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

DECEMBER 2013 IMMIGRATION UPDATE

Posted on December 3, 2013 by Cyrus Mehta

1. **USCIS Announces E-Verify Anti-SSN Fraud Effort** PUSCIS has announced an E-Verify effort to combat identity fraud by identifying and deterring fraudulent use of Social Security Numbers for employment eligibility verification.

2. **Temporary Accommodation for Form I-129 H-2A Petitions Has Expired** - The Office of Foreign Labor Certification has stopped sending Adobe PDF copies of approved temporary labor certifications to H-2A employers and authorized representatives as of November 18, 2013.

3. **USCIS Warns of Scams Exploiting EB-5 Immigrant Investor Program** - In coordination with USCIS, which administers the EB-5 program, the SEC has taken emergency enforcement action to stop allegedly fraudulent securities offerings made through the EB-5 program.

4. **USCIS Reminds Filipinos of Immigration Relief Measures Following Typhoon; US-CERT Warns About Scams** - Following Typhoon Haiyan in the Philippines, USCIS is reminding Filipino nationals that they may be eligible for certain immigration relief measures if requested.

5. **DHS Proposes SEVP Rule** - Among other things, the proposed rule would grant school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses.

6. **USDA Postpones Release of 2014 AEWR Wage Data** - The new release date for the Farm Labor Survey report is December 5, 2013.

7. **DOL Publishes Three Final Rules Eliminating Obsolete OFLC Regulations** - The Department of Labor has published three final rules eliminating Office of Foreign Labor Certification regulations that have been made obsolete by statutory or regulatory changes.

8. **Infosys Settles Visa Fraud and Abuse Case for Record $34 Million** –

Infosys has agreed to pay a record $34 million civil settlement based on allegations of systemic visa fraud and abuse of immigration processes. The company also has agreed to enhanced corporate compliance measures.

9. Office of Foreign Labor Certification Deals With Backlogs After Shutdown - OFLC has implemented temporary changes to deal with backlogs resulting from the recent federal government shutdown.

10. Visa Office Forecasts Changes in Some Employment Cut-Off Dates - The Department of State's Visa Office has projected changes in some employment cut-off dates.

11. OCAHO Substantially Reduces Penalties for Two Small Businesses; Fact Sheet Updated -OCAHO reduced I-9-related penalties substantially for two small restaurants. Also, the EOIR updated its fact sheet on OCAHO.

12. State Dept. Updates Visa Reciprocity Tables - Among other things, the Department recently updated the document section for Somalia.

13. USCIS Extends TPS for Somalis - Acting Secretary of Homeland Security Rand Beers has extended temporary protected status (TPS) for eligble nationals of Somalia for an additional 18 months.

14. ABIL Global: Turkey - The new Residence Permit Law will overhaul immigration in Turkey.

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Details:

1. USCIS Announces E-Verify Anti-SSN Fraud Effort

U.S. Citizenship and Immigration Services (USCIS) has announced an E-Verify effort to combat identity fraud by identifying and deterring fraudulent use of Social Security Numbers (SSNs) for employment eligibility verification.

USCIS explained that an employer, for example, may enter information into E-Verify that appears valid, such as a matching name, date of birth, and SSN, but that was in fact stolen, borrowed, or purchased from another individual. The agency said the new safeguard enables USCIS to lock an SSN that appears to have been misused.

USCIS said this implements standards that have proven effective in protecting individual identity in other industries. As with a credit card company that can lock a card that appears to have been stolen, USCIS may now lock SSNs in E-Verify that appear to have been used fraudulently. USCIS said it will use a combination of algorithms, detection reports, and analysis to identify patterns of fraudulent SSN use and then lock the number in E-Verify.

If an employee attempts to use a locked SSN, E-Verify will generate a "Tentative Nonconfirmation" (TNC). The employee receiving the TNC may contest the finding at a local Social Security Administration (SSA) field office. If an SSA field officer confirms that the employee's identity correctly matches the SSN, the TNC will be converted to "Employment Authorized" status in E-Verify.

Employer enrollment in E-Verify has more than doubled since January 2009, with more than 470,000 participating employers representing more than 1.4 million hiring sites. Approximately 1,500 new employers enroll each week. In fiscal year (FY) 2013, E-Verify was used to authorize workers in the U.S. more than 25 million times, representing a nearly 20 percent increase from FY 2012.

The announcement is available at http://www.uscis.gov/news/new-security-enhancement-helps-e-verify-deter-employee-fraud.

