

Immigration Insights

Here are the hot topics that our clients and friends will want to know about. Additional U.S. immigration-related information is available at <http://immigration.dinslaw.com/>

April Showers Bring April (or May) Receipts - An Update on The Current FY09 H-1B Cap Situation

Douglas Halpert, Esq.

U.S. Citizenship and Immigration Services ("CIS") received approximately 163,000 petitions requesting H-1B classification from U.S. employers during the five-day filing period spanning April 1st to April 7th. Approximately 31,200 of these petitions were for beneficiaries holding master's or other advanced degrees from U.S. educational institutions. On April 14th, CIS ran the first random lottery to determine which of the 31,200 master's degree group would receive the 20,000 slots available to that special subgroup of H-1B beneficiaries. CIS already has begun to mail Receipt Notices to those "winners." CIS then ran a second lottery that included the 11,200 master's degree beneficiaries who did not snag a spot in the first lottery, plus the remaining 132,000 or so beneficiaries, who will all be vying for slightly less than 65,000 "regular" H-1B slots. CIS anticipates that all employers who filed a case will have received Receipt Notices (meaning case acceptance) or case rejection by the end of May.

Alert for Employers Who Have Hired F-1 (Student) Visa Status Holders Who Have Optional Practical Training

Douglas Halpert, Esq.

On April 8, 2008, the Department of Homeland Security ("DHS") issued a federal regulation formally titled "Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B

Petitions." This regulation benefits two classes of F-1 (international student) visa status holders who are in the optional practical training ("OPT") stage of their F-1 life: those F-1 students (a) who have completed a science, technology, engineering, or mathematics ("STEM") degree *and* (b) whose employer has opted to enroll in a U.S. government program known as E-Verify may follow certain



procedures to apply to U.S. Citizenship and Immigration Services ("CIS") for an extension of their 12 month grant of OPT by another 17 months (for a total OPT period of 29 months). Not all employers will decide to participate in E-Verify because there are some significant responsibilities that employers must undertake and concessions they must make to participate. Further, students who benefit from this provision must comply with detailed reporting requirements regarding their F-1 visa status; and even students who do not qualify for a STEM-based extension of OPT may be eligible for "cap gap" protection if their employer's H-1B petition is accepted for processing by CIS under the FY09 H-1B cap "lottery." For example, if an F-1 student who is not a STEM graduate has OPT employment authorization that expires on August 4, 2008, normally the student would need to stop work on that date and not resume work until CIS approves a change of status (to H-1B) effective on October 1, 2008. Under cap gap, the student would be able to

IMMIGRATION

Led by two Partners who have long been recognized in the field of immigration law by *The Best Lawyers in America* publication, the Dinsmore & Shohl LLP Immigration Group focuses its practice in the area of business immigration law.

The Immigration Group represents a wide range of publicly-traded companies, multi-national corporations, privately-held businesses, universities, research institutions, arts, entertainment and professional sports organizations, professors, and professionals with respect to both work visa and permanent resident (green card) cases.

In addition, the members of the Immigration Group have significant experience in many other areas that companies and other institutions may need help with in regard to the U.S. immigration system, including but not limited to visa applications at United States Consulates, labor certification proceedings before the U.S. Department of Labor, I-9 (Employment Eligibility Verification) compliance, immigration policy formulation, naturalization, family immigration law, and NAFTA immigration issues.

IMMIGRATION PRACTICE GROUP

PRACTICE GROUP CHAIR

Gregory P. Adams

PARTNERS

Linda A. Ash
Douglas J. Halpert

ASSOCIATES

Lindsay L. Chichester
Susan A. Smith

Immigration *Insights*

Cont'd

continue work if the petition is pending and CIS has not rejected it even during the period after the OPT expires and October 1, 2008 (in our example above, from August 5, 2008 to October 1, 2008).

To help employers and F-1 students to self-assess whether they can take advantage of one or both of these provisions, we have prepared and linked the following Self-Assessment Guide, which contains the basics: [Click Here](#)

Summer Interns from Abroad - You Can Sponsor Them

Douglas Halpert, Esq.

