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## Immigration Updates

### U.S. State Department's Changes to the Exchange Visitor Program for Trainees and Interns

On June 19, 2007, the Department of State (DOS) published in the Federal Register its final rules, formalizing significant revisions to the Exchange Visitor Program (J-1) for Trainees and Interns. The proposed changes seek to prevent host employers from misusing the Exchange Visitor Program as a substitute for H-1B visa or ordinary employment or to displace American workers. DOS and the Government Accountability Office have found that there have been "occasions where training programs were...being used in lieu of the H visa or as a stepping stone for another longer-term non-immigrant or immigrant classification.... [T]he Fulbright-Hays Act and the Exchange Visitor Program regulations were not meant to supply U.S. employers with employees under the guise of being trainees. The...intent was, and continues to be, that trainees enter the United States, are exposed to American techniques, methodologies, and expertise, gain a better understanding of American culture and society, and then return to their homelands to share that learning with their countrymen."

These regulatory changes became effective **July 19, 2007**, and established changes to the existing procedures by:

- defining and limiting the training fields and program eligibility;
- requiring sponsor organizations to verify each trainee's English language skills and financial sufficiency for the duration of the entire program;
- mandating that the trainee, the host employer, and the sponsor organization make certified attestations and describe the training program on Form DS-7002 (Training/Internship Placement Plan);
- obliging sponsor organizations to conduct periodic evaluations of trainees; and
- increasing the State Department's monitoring and oversight functions.

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For the first time, to qualify as a **J-1 trainee**, foreign nationals must either:

- have a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in his or her occupational field acquired outside the United States; or
- have five years of work experience outside the United States in his or her occupational field,

and enter the United States to participate in a structured and guided work-based training program in his or her specific occupational field.

Traineeships can still be up to 18 months in duration.

The new regulations also create a brand new internship category. Internships can be up to 12 months in duration. To qualify as a **J-1 intern**, the foreign national must be either:

- an individual who is currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States; or
- an individual who has graduated from such an institution no more than 12 months prior to his or her Exchange Visitor Program begin date.

The rule changes also established and defined a new range of authorized fields of training. These newly authorized fields include:

- (i) Agriculture, Forestry, and Fishing;
- (ii) Arts and Culture;
- (iii) Aviation;
- (iv) Construction and Building Trades;
- (v) Education, Social Sciences, Library Science, Counseling and Social Services;
- (vi) Health Related Occupations;
- (vii) Hospitality and Tourism;
- (viii) Information Media and Communications;
- (ix) Management, Business, Commerce and Finance;
- (x) Public Administration and Law; and
- (xi) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations.

The duties of trainees or interns as outlined in the Training/Internship Placement Plan must not involve more than 20% clerical work.

Per the revised regulations, sponsor organizations are not authorized to place trainees/interns in:

- unskilled or casual labor positions;
- positions that require or involve child care or elder care; or
- in clinical or any other kind of work that involves patient care or contact, including any work that would require trainees or interns to provide therapy, medication or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education).

These rule changes took effect July 19, 2007, and the greatest impact of these new rules has been a significant increase in the sponsor program's level of oversight and involvement in the entire training program. Unlike in the past, sponsor organizations must ensure that trainees and interns have *verifiable* English language skills sufficient to function on a day-to-day basis in their training environment. English language proficiency must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through an interview conducted by the sponsor in-person or by videoconference or Web camera.

Program sponsors are also now required to collect and submit additional and more detailed information about the U.S. host organizations as well as the overseas partners. This now includes a standard site visit performed by the program sponsor for host employers that have not previously participated successfully in the sponsor's training and internship programs and that have fewer than 25 employees or less than \$3 million in annual revenue. The site visit may also be performed by third-party contractors on behalf of the program sponsor.

Program sponsors are now also required to submit more detailed information about the host companies, including federal Employer Identification Numbers and Dun & Bradstreet numbers, as well as proof of an existing workers' compensation insurance policy. These requirements can make the application process lengthier, especially if a Dun & Bradstreet number must be requested, a process that can take up to 30 days and thus greatly increase the processing time of a J-1 visa application. While the new application form (DS-7002) in practice requests very similar information to what was required in the past, the old process allowed for two separate forms (one signed by the trainee/intern and one signed by the host company), and the new form must be completed and signed by both the trainee/intern *and* the host company, which can also add to the processing

time for a J-1 application. The extended processing times for J-1 applications, especially for host companies submitting their initial post-July 19th applications, has been the most noticeable effect of these new rule changes.