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.2. Temporary Accommodation for Form I-129 H-2A Petitions Has Expired

The Department of Labor's Office of Foreign Labor Certification has announced that it has stopped sending Adobe PDF copies of approved temporary labor certifications (TLCs) to H-2A employers and authorized representatives as of November 18, 2013.

U.S. Citizenship and Immigration Services (USCIS) previously issued an alert allowing H-2A petitioners to temporarily file Form I-129, Petition for a Nonimmigrant Worker, with a copy of the signed, certified TLC. To align with the Department of Labor's return to normal practice following the federal government shutdown, USCIS's temporary accommodation expired on November 29, 2013. Beginning December 2, 2013, USCIS will revert to its previous filing practice and will not accept any I-129 H-2A petitions filed without the certified TLC on blue security paper with original signatures.

The announcement is available at

http://www.uscis.gov/news/alerts/temporary-accommodation-form-i-129-h-2a-petitions-set-expire-nov-29. Frequently asked questions about H-2A and H-2B signature requirements for electronically filed temporary labor certifications and the H classification supplement to the I-129 are available at http://www.uscis.gov/news/public-releases-topic/visas-h-2a-and-h-2b/h-2a-and-h-2b-signature-requirements-electronically-filed-temporary-labor-certifications-and-h-classification-supplement-form-i-129.

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3. USCIS Warns of Scams Exploiting EB-5 Immigrant Investor Program

The U.S. Securities and Exchange Commission's (SEC) Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services have jointly issued a warning to individual investors about fraudulent investment scams that exploit the EB-5 immigrant investor program.

In coordination with USCIS, which administers the EB-5 program, the SEC has taken emergency enforcement action to stop allegedly fraudulent securities offerings made through the EB-5 program. USCIS explained that business owners apply to USCIS to be designated as "regional centers" for the EB-5 program. Regional centers offer investment opportunities in new commercial enterprises that may involve securities offerings. The fact that a business is designated as a regional center by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered by the business, or has otherwise expressed a view on the quality of the investment. The SEC and USCIS are aware of attempts to misuse the EB-5 program as a means to carry out fraudulent securities offerings. For example, in a recent case, *SEC v. Marco A. Ramirez, et al.*, the SEC and USCIS worked together to stop an alleged investment scam in which the SEC claims that the defendants, including the "USA Now" regional center, falsely promised investors a 5 percent return on their investment and an opportunity to obtain an EB-5 visa. The promoters allegedly started soliciting investors before USCIS had designated the business as a regional center. The SEC alleged that while the defendants told investors their money would be held in escrow until USCIS approved the business as eligible for EB-5, the defendants misused investor funds for personal use, such as funding their Cajun-themed restaurant. According to the SEC's complaint, the investors did not obtain even conditional visas as a result of their investments through the USA Now regional center.

In another case, *SEC v. A Chicago Convention Center, et al.,* the SEC and USCIS

coordinated their efforts to halt an alleged $156 million investment fraud. The SEC alleged that an individual and his companies used false and misleading information to solicit investors in the "World's First Zero Carbon Emission Platinum LEED certified" hotel and conference center in Chicago, including falsely claiming that the business had acquired all necessary building permits and that the project was backed by several major hotel chains. According to the SEC's complaint, the defendants promised investors that they would get back any administrative fees they paid for their investments if their EB-5 visa applications were denied. The defendants allegedly spent more than 90 percent of the administrative fees, including some for personal use, before USCIS adjudicated the visa applications.

USCIS noted that as with any investment, it is important to research thoroughly any offering that purports to be affiliated with EB-5. USCIS recommended the following steps:

- ***Confirm that USCIS has designated the regional center.*** If you intend to invest through a regional center, check the list of current regional centers on USCIS's website (http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers). If the regional center is not on the list, exercise extreme caution. Even if it is on the list, understand that USCIS has not endorsed the regional center or any of the investments it offers.
- ***Obtain copies of documents provided to USCIS.*** Regional centers must file an initial application (Form I-924) to obtain USCIS approval and designation, and must submit an information collection supplement (Form I-924A) at the end of every calendar year. Ask the regional center for copies of these forms and supporting documentation provided to USCIS.
- ***Request investment information in writing*.** Ask for a copy of the investment offering memorandum or private placement memorandum from the issuer. Examine it carefully and research similar projects in evaluating the proposal. Follow up with any questions you may have. If you do not understand the information in the document or the issuer is unwilling or unable to answer your questions to your satisfaction, do not invest.

