

# Client Alert

A report  
for clients  
and friends  
of the firm     July 2004

## Recent Developments In Immigration

### **Preliminary Numbers are in for the Fiscal 2005 H-1B Cap**

On June 11, 2004, Fujie Ohata, Director of Center Operations for the United States Citizenship and Immigration Services (USCIS), announced that at the end of May a total of 16,100 out of the available 65,000 H-1Bs had been counted towards the fiscal 2005 cap. These H-1Bs are being adjudicated with start dates on or after October 1, 2004. At this pace, the 65,000 mark for fiscal year 2005 could be reached in March 2005. This is better than originally anticipated, but still falls short of the sufficient number of H-1Bs needed for the fiscal 2005 cap. Once the cap for fiscal year 2005 is reached, anyone subject to this cap will not be allowed to start working for their respective employer until October 1, 2005.

Ms. Ohata's announcement gives employers and practitioners alike a greater sense of when the H-1B cap will be exhausted for the fiscal year 2005. Given this important statistic, employers are urged to identify "new hires" who may be subject to the H-1B cap and plan accordingly. Specifically, we urge employers to file the H-1B petition as soon as possible and to opt for the Services' premium processing service for an additional \$1,000 fee. The latter is highly recommended and may even be critical to avoid the cap, since H-1B cases are charged against the cap as they are approved, not filed. For example, at the Vermont Service Center, non-premium processing filed H-1B petitions are currently taking approximately six to seven months to adjudicate.

### **Indefinite Suspension of Visa Revalidation by the U.S. Department of State**

On June 16, 2004, Catherine Barry, Deputy Assistant Secretary of State, announced that the Department of

State's (DOS) Visa Office will indefinitely suspend accepting applications for visa revalidations after July 16, 2004 for nonimmigrant classifications including C, E, H, I, L, O and P. The DOS claims that it is suspending visa revalidations indefinitely because it is unable to domestically acquire the biometric identifier capabilities for visas, which will be mandated as of October 26, 2004.

After July 16, 2004, applicants seeking to revalidate (or renew) their visas, must apply at a U.S. embassy or consulate abroad that processes nonimmigrant visa applications. The suspension of visa revalidation at the Visa Office in the United States will likely result in the increase of nonimmigrant visa renewal applicants at U.S. embassies and consulates abroad. This increase is likely to cause further delays in scheduling appointments and processing of nonimmigrant visa applications at U.S. embassies and consulates abroad. Consequently, employers should be aware of possible delays in bringing their foreign national employees, who need to schedule an appointment and apply for nonimmigrant visas at a U.S. embassy or consulate, into the United States and plan accordingly.

### **USCIS To Issue Multiyear Employment Authorization Document**

On June 17, 2004, in a statement given before the House Committee on the Judiciary's Subcommittee on Immigration, Border Security and Claims, Eduardo Aguirre, Jr., the first Director of USCIS, announced that the USCIS will begin issuing Employment Authorization Documents (EADs) by the end of June for "periods greater than 1 year." Mr. Aguirre made this statement at the Congressional Hearing on "Backlog Reduction Plan For Immigration Applications." According to Mr. Aguirre, the multiyear EAD is aimed at eliminating "unnecessary repetition of applications for renewed cards."

USCIS' decision to issue multiyear EADs is part of the Services' renewed initiative to reduce the significant backlogs. In an effort to meet the President's

proclamation of "welcoming immigrants with open arms . . . not endless lines," Mr. Aguirre assured Congress that the USCIS is on track to eliminate the application backlogs and achieve six-month cycle times by the end of 2006.

Presently, most EADs are issued in one year increments. However, since it is taking USCIS approximately five months to issue these cards, by the time an applicant receives his/her EAD it is time to file the renewal. By law, USCIS is obligated to issue EADs in 90 days. After 90 days, an applicant may take the receipt notice for the I-765 (USCIS application form for the EAD) to the USCIS district office and request issuance of an interim EAD. Generally, this requires the employee to spend a half-day, if not a whole day, at USCIS.

USCIS' multiyear EAD is definitely a step in the right direction. This will not only eliminate the backlog of renewal applications for USCIS, it will also reduce the costs associated with renewals for employers, and hopefully, do away with the inconvenience imposed on foreign national employees. In addition to the multiyear EADs, USCIS is also looking to reengineer other processes to increase its productivity.

### **New USCIS Procedures Aimed At Reducing Concurrent Filing Of I-140/I-485 Petitions/Applications**

Another example of USCIS' renewed initiative to reduce application backlogs is the recent change in processing procedures for concurrently filed I-140/ I-485s. On March 31, 2004, Fujie Ohata, USCIS' Director of Service Center Operations, issued a new directive regarding the processing of concurrently filed I-140/I-485s. These instructions were sent to all Service Center Directors mandating new adjudicating and reporting of processing times for concurrently filed I-140/I-485s. In an effort to streamline this process, Service Centers will now adjudicate concurrently filed I-140/I-485s simultaneously.

Previously, USCIS processed concurrently filed I-140/I-485 by first adjudicating the I-140 and, if approved, subsequently, adjudicating the I-485. With the implementation of this new simultaneous processing procedure, Ms. Ohata advises that the processing time for concurrently filed petitions will be significantly reduced. In order to take advantage of this new processing procedure, however, the I-140/I-485 must be filed together. If the I-485 is not filed together with the I-140, it may not be adjudicated simultaneously and, thus, may incur additional processing delays. As such, to take full benefit of this new procedure, the decision to concurrently file both the I-140/I-485 together should be made early in the process.

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