

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/>

USCIS Announces Regulation Forbidding Multiple H-1B Filings

by Lindsay L. Chichester, Esq.

On March 24, 2008, approximately one week before the first day for filing Fiscal Year 2009 H-1B petitions (April 1, 2008), U.S. Citizenship and Immigration Services (USCIS) published an interim rule in the *Federal Register*. Under this new rule, USCIS precludes employers from filing multiple H-1B petitions for the same employee.

Previously, some employers submitted two petitions for those employees with U.S. master's degrees – one petition that would count towards the 65,000 visas permitted under the quota (or "cap"), and a second petition requesting that the case be considered under the 20,000 visas set aside for foreign nationals holding a U.S.-earned master's degrees. In recent years, USCIS has received more petitions on the first day it accepts filings than the number of visas available and has resorted to a lottery system to allocate the 65,000 and 20,000 pools of H-1B visas. Therefore, employers submitting two petition, one cap-exempt and one subject to the cap, could improve their chances of securing a visa for their employee. The new rule forbids this process.

USCIS emphasized that, if between April 1 and April 7, 2008 USCIS receives more than 20,000 petitions for the master's degree category (which is likely), USCIS will perform the lottery for cases seeking one of the 20,000 slots. Any petitions not selected for consideration against the 20,000 cap will then be added to the cases filed against the 65,000 cap. USCIS will conduct a random lottery selection to include all cases filed against the 65,000 cap plus any cases that were not selected for the 20,000 pool. Those petitions not selected in the second lottery will be rejected and returned to the employer.

The entire USCIS regulation can be viewed by [Clicking Here](#)

Increase in Fines for Immigration Worksite Violations Take Effect March 27, 2008

by Lindsay L. Chichester, Esq.

In February 2008 the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) increased the civil monetary penalties

for worksite immigration violations. The increased fines are effective March 27, 2008. Such worksite violations include knowingly employing unauthorized workers, failing to comply with the statutory I-9 employment eligibility verification requirements, committing immigration-related unfair employment practices such as discrimination, and acts related to immigration-related document fraud. The government's stated basis for these increased fines is an inflation adjustment to ensure the fines maintain a deterrent effect, noting that the fines had not been adjusted since 1999.

On average, the fines have increased by approximately 25 percent, with a few noteworthy exceptions. The fines for paperwork violations in the I-9 employment eligibility verification process were not adjusted for inflation and remain unchanged, ranging from \$110 to \$1,100. Some penalties for employing unauthorized workers and committing immigration-related discrimination in the

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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.

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hiring process increase by more than 45 percent:

First offense	previously \$275-\$2,200	now \$375-\$3,200
Second offense	previously \$2,200-\$5,500	now \$3,200-\$6,500
Subsequent offense	previously \$3,300-\$11,000	now \$4,300-\$16,000

These increases in civil penalties apply to all offenses committed on or after March 27, 2008.

CDC Changes Vaccination Requirements for Permanent Resident Applicants

by Lindsay L. Chichester, Esq.

The Centers for Disease Control (CDC) provides the Department of State (DOS) and U.S. Citizenship and Immigration Services (USCIS) with medical screening guidelines for all examining physicians of permanent resident (“green card”) applicants. The CDC recently has made significant changes to the vaccination requirements for green card applicants. All applicants must be examined by a physician – either a physician in a foreign country of the foreign national is applying for an immigrant visa at a U.S. consulate abroad, or by an approved physician in the U.S. if the applicant is seeking adjustment of status from USCIS.

Under the CDC's recent changes, the following vaccines have been added (as age-appropriate) to the vaccination requirements with which all green card applicants must comply:

- rotavirus vaccine;
- hepatitis A vaccine;
- meningococcal vaccine;
- human papillomavirus vaccine; and
- zoster vaccine.

Additionally, hepatitis B vaccine is required through 18 years of age, influenza vaccine is required for children from ages 6 months to 59 months, and acellular pertussis-containing vaccines have been developed for persons ages 10 years to 64 years.

Further information and updates on the required vaccines are available at the CDC's Division of Global Migration and Quarantine website, please [Click Here](#)

April 2008 Visa Bulletin: India EB-2 Visa Numbers Become Available Again

by Lindsay L. Chichester, Esq.

In the February and March Visa Bulletins published by the U.S. Department of State (DOS) the India EB-2 (employment-based second preference) category was unavailable. In April 2008, immigrant visas in the India EB-2 category will become available once again, with a cut-off date for applications being accepted set at December 1, 2003. DOS noted that the rate of visa numbers used in the India EB-2 category will continue to be monitored, and it may be necessary to make adjustments should the level of demand increase substantially.