- ***Ask if promoters are being paid*.** If there are supposedly unaffiliated consultants, lawyers, or agencies recommending or endorsing the investment, ask how much money or what type of benefits they expect to receive in connection with recommending the investment. Be skeptical of information from promoters that is inconsistent with the investment offering memorandum or private placement memorandum from the issuer.

- ***Seek independent verification*.** Confirm whether claims made about the investment are true. For example, if the investment involves construction of commercial real estate, check county records to see if the issuer has obtained the proper permits and whether state and local property tax assessments correspond with the values the regional center attributes to the property. If other companies have purportedly signed onto the project, go directly to those companies for confirmation.

- ***Examine structural risk***. Understand that you may be investing in a new commercial enterprise that has no assets and has been established to loan funds to a company that will use the funds to develop projects. Carefully examine loan documents and offering statements to determine if the loan is secured by any collateral pledged to investors.

- ***Consider the developer's incentives***. EB-5 regional center principals and developers often make capital investments in the projects they manage. Recognize that if principals and developers do not make an equity investment in the project, their financial incentives may not be linked to the success of the project.

- ***Look for warning signs of fraud*.** Beware if you spot any of these hallmarks of fraud:

    - **Promises of a visa or becoming a lawful permanent resident**. Investing through EB-5 makes you eligible *to apply for* a conditional visa, but there is no guarantee that USCIS will grant you a conditional visa or subsequently remove the conditions on your lawful permanent residency. USCIS carefully reviews each case and denies cases where eligibility rules are not met. Guarantees of the receipt or timing of a visa or green card are warning signs of fraud.

- **Guaranteed investment returns or no investment risk.** Money invested through EB-5 must be at risk for the purpose of generating a return. If you are guaranteed investment returns or told you will get back a portion of the money you invested, be suspicious.

- **Overly consistent high investment returns.** Investments tend to go up and down over time, particularly those that offer high returns. Be suspicious of an investment that claims to provide, or continues to generate, high rates of return regardless of overall market conditions.

- **Unregistered investments.** Even though a regional center may be designated as a regional center by USCIS, most new commercial enterprise investment opportunities offered through regional centers are not registered with the SEC or any state regulator. When an offering is unregistered, the issuer may not provide investors with access to key information about the company's management, products, services, and finances that registration requires. In such circumstances, investors should obtain additional information about the company to help ensure that the investment opportunity is *bona fide*.
- **Unlicensed sellers.** Federal and state securities laws require investment professionals and their firms who offer and sell investments to be licensed or registered. Designation as a regional center does not satisfy this requirement. Many fraudulent investment schemes involve unlicensed individuals or unregistered firms.
- **Layers of companies run by the same individuals**. Some EB-5 regional center investments are structured through layers of different companies that are managed by the same individuals. In such circumstances, confirm that conflicts of interest have been fully disclosed and are minimized.

USCIS noted that if an investment through EB-5 turns out to be in a fraudulent securities offering, the investor may lose both his or her money and a path to lawful permanent residence in the United States. USCIS said any EB-5 offering should be carefully vetted before investing money and hope of becoming a lawful permanent resident in the United States.

The USCIS alert is available at
http://www.uscis.gov/news/alerts/investor-alert-investment-scams-exploit-immi

grant-investor-program. That page also has links to the alert in Chinese, Korean, and Spanish.

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4. USCIS Reminds Filipinos of Immigration Relief Measures Following Typhoon; US-CERT Warns About Scams

Following Typhoon Haiyan (Yolanda) in the Philippines, U.S. Citizenship and Immigration Services (USCIS) is reminding Filipino nationals that they may be eligible for certain immigration relief measures if requested.

USCIS said it understands that a natural disaster can affect an individual's ability to establish or maintain lawful immigration status in the United States. Filipino nationals affected by Typhoon Haiyan may be eligible to benefit from the following immigration relief measures:

- Change or extension of nonimmigrant status for an individual currently in the United States, even when the request is filed after the authorized period of admission has expired;
- Extension of certain grants of parole made by USCIS;
- Extension of certain grants of advance parole, and expedited processing of advance parole requests;
- Expedited adjudication and approval, where possible, of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship (for more on this, see http://www.uscis.gov/forms/expedite-criteria);
- Expedited processing of immigrant petitions for immediate relatives of U.S. citizens and lawful permanent residents (LPRs);
- Expedited adjudication of employment authorization applications, where appropriate; and
- Assistance to LPRs stranded overseas without immigration or travel documents, such as permanent resident cards (green cards). USCIS said that it and the Department of State will coordinate on these matters when the LPR is stranded in a place that has no local USCIS office.