### **Summary of Suspension of Premium Processing for Form I-140 Immigrant Alien Worker Petitions**

On July 24, 2007, U.S. Citizenship and Immigration Services (USCIS) announced an indefinite extension of the temporary suspension of Premium Processing Service for Form I-140 immigrant alien worker petitions, which had been in effect since July 2, 2007. USCIS indicated that the volume of I-140 petitions filed with requests for Premium Processing continued to exceed USCIS's capacity to accurately and adequately review and approve these cases pursuant to the Premium Processing Service program guidelines, which guarantee some type of USCIS action (approval, denial, notice of intent to deny, request for additional evidence, etc.) within 15 calendar days of receipt of this petition. USCIS's inability to adjudicate I-140 petitions within the time constraints of the Premium Processing guidelines may be an unintended consequence of the increased efficiency with which labor certifications are being approved by the U.S. Department of Labor under the relatively new PERM program. USCIS will not speculate about when the suspension of this service will be lifted.

### **Recap of July Immigrant Visa Retrogression, Subsequent USCIS Reversal and Current Status of Visa Availability**

On June 12, 2007, DOS issued its Visa Bulletin documenting the availability of immigrant numbers for the month of July. Since many I-485 applicants had been waiting for immigrant visas to become available for months, or even years, it was encouraging when the June 12th Visa Bulletin indicated that immigrant visa numbers would be available to employment-based I-485 applicants in all categories and from all countries of birth. Immigration practices across the country were inundated with documentation from clients hoping to file their employment based I-485 applications in the month of July. Tens of thousands of I-485 applications were quickly prepared and filed on June 30th to be received on the earliest date possible for July processing: Monday, July 2nd.

In a shocking about-face on Monday, July 2nd, DOS reversed its previously issued July Visa Bulletin, which had announced that visa numbers would be available for the entire month of July for all employment-based immigrant preferences, and instead indicated that *no* visa numbers would be available until October 1, 2007.

The impact of this reversal quickly reverberated throughout the immigration community, and led to a massive and coordinated outcry in protest of this unprecedented action. The American Immigration Lawyers Association

went so far as to prepare a class action lawsuit on behalf of a long list of multinational corporations and small businesses alike, and intense pressure was exerted on representatives in Washington, D.C. to address this action.

On July 17, 2007, USCIS announced that it would immediately resume accepting employment-based Adjustment of Status Applications (Form I-485) for all persons eligible to file. DOS advised that its original July Visa Bulletin, which indicates that all employment-based visa preference categories are “current” for the month of July, would be reinstated. USCIS effectively apologized to the public for the confusion created by the federal government when, on July 2nd, DOS announced that all visas had been used and that no more applications would be adjudicated or accepted for filing until the next fiscal year.

This was welcome news, and USCIS accepted all eligible I-485 applications received by August 17th to give applicants the full one-month opportunity to file that was promised in the original July Visa Bulletin. Moreover, USCIS did the right thing by keeping the current filing fees for I-485 applications in place until August 17th, despite the fact that all other fees increased on July 30th.

Given that tens of thousands more I-485 applications were submitted to USCIS prior to August 17, 2007, many in the immigration community worried that there would be no further immigrant visas assigned until the beginning of the new fiscal year (October 1, 2007), and the Department of State’s Visa Bulletin for September, issued August 13, 2007 did show retrogression in every available visa category. However, the October 2007 visa numbers have just been made available, and we reproduce the employment-based numbers below. For the month of October, the visa availability is back to levels that were available in January 2007. Each month these numbers are subject to change.

*Employment-Based Preference Categories*

	<b>All Charge-ability</b>	<b>China - Mainland Born</b>	<b>India</b>	<b>Mexico</b>	<b>Philippines</b>
<b>1st Preference</b>	Current	Current	Current	Current	Current
<b>2nd Preference</b>	Current	01JAN06	01APR04	Current	Current
<b>3rd Preference</b>	01AUG02	01SEP01	22APR01	22APR01	01AUG02
<b>All Other</b>	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01

**Workers**

**Recap of USCIS Fee Increases**

On July 30, 2007, USCIS implemented a new fee schedule, increasing almost all filing fees previously in effect. The most common fee increases are listed below:

<b>Form</b>	<b>Description</b>	<b>Previous Fee</b>	<b>New Fee (Effective 7/30/07)</b>
I-90	Application to Replace Permanent Resident Card	\$190	\$290
I-129	Petition for Nonimmigrant Worker	\$190	\$320
I-140	Immigrant Petition for Alien Worker	\$195	\$475
N-400	Application for Naturalization	\$330	\$595
I-765	Application for Employment Authorization	\$180	\$340
I-131	Application for Travel Document	\$170	\$305
I-485	Application to Register Permanent Residence or to Adjust Status	\$325	\$930 (incl. fee for I-131 and I-765)
I-485	Biometrics Biometrics Fee	\$70	\$80

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*If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or go to [www.mintz.com](http://www.mintz.com).*

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