There was also substantial movement in other employment-based visa categories. For the all chargeability (all areas except India, China, Mexico, and the Philippines) EB-3 (third preference) category, cases with a priority date of earlier than July 1, 2005 are being processed, an advancement of six months from the March 2008 Visa Bulletin. Also, the China EB-3 category will advance nine weeks to February 8, 2003 and the India EB-3 category will advance two months to March 1, 2002.

For more information about the April 2008 Visa Bulletin advances, please [Click Here](#)

The April Visa Bulletin can be viewed [Here](#)

Recent Treatment of Foreign Degree Equivalencies in the Permanent Residence Process

by Lindsay L. Chichester, Esq.

In determining whether a foreign educational degree is equivalent to a U.S. degree, U.S. Citizenship and Immigration Services (USCIS) recently has applied heightened scrutiny. For example, USCIS has denied cases involving three-year foreign bachelor's degrees, finding that a foreign bachelor's degree earned after three years of post-secondary study is not equivalent to a U.S. bachelor's degree. Similarly, USCIS has denied master's degree equivalency to a three-year bachelor's degree followed by a two year master's degree (on the ground that it would take six years of post secondary study in the U.S. to earn a master's degree.)

Two recent unpublished USCIS decisions illustrate the unpredictability of USCIS's treatment of foreign educational degrees.

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The Administrative Appeals Office (AAO), USCIS's appellate body, recently overturned the Nebraska Service Center's (NSC) denial of an EB-2 Immigrant Petition for an Indian foreign national, finding that the foreign national's master's degree earned in India was indeed the equivalent of a U.S. master's degree. The NSC had declined to consider the foreign national's master's degree because it was preceded by a three-year bachelor's degree, and the three-year degree was not a foreign equivalent of a U.S. bachelor's degree. The AAO stated that the relevant inquiry was whether the Indian master's degree was the equivalent of a U.S. master's degree, and that the petitioner was not relying on multiple lesser degrees or a combination of degrees to equal a bachelor's degree. While this unpublished decision is positive, USCIS has denied cases in the past where the foreign equivalent master's degree was earned in less than six years. Employers should be mindful that this unpublished decision is fact-specific and may not apply to other cases involving a three-year bachelor's degree followed a two-year master's degree.

In another recent decision, the Texas Service Center (TSC), denied an EB-3 Immigrant Petition, holding that a three-year Indian bachelor's degree was not the foreign educational equivalent of a U.S. bachelor's degree. The TSC found that the labor certification required a bachelor's degree, which requires four years of study, and that beneficiary lacked a four year bachelor's degree. The TSC rejected the petitioner's assertion that placing an "x" in the number of years required for the bachelor's degree on the labor certification application permitted a bachelor's degree of less than four years. The TSC also questioned the validity of the academic degree evaluations submitted in support of the case, noting that the first evaluation indicated that the foreign national qualified for the position based on a combination of education and experience, and the second evaluations stated that the Indian degree amounted to 120 credit hours and was thus a U.S. equivalent. The petitioner has appealed this case to the AAO.

USCIS Lowers Projected Adjudication Times For Naturalization Applications

by Lindsay L. Chichester, Esq.

USCIS recently reported to the House Appropriations Committee that it will adjudicate naturalization applications more quickly than original projections. In January 2008, USCIS stated that the average decision-making time would be 16-18 for naturalization applications. Now, USCIS projects an average adjudication time of 14-16 months. USCIS attributes the processing delays to a surge of applications, saying that it received 1.4 million naturalization cases in the 2007 fiscal year.

Job-Related Changes Impacting Visaed Employees

by Gregory P. Adams, Esq.

Almost all employer-sponsored immigration and visa efforts for the organization's foreign national employees require the employer to disclose to the U.S. government the foreign national employee's job title, job description, work location, and compensation.

Because a change in any one of these can cause visa-related problems ranging from "problematic" to "disastrous," and because knowing about potential changes *in advance* can make all the difference in the world, we remind our clients to inform us immediately and in advance whenever any of the following events might occur in the work life of a visaed employee:

- Change in job title
- Change in job duties
- Change in work location
- Decrease in compensation
- Interest in bidding on a different job
- Extended leave of absence
- Change in work hours from full-time to part-time (or vice versa)
- Relocation outside the United States
- Assignment to a different operating company