U.S. Citizenship and Immigration Services has released questions and answers on employment authorization and verification under federal immigration law, particularly with respect to these umbrella permits.

The employment authorization of workers in the CNMI is now under federal law. For a two-year transition period starting on November 28, 2009, however, federal law authorizes workers based on the employment authorization they had received under CNMI law as of the transition date.

The Q&A is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3621788503457210VgnVCM100000082ca60aRCRD&vgnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD.

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19. **ABIL Global: Temporary Foreign Workers - An Important Source of Labor Supply in Canada**

Canada's Temporary Foreign Worker Program enables Canadian employers to hire eligible foreign nationals to work for them in Canada for a specified duration, provided they can demonstrate that the employers cannot find a

suitable Canadian/permanent resident to do the job and that the entry of the foreign national will not have a negative impact on the Canadian labor market. Employers must note that all individuals wishing to work in Canada require a work permit.

In most cases, unless an exemption is available (a discussion of which is outside the scope of this article), an employer must obtain a favorable labor market opinion (LMO) from Human Resources and Skills Development Canada/Service Canada (Service Canada) before the foreign national can apply to Citizenship and Immigration Canada (CIC) to obtain a work permit. An LMO is Service Canada's opinion on the likely impact that hiring the foreign national will have on the Canadian labor market.

If an LMO is required to hire a particular foreign national, the prospective Canadian employer must submit an application to Service Canada setting out, among other things: the occupation for which the foreign national is required; details of the job offer including wages and working conditions that will apply to the foreign worker; advertising and recruitment efforts on the employer's part to hire a Canadian or permanent resident to fill the position; the benefits that the foreign worker's employment may have to the Canadian labor market; a copy of the employment contract (required in some cases); the number of Canadians/permanent residents currently employed in the organization; whether any Canadians/permanent residents were laid off in the 12 months preceding the application; and education, experience, and skills (including language skills) required for the position.

The advertising requirements with which an employer must comply depend on the skill level of the occupation for which the LMO is being sought, having regard to the National Occupational Classification (NOC) Skill Levels O, A, B, C, and D. Generally, some combination of advertising on the National Job Bank (or the equivalent in Saskatchewan, Quebec, or the Northwest Territories) and/or conducting similar recruitment activities consistent with the practice within the occupation (e.g., Internet job sites, national newspapers, consulting unions, newsletters, or professional associations) is required for a minimum number of days and for a specified duration prior to making the LMO application. However, the specific requirements vary depending on the occupation at issue and should be carefully considered in each individual case.

Employers should seek legal advice to ensure they comply with the requisite

advertising standards applicable to their particular case, because failure to comply with the advertising efforts required for the particular NOC level and category at issue will result in an LMO being denied.

If a favorable LMO is issued, the employer must send a copy of the written confirmation to the worker along with a signed job offer (and employment contract, if required). The foreign national then applies to CIC for a work permit, the issuance of which depends on the foreign national meeting admissibility requirements and is within the discretion of the CIC officer and Canada Visa and Border Services officer assessing the work permit application and the foreign national's entry into Canada, respectively.

Employers should be aware that any LMO issued to them expires 6 months from the issuance date and unless, within this time frame, the foreign national has applied to CIC for a work permit and certain other requirements have been met, the LMO will be deemed to expire and the employer will need to apply for a new LMO to hire a foreign worker.

Also, it should be noted that extensions of an LMO are no longer permitted. The elimination of the extension application is of particular importance to employers wishing to continue the employment of a foreign national beyond the duration of his or her current work permit. Employers should seek legal advice for their particular situation to ensure that they apply for a new LMO in a timely fashion so they can continue to employ their chosen foreign workers as desired.

Legal advice should also be sought regarding proposed changes to the Temporary Foreign Worker Program that will introduce a number of factors applicable to the assessment of the genuineness of an employer's job offer of employment under this program. These proposed changes, if enacted, will lead to a more rigorous approach to the assessment of LMO and LMO-exempt cases.

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