Meanwhile, US-CERT (United States Computer Emergency Readiness Team) issued a warning about disaster-related scams and phishing attacks. After a natural disaster, phishing emails and websites requesting donations for bogus charitable organizations often appear. US-CERT said users should be aware of

potential email scams and phishing attacks regarding the Philippines typhoon disaster. Email scams may contain links or attachments that may direct users to phishing or malware-laden websites.

US-CERT encourages users to take various measures to protect themselves, including not clicking on unsolicited web links or attachments in email messages, and reviewing the Federal Trade Commission's Charity Checklist and the Better Business Bureau's National Charity Report Index.

The USCIS announcement is available at http://www.uscis.gov/news/alerts/uscis-reminds-filipino-nationals-impacted-typhoon-haiyan-available-immigration-relief-measures. Additional information on types of relief is available at http://www.uscis.gov/humanitarian/special-situations. Information from US-CERT on disaster-related scams is available at http://www.us-cert.gov/ncas/current-activity/2013/11/12/Philippines-Typhoon-Disaster-Email-Scams-Fake-Antivirus-and.

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5. DHS Proposes SEVP Rule

The Department of Homeland Security (DHS) has proposed to amend its regulations under the Student and Exchange Visitor Program (SEVP) to improve management of international student programs and increase opportunities for study by spouses and children of nonimmigrant students. The proposed rule would grant school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses. The rule also would provide greater incentives for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students in F-1 or M-1 nonimmigrant status to enroll in study at an SEVP-certified school so long as any study remains less than a full course of study. F-2 and M-2 spouses and children may not engage in a full course of study unless they apply for, and DHS approves, a change of nonimmigrant status to a status authorizing such study.

The proposed rule is available at https://www.federalregister.gov/articles/2013/11/21/2013-27898/adjustments-to-limitations-on-designated-school-official-assignment-and-study-by-f-2-and-m-2. Comments are due by January 21, 2014.

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6. USDA Postpones Release of 2014 AEWR Wage Data

On October 17, 2013, the United States Department of Agriculture (USDA) announced a change in the schedule for the release of certain reports due to the lapse in appropriations resulting in the federal government shutdown. Among the affected reports is the Farm Labor Survey (FLS) report upon which the Department relies to establish the Adverse Effect Wage Rates in the H-2A program. The new release date for the FLS report is December 5, 2013.

Details are available at http://www.nass.usda.gov/Newsroom/Notices/10_17_2013.asp.

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7. DOL Publishes Three Final Rules Eliminating Obsolete OFLC Regulations

The Department of Labor (DOL) has published three final rules eliminating Office of Foreign Labor Certification (OFLC) regulations that have been made obsolete by statutory or regulatory changes. The H-1A nursing visa (20 CFR 655 subparts D and E) and the F-1 student off-campus work permit (20 CFR 655 subparts J and K) regulations were based on statutes that sunset September 30, 1997, and September 30, 1996, respectively; the programs sunset at later dates and have now been completed. The logging provisions in 20 CFR subpart C were incorporated into the H-2A regulations published in the DOL's final rule, Temporary Agricultural Employment of H-2A Aliens in the United States, at 75 Fed. Reg. 6884 (Feb. 12, 2010).

The OFLC announcement is available at http://www.foreignlaborcert.doleta.gov/. The H-1A rule is available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-20/pdf/2013-27683.pdf. The F-1 rule is available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-20/pdf/2013-27685.pdf. The logging rule is available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-20/pdf/2013-27693.pdf.

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8. Infosys Settles Visa Fraud and Abuse Case for Record $34 Million

Infosys Limited, an Indian company involved in consulting, technology and

outsourcing, has agreed to pay a record $34 million civil settlement based on allegations of systemic visa fraud and abuse of immigration processes, and also agreed to enhanced corporate compliance measures. The $34 million payment made by Infosys as a result of these allegations represents the largest payment ever levied in an immigration case, U.S. Immigration and Customs Enforcement (ICE) announced.

ICE noted that Infosys is located in 30 countries and in 17 U.S. cities, including a location in Plano, Texas. The Plano location is responsible for handling the immigration practices and procedures for U.S. operations of Infosys. Infosys brings foreign nationals into the United States to perform work and fulfill contracts with its customers under two visa classification programs relevant to this case: H-1B and B-1.