Especially at this time of the year we receive questions from employers about the possibility of hosting a foreign intern or trainee. Many European universities require their students to work abroad for a semester as part of their degree program. Hiring such an intern can allow a U.S. company to build a relationship with a budding engineering or business superstar who may later be interested in employment with the employer's foreign affiliate or a valued business partner.

Hiring an intern or trainee is possible in most instances without a lot of hassle. We counsel and assist employers through the process of aligning with established exchange program sponsors, such as the Council on International Educational Exchange, Association for International Practical Training, and the American Immigration Lawyers Foundation Exchange Program to secure J-1 (exchange visitor visas) for this purpose. While rush processing is sometimes possible, it is best to leave yourself at least two months of lead time between case initiation and when you want the intern to arrive. Please contact us now if you need advice on how to do this for this summer.

CIS and FBI Announce Plan to Eliminate Backlog of FBI Name Checks on Long-Pending Permanent Residence Cases

Douglas Halpert, Esq.

As we previously reported, U.S. Citizenship and Immigration Services (CIS) and the Federal Bureau of Investigation (FBI) recently announced an initiative to complete FBI "names checks" on long-overdue permanent residence (green card) applications. CIS had been successfully sued by many applicants who were tired of waiting for many years beyond the ordinary case processing times.

The latest joint plan is that CIS and the FBI will target completing processing of impacted cases on the following schedule:

Completion Goal	Category
May 2008	Process all name checks pending more than three years
July 2008	Process all name checks pending more than two years
Nov. 2008	Process all name checks pending more than one year
Feb. 2009	Process all name checks pending more than 180 days
June 2009	Process 98 percent of all name checks within 30 days and process the remaining two percent within 90 days

Department of Homeland Security and the Department of State Announce Western Hemisphere Travel Initiative ("WHTI") Land and Sea Final Rule -- Implementation to Occur on June 1, 2009

Douglas Halpert, Esq.

The Department of Homeland Security (DHS) and the Department of State (DOS) have issued a final rule that will require travelers to present a passport or other approved secure document denoting citizenship and identity for all land and sea travel into the United States starting on June 1, 2009. Citizens of Canada, the United States and Bermuda are currently exempt. Therefore, U.S., Canadian and Bermudan citizens should apply for secure passports or renew passports now or investigate obtaining other acceptable secure documents such as special passport cards and trusted traveler cards that DHS has developed.

Department of Homeland Security Makes a Second Attempt at "No Match" Letters

Douglas Halpert, Esq.

DHS had published another proposed rule that would require U.S. employers to take certain steps if they received a letter from either the U.S. Social Security Administration ("SSA") or the Department of Homeland Security (DHS) that indicated an employee's name and Social Security Number or name and work authorization did not match the government's records. If employers did not take prompt action, they would not have a "safe harbor" in the event of an I-9 (Employment Eligibility Verification) audit or raid.

Cont'd

Immigration *Insights*

Cont'd

Essentially, DHS seeks to hold U.S. employers accountable if they receive a U.S. government-issued "no match" letter that raises the possibility that an employee may have presented false identity and/or work documents to the employer at the time of hire. Due to ensuing litigation that faulted the government's compliance with rule-making procedures, DHS has issued a supplemental rule. The government allegedly wishes to send a flood of "no match" letters to employers as a means of forcing them to fire the millions of undocumented workers who are speculated to be employed in the U.S. The bottom line is that if you receive a "no match" letter, you should immediately contact your immigration lawyer for advice about what steps you should take.

TN Visa Holders Under NAFTA To Be Admitted for Three Years?

Gregory P. Adams

According to a published report, U.S. Citizenship and Immigration Services (CIS) will soon propose to authorize a three-year period of admission or extension of stay for Canadian and Mexican citizens who are accorded "TN" (Trade NAFTA) nonimmigrant visa status. Ever since the TN visa category was created, TN nonimmigrants have been restricted to one-year periods of admission at a time. According to the published report, the CIS proposed rule has cleared internal review by the Office of Management and Budget. No timetable has been offered for when CIS will publish its proposed rule.