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IMMIGRATION ATTORNEYS

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When to File an Amended H-1b Petition

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In April the Administrative Appeals Office (AAO) issued a precedent decision, which held that an H-1b employer must file an amended or new H 1b petition when a new Labor Condition Application (LCA) for non-immigrant specialty occupation workers is required due to a change in the H-1b worker's place of employment.

In essence, the AAO held the following:

- **A change in the place of employment of a beneficiary to a geographical area requiring a corresponding LCA be certified to the Department of Homeland Security (DHS) with respect to that beneficiary may affect eligibility for H-1B status; it is therefore a material change for purposes of 8 C.F.R. §§ 214.2(h)(2)(i)(E) and (11)(i)(A) (2014).**

- **When there is a material change in the terms and conditions of employment, the Petitioner must file an amended or new H-1B petition with the corresponding LCA.**

This means that an H-1b employer must file an amended or new petition before transferring an H-1b worker to a new place of employment not covered by an existing approved H-1b petition.

For additional guidance, the USCIS policy memorandum can be found HERE

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I-9's and Green Cards Without Signatures

Alert for HR Professionals: Did you know that Permanent Resident Cards that say "signature waived" are acceptable documents for Form I-9, Employment Eligibility Verification, as long as they are unexpired and reasonably appear to be genuine and relate to the person presenting them?

Since February 2015, USCIS has been waiving the signature requirement for people entering the United States for the first time as lawful permanent residents after obtaining an immigrant visa abroad.

Sunset of Conrad 30 Program

The Conrad 30 Program permits states to bring up to 30 foreign national physicians to medically underserved areas and the physicians in turn receiv a waiver of the two-year home residence requirement on their J-1 visas. Th program has been in existence since 1994 and Congress has reauthorized it several times. The current program is scheduled to sunset on September 30 2015.

Legislation for reauthorization is pending. If the program is not reauthorized timely and does sunset, states may still avail themselves of th benefit for all foreign physicians who have been admitted to the United States in J-1 status prior to the sunset date.

Are Changes to the Eb-5 Regional Center Program Inevitable?

Congress has extended the Eb-5 program many times and its renewal is not in doubt because countless new regional centers have been authorized. The legislative grapevine; however, has it that Congress may be contemplating significant changes to the program.

Specifically, Congress might increase the investment amount from $500,000.00 to $800,000.00, or it could eliminate the TEA (targeted employment area) designation all together, which would set the minimum investment amount for all Eb-5 projects at $1,000,000.00.

There have not been any changes in required investment amounts since the inception of the program in the early 1990's. The driving force behind the proposed investment amount changes is the Department of Homeland Security.

September 2015 Visa Bulletin

The Department of State published the last Visa Bulletin for fiscal year 2015.

Download HERE

Although visa number advancements are rare towards the end of the fisca year, the Family 2A preference advanced by almost three months.

The employment-based third category (Eb-3) for all chargeability areas has advanced to August 15, 2015, which makes it all but current for the firs time in 10 years.

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The employment-based fifth category (Eb-5) for China advanced only thre weeks and remains backlogged to September 22, 2013.

STEM OPT Extension Validity Under Court Scrutiny

The District Court for the District of Columbia held that the existing Department of Homeland Security interim final rule extending the period of post-graduation optional practical training by 17 months for eligible STEM graduates on F-1 student visas is invalid, because the Department promulgated the rule without notice and public comments.

The court further held that vacating the rule immediately would cause substantial hardship for current STEM students and would create a major labor disruption for the technology sector. Accordingly, the court ordered that the rule and its amendments be vacated effective February 12, 2016, which will allow the Department to submit the rule for proper public notice and comments.

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