ICE said that, among other things, Infosys fraudulently used B-1 visa holders to perform jobs involving skilled labor that were instead required to be performed by U.S. citizens or legitimate H-1B visa holders. ICE accused Infosys of directing B-1 visa holders to deceive U.S. consular officials, including a "do's and don'ts" memorandum that instructed B-1 foreign nationals not to mention activities that "sound like work" or anything about contract rates. ICE also noted that Infosys failed to maintain I-9 records for many of its foreign nationals in the United States in 2010 and 2011, including failing to update and re-verify the employment authorization status of a large number of its foreign employees.

In addition to the $34 million payment, the settlement requires Infosys to conduct additional auditing for I-9 forms and meet a reporting requirement for B-1 usage, among other things.

David M . Marwell, special agent in charge of Homeland Security Investigations in Dallas, said: "This settlement against Infosys is the largest immigration fine on record. The investigation indicated that Infosys manipulated the visa process and circumvented the requirements, limitations, and governmental oversight of the visa programs. The investigation also showed that more than 80 percent of Infosys's I-9 forms for 2010 and 2011 contained substantive violations. Ultimately, these actions by Infosys cost American jobs and simultaneously financially hurt companies that sought to follow the laws of this nation. Companies that misuse the visa process can expect to be scrutinized and held accountable."

The settlement agreement is available at

http://www.ice.gov/doclib/news/releases/2013/131030plano.pdf.

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9. Office of Foreign Labor Certification Deals With Backlogs After Shutdown

The Department of Labor's Office of Foreign Labor Certification (OFLC) has experienced backlogs as a result of the cessation of its electronic systems due to the recent federal government shutdown. OFLC noted that this further resulted in a backlog of documents submitted to OFLC during that period by mail, hand-delivery, or email. As a result, OFLC implemented the following temporary changes:

1. **Submissions mailed, couriered, or emailed to OFLC and received between October 1 and October 18:**

Submissions are applications that the National Processing Centers (Chicago, Atlanta, or Prevailing Wage Center) could not receive electronically through the iCERT system during the shutdown, and were mailed, delivered by private courier (Federal Express, etc.) or emailed to OFLC. These include Applications for Permanent Employment Certification (PERM, ETA 9089), Applications for Temporary Employment Certification (H-2B, H-2A ETA 9142), and Applications for Prevailing Wage Determinations (ETA 9141).

Because of the backlog in submissions that were mailed, delivered or emailed to OFLC for shutdown-related reasons or otherwise, **all submissions received by OFLC between October 1 and October 18 were considered received on October 18**. For example, a PERM application mailed to the Atlanta National Processing Center on October 5 was given a receipt date of October 18, 2013. If an October 18 receipt date on an application would have otherwise rendered out-of-date the recruitment or prevailing wage determination used for the application, the application was deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination.

1. **PERM and H-2B submissions with time-sensitive recruitment or prevailing wage determinations NOT mailed or delivered to OFLC during the shutdown:**

Employers that decided not to mail or deliver PERM or H-2B submissions to OFLC because of the shutdown may now have recruitment or prevailing wage

determinations that are out-of-date because of the shutdown-related delay. These employers were asked to mail or file electronically in PERM or iCERT (see note below about iCERT filing) submissions for receipt by November 14, 2013. This accommodation applied only to PERM and H-2B applications that had timely recruitment or prevailing wage determinations during the shutdown period and were later unsuitable for filing due to expired recruitment or prevailing wage determinations. Employers with time-sensitive recruitment or prevailing wage determinations who delayed their filings until after October 18, 2013, were deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination. For mailed submissions, employers were asked to include a pink sheet of paper as a cover page for the submission and label that cover sheet as a "shutdown pre-empted submission" so that it would be properly handled in OFLC mailrooms.

Note for PERM and H-2B iCERT filers: As with PERM and H-2B submissions with out-of-date recruitment or prevailing wage determinations that are mailed, no application with expired recruitment or expired prevailing wage determinations was accepted after November 14, 2013.

