



Immigration Insider

News from the Alliance of Business Immigration Lawyers

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Details...

1. Immigration Reform Action Heats Up in Congress

As of press time, the full Senate is debating and seeking compromise on a variety of sweeping immigration reform proposals, including border enforcement measures, work authorization verification provisions, and a temporary worker plan. The Judiciary Committee marked up the legislation on March 27, 2006. Sen. Bill Frist (R-Tenn.) said the goal is to pass a bill by April 7, which would have to be reconciled with the House version. The timeline remains uncertain, however, because the legislation continues to generate controversy among lawmakers torn between the appeal of get-tough measures and concerns about alienating Latino voters.

During the mark-up on March 27, the Judiciary Committee passed a variety of amendments. Among the more noteworthy are amendments to create a temporary worker program, which President George Bush has long sought, and to apply a one-year limit on an initial L visa if the worker is coming to open a new office in the U.S., after which the worker would have to submit evidence supporting the viability of the office before applying for an extension of L status. New F-4 student visa provisions also were approved that would, among other things, raise the application fee from \$1,000 to \$2,000.

The National Association of Manufacturers weighed in with a letter to the Senate recommending that "[a]ny new legislation should include a market-based cap on H-1B visas; exemptions from EB caps for an expanded group of workers that are needed for their knowledge or contributions to innovation in fields like science, technology, engineering and mathematics (STEM); and... a direct path to green cards for STEM advanced degree graduates of U.S. universities."

Meanwhile, the American Civil Liberties Union and an assortment of other groups from both sides of the political aisle, including privacy rights groups, opposed a provision that would mandate the use of the Basic Pilot employment verification database by all United States employers to verify the work-eligibility of both current employees and future hires, which the organizations said would lead to privacy violations and a national identification system.

Some of the enforcement-related proposals that the Judiciary Committee did not pass included making unlawful presence in the U.S. a felony and criminalizing those who aid the undocumented. Sen. Hillary Clinton (D-N.Y.) had opined that such provisions would "literally criminalize the Good Samaritan and probably even Jesus himself." The proