

Immigration Insights (November 2009)

November 30, 2009

H-1B Site Inspection Update -- 25,000 Visits Nationwide

U.S. Citizenship and Immigration Services (USCIS) has announced plans to conduct 25,000 site visits this fiscal year in connection with H-1B petitions filed by U.S. employers. The purpose for the visits is to confirm that the information provided by the employer to USCIS in the H-1B petition is accurate and that the employee is working at the location specified and being paid the salary stated in the petition. The number of site visits is a five-fold increase from the previous fiscal year.

Employers should ensure that all of the information supplied to USCIS in connection with an H-1B petition is accurate and, if the employer is given advance notice of the visit, the employer should contact its legal counsel. The information obtained through site visits could be used as a basis to deny the petition or revoke previously approved petitions if the government finds the employer to have violated the basis on which the petition was approved. Furthermore, adverse information could also be shared with the enforcement arm of the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and could expose the employer to possible civil and criminal penalties.

ICE Issues 1,000 Notice of Inspection for Employers' I-9s

On November 19th, U.S. Immigration and Customs Enforcement (ICE) announced the issuance of 1,000 Notices of Inspection (NOIs) to employers across the U.S. "associated with critical infrastructure." ICE stated that the 1,000 entities that received NOIs were selected based on "investigative leads and intelligence" and because of the business' "connection to public safety and national security."

Once the NOI is issued, the employer has limited time to provide the requested I-9 forms and related documentation (often payroll and tax information) to ICE. ICE then audits that documentation and determines whether the employer should be civilly fined for violations on the I-9s or for employing individuals who are not work authorized. Audits can also result in criminal investigations and penalties for employers who knowingly hire unauthorized workers and violate the law.

If an employer receives such a notice, the employer should promptly contact its legal counsel for assistance. Counsel can assist the employer in negotiating with ICE, reviewing the I-9s to be submitted to ICE, and defending the employer in the event that ICE pursues administrative or criminal penalties.

HPV Vaccination No Longer Required to Become a Lawful Permanent Resident

Effective December 14, 2009, the HPV (human papillomavirus) vaccine is being removed from the list of

immunizations that some immigrants must receive before being approved for Lawful Permanent Resident (green card) status. The requirement was originally implemented in July 2008, and all immigrant women ages 11 to 26 seeking permanent resident status have since been required to receive the first dose of the vaccine. According to the government's official comment, "while HPV may be an age appropriate vaccine for an immigrant applicant, HPV neither causes outbreaks nor is it associated with outbreaks... Further, HPV has not been eliminated, nor is in the process of elimination, in the United States. Therefore, because HPV does not meet the adopted criteria, it will not be a required vaccine for immigrant and adjustment of status to permanent residence applicants."

H-1B Visa Category Remains Open

As of the end of November, approximately 58,900 H-1B cap-subject petitions and approximately 20,000 petitions qualifying for the advanced degree cap exemption had been filed for fiscal year 2010. USCIS has now approved sufficient advanced degree cases and is no longer accepting cases in that category. USCIS will continue to accept cap-subject petitions until a sufficient number of H-1B petitions have been received to reach the statutory limit of 65,000. USCIS continues to update the H-1B cap count about twice a month.

DHS Announces Proposal to Make Global Entry Program Permanent

The Department of Homeland Security (DHS) has proposed making the Global Entry Program a permanent program. The program, which began in mid-2008, streamlines the screening process at airports for travelers who register and provide biometric identification.

Members go to a kiosk at the airport, insert their passport or lawful permanent resident card into a document reader, provide digital fingerprints for comparison with fingerprints on file, answer customs declaration questions on the kiosk's touch-screen, and then present a transaction receipt to DHS officers before leaving the inspection area. DHS reports that this program can cut down airport wait times by 70 percent. To date, there are approximately 27,000 Global Entry program members.

The program is currently available at twenty airports -- Atlanta, Boston, Chicago (O'Hare), Dallas, Detroit, Fort Lauderdale, Honolulu, Houston (Intercontinental), Las Vegas, Los Angeles, Newark, New York (JFK), Miami, Orlando, Philadelphia, San Francisco, San Juan, Sanford, Seattle and Washington (Dulles).

December Visa Bulletin -- EB-2 and EB-3 Categories Remain Stagnant

The U.S. State Department (DOS)'s [December Visa Bulletin](#) reflects little to no movement in the permanent resident or "green card" Employment Second Preference and Third Preference categories. The cutoff dates for EB-2 India and China remain at January 22, 2005 and April 1, 2005, respectively. The Employment First and Third Preference categories remain unchanged compared to the November 2009 Visa Bulletin. The Employment First Preference is current for all categories and Third Preference has a cut-off date of June 1, 2002 for all but India, which has a cut-off date of May 1, 2001.