1. **Employer responses to OFLC directives that were due between October 1 and October 18, 2013, but were NOT transmitted to OFLC:**

In the H-2A, H-2B and PERM programs, some employers may have been directed by OFLC to respond by a deadline that occurred from October 1, 2013, to October 18, 2013. Responses that were due to the OFLC during this period but not transmitted had their due dates extended to November 14, 2013. The deadline extension applied to the following documents in the following programs:

For Prevailing Wage Determinations:

- Responses to Requests For Information

In H-2A and H-2B:

- Responses to Notices of Deficiencies or Requests for Further Information
- Audit Responses
- Responses to Notices of Intent to Debar

In PERM:

- Responses to information requests related to employer sponsorship
- Audit/AAIR responses
- Responses to Requests For Information
- Responses to requests for review of advertisements in supervised recruitment
- Responses to supervised recruitment (Recruitment Instructions Letters)
- Responses to Notices of Intent to Revoke or to Debar

1. **Employer responses to OFLC directives that were due between October 1 and October 18, 2013, and were transmitted to OFLC during that period:**

Responses to OFLC directives in the H-2A, H-2B and PERM programs (those noted in no. 3 above) that were due between October 1 and October 18, 2013, and were transmitted via mail, hand-delivery or email during that time were considered received on October 18 and timely.

If an applicant transmitted an application or response by mail, hand-delivery, or email between October 1 and October 18, 2013, and the employer had not received notice that the transmission was undeliverable, the employer should not re-submit it.

Employers were reminded that if they viewed a PERM application as erroneously denied during that period based on out-of-date recruitment, they could submit the request for reconsideration to the attention of the government error queue.

None of the temporary procedures established in this notice applied to appeals to the BALCA. Employers were encouraged to contact the BALCA for information related to deadlines applicable to appeals.

The notice is available at http://www.foreignlaborcert.doleta.gov/.

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10. Visa Office Forecasts Changes in Some Employment Cut-Off Dates

The Department of State's Visa Office has projected changes in some employment cut-off dates. The December 2013 Visa Bulletin notes that the India employment second and third preference category cut-off dates advanced very rapidly at the end of fiscal year 2013. Those movements were

based on the availability of thousands of "otherwise unused" numbers that could be made available without regard to the preference per-country annual limits. This has resulted in a dramatic increase in applicant demand, the Visa Bulletin notes. Consequently, the Visa Office has retrogressed those cut-off dates for December "in an effort to hold number use within the numerical limits."

In the coming months, the Visa Office expects the employment first preference category to remain Current, and the employment second preference worldwide category to remain Current. The employment second preference category for China is expected to move forward three to five weeks. No forward movement is expected in the India second preference category.

The worldwide employment third preference category cut-off date has advanced extremely rapidly during the past seven months "to generate new demand," the Visa Bulletin states. As the rate of applicants whose cases are finalized increases, it could have a significant effect on the cut-off date. Rapid forward movement of this cut-off date "should not be expected to continue beyond February," the Visa Bulletin notes.

China's and Mexico's employment third preference cut-off dates are expected to remain at the worldwide date. India should see no forward movement and the Philippines is expected to move forward three to six weeks.

The employment fourth and fifth preference cut-off dates are expected to remain Current. The Visa Office noted that these projections are "what is likely to happen during each of the next few months based on current applicant demand patterns." However, the Visa Office cautioned that these trends are not guaranteed and corrective action could be required at some point to maintain number use within the applicable annual limits. Unless indicated, the Visa Office said that those categories with a Current projection in the December Visa Bulletin "will remain so for the foreseeable future."

The Visa Bulletin for December 2013 is available at http://www.travel.state.gov/visa/bulletin/bulletin_6211.html.

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11. OCAHO Substantially Reduces Penalties for Two Small Businesses; Fact Sheet Updated

In *U.S. v. Red Bowl of Cary, LLC*, the Executive Office for Immigration Review's (EOIR) Office of the Chief Administrative Hearing Officer (OCAHO) reduced fines for Red Bowl of Cary, doing business as Red Bowl Asian Bistro in North Carolina, for Form I-9 violations. OCAHO also reduced fines for a small family business in a similar case, *U.S. v. Kobe Sapporo Japanese, Inc.* EOIR also recently updated its fact sheet on OCAHO.

Red Bowl case. U.S. Immigration and Customs Enforcement (ICE) investigated Red Bowl, which had 23 active employees, in 2011. The restaurant manager advised ICE that its I-9 employment authorization forms were filled out after ICE issued its Notice of Inspection and that he and Red Bowl's president were unaware of the requirement to use the form. ICE sought penalties totaling $21,505. Red Bowl argued that the penalty was both inappropriate and excessive.

OCAHO noted that the minum penalty for paperwork violations is $110 and the maximum is $1,100. In assessing an appropriate penalty, OCAHO noted, the following factors are considered: (1) the size of the employer's business, (2) the good faith of the employer, (3) the seriousness of the violations, (4) whether the individual was an unauthorized alien, and (5) the history of previous violations. OCAHO observed that the law neither requires that equal weight be given to each factor nor rules out consideration of additional factors.

Potential penalties for the 23 violations in this case ranged from $23,509 to $25,300, OCAHO noted. Instead of focusing on the completion of its I-9 forms, Red Bowl noted that it exercised reasonable care to refrain from hiring unauthorized aliens and had never done so. Red Bowl said that its conduct may have been negligent but that its violations were less serious than, for example, an intentional falsification of forms or a refusal to fill them out. Red Bowl argued that the fines were unduly punitive in light of a statutory analysis showing no aggravating factors. The restaurant noted that even in a worst-case scenario, where a large company willfully disregarded its obligations, falsified I-9 forms, employed unauthorized workers, and had a history of previous violations, the penalty would still be only $3,794.45 more than what the government sought here. Red Bowl also noted that the proposed penalty represented 16% of its income for the tax year 2011 and would create undue hardship. Red Bowl argued that a more appropriate penalty would be $110 for each violation, or a total of $2,530. The restaurant also requested a schedule permitting payment over a six-month period.

OCAHO noted that Red Bowl had not employed any unauthorized aliens and had no history of previous violations, so the only negative factor was the seriousness of the violations. OCAHO said that an employer's failure to prepare a timely I-9 form for an employee is a serious violation because it may permit an unauthorized individual to maintain unlawful employment. OCAHO acknowledged that 16% of the restaurant's income appeared excessive in light of the record, noting that a penalty "needs to be sufficiently meaningful to acocmplish the purpose of deterring future violations" but "should not be unduly punitive in light of the respondent's resources." OCAHO said that penalties very close to the maximum permissible "should be reserved for the most egregious violations," noting a "general public policy of leniency toward small entities." OCAHO adjusted the penalty amount to "an amount closer to the midrange," for a total penalty of $10,350. OCAHO said that a payment schedule could be established "to minimize the impact of the penalty on the operations of the restaurant."

Kobe Sapporo Japanese case. In a similar case, *U.S. v. Kobe Sapporo Japanese, Inc.*, ICE alleged that the company, a small family-owned restaurant in North Carolina, failed to ensure that its 26 workers properly completed various sections of the I-9 form. The complaint sought penalties totaling $29,452.50. OCAHO noted that an employer's financial health, the economy, the employer's ability to pay the fine, and the potential effect of the fine on the company are all appropriate additional factors to be considered. Penalties are not intended to cause employees to lose their jobs or to force employers out of business, but rather to enhance the probability of future compliance, OCAHO said, reducing the total amount of the penalties to $15,400.

Both cases were decided on October 18, 2013. The Red Bowl decision is available at http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1206.pdf. The Kobe Sapporo Japanese decision is available at http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1204.pdf.

Fact sheet updated. EOIR also updated its OCAHO fact sheet on October 1, 2013. The fact sheet explains what OCAHO does; the types of cases it hears; and how it receives cases related to employer sanctions, document fraud, and unfair immigration-related employment practices, including the typical steps in how a case proceeds. The fact sheet notes that OCAHO decisions are available

at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm. The fact sheet is available at http://www.justice.gov/eoir/press/2012/OCAHOFactSheet05292012.pdf.

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12. State Dept. Updates Visa Reciprocity Tables

The Department of State has updated the visa reciprocity tables. Among other things, the Department recently updated the document section for Somalia; updated police records information for Croatia; and added same-sex marriage certificate information for South Africa and Spain.

The tables are available at http://travel.state.gov/visa/fees/fees_3272.html.

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13. USCIS Extends TPS for Somalis

Acting Secretary of Homeland Security Rand Beers has extended temporary protected status (TPS) for eligible nationals of Somalia for an additional 18 months, effective March 18, 2014, through September 17, 2015.

Current Somali beneficiaries seeking to extend their TPS status must re-register during a 60-day period that began on November 1, 2013, and runs through December 31, 2013. U.S. Citizenship and Immigration Services (USCIS) encourages beneficiaries to re-register as soon as possible. USCIS did not accept applications it received before November 1, 2013.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Somali TPS beneficiaries who re-register during the re-registration period and request work authorization will receive a new EAD that expires on September 17, 2015.

To re-register, current TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status. Re-registrants do not need to pay the I-821 application fee, but they must submit the biometric fee, or a fee-waiver request, if they are age 14 or older. All TPS re-registrants must also submit Form I-765, Application for Employment Authorization, but no I-765 application fee is required if the re-registrant does not want an EAD. TPS re-registrants requesting an EAD must submit the I-765 application fee, or a fee-waiver request.

Applicants may request that USCIS waive any or all fees based on inability to pay by filing Form I-912, Request for Fee Waiver, or by submitting a written request. Fee-waiver requests must be accompanied by supporting documentation. Failure to submit the required filing fees or a properly documented fee-waiver request will result in the rejection of the TPS application, USCIS noted.

Additional information on TPS for Somalia is available online at http://www.uscis.gov/tps. Further details on this extension of Somalia for TPS, including application requirements and procedures, are available in the Federal Register notice at http://www.gpo.gov/fdsys/pkg/FR-2013-11-01/pdf/2013-25969.pdf. A correction to the Federal Register notice amending the dates of the re-registration period was published at https://www.federalregister.gov/articles/2013/11/06/C1-2013-25969/extension-of-the-designation-of-somalia-for-temporary-protected-status.

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14. ABIL Global: Turkey

The new Residence Permit Law will overhaul immigration in Turkey.

On April 11, 2013, Law No. 6458, Law on Foreigners and International Protection, was published in the official gazette of Turkey and is set to go into effect in one year. This new law will make vast changes to residence permit eligibility and procedure, and will create a new governmental office.

The changes span a wide variety of issues, including the requirements for residing and working in Turkey, protection of victims of human trafficking, changes in business visitor rules, procedures and categories of residence status, grounds for deportation, and processing of refugees. Changes include the extension of the 90-out-of-180-day rule for tourists to business visitors. Also, sticker visas obtained at the border will only be valid for 15 days. The rule to apply for a residence permit within 30 days of entry will be extended to 90 days. The renewal of residence permits will be accepted for filing at a much earlier period of 60 days before expiration. Also, a new provision will allow the initial filing of residence permits at consular posts.

Significantly, new categories of resident permit eligibilities will be created, including for those who will open a business or buy real estate in Turkey. The

law also requires the creation of a new Administration General Directorate of Migration under the Ministry of Interior, which is underway.

Residence Permits

Until April 11, 2014, residence permits are being handled by the local and regional Police Departments under the Interior Ministry. With the new law, this process will be moved to the new Directorate of Migration, as well as to consular posts for certain applications. The new Directorate will establish new offices under the governor's and district governor's offices around Turkey.

New categories of residence permits include short-term, long-term, family, student, humanitarian, and victims of human trafficking.

According to the new law, a foreigner must seek a residence permit in an appropriate category if he or she intends to remain in Turkey more than 90 days. This is an expansion of the previous 30-day rule. Short-Term Residence Permits will be valid up to one year. The new Long-Term Permit appears to have some similarities to a U.S. green card. This type of permit will require that the person has already resided legally and continuously in Turkey for at least eight years, shown that he or she has not required public assistance for the last three years, provided evidence of financial self-support (including health insurance), and not be a threat to public order or security.

Procedurally, the new law indicates that those applying for new residence permits must do so at a Turkish consular post in the applicant's home country. For those who already have a current, valid residence permit, extensions must be filed with the new Directorate officials at the local governor's office.

The new law stipulates that if a person is granted a work permit, he or she no longer must obtain a separate residence permit. This will be a relief to international assignees who have dealt with tremendous delays in residence permit issuance due to massive backlogs of applications at the local police departments in many municipal locations.

Deportation and Ban on Reentry

The law also creates new harsher procedures and penalties for deportation and a ban on the re-entry of foreigners who are out of status or not abiding by the terms of their stay. The ban may be up to five years in some circumstances such as overstaying, and up to 10 years if the person is deemed a "security

threat."

Protection of Refugees and Victims of Human Trafficking

The new law also better protects refugees and victims of human trafficking. It is a significant step for Turkey's protection of human rights, particularly considering the refugee flow into Turkey from neighboring countries such as Syria, Iraq, and Iran. Under the new law, Turkey will not be able to return foreigners to countries where they will be subject to torture or inhumane treatment.

The new law indicates Turkey's awareness of the need to overhaul its management of foreigners. As Turkey's economy has grown, it is now a leading location in the region for expatriates of many international companies, as well as a prime location for new investment. As a result, the number of foreigners needing work permits has grown exponentially. Also, based on its location bordering several countries in turmoil, the processing of refugees has become a growing problem. Further detailed guidance is sorely needed well in advance of the April 11, 2014, implementation deadline.

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15. Firm In The News

Cyrus Mehta was the Discussion Leader in an AILA webinar entitled *An Ethical Look At Accepting Fees Before Immigration Reform on* November 15, 2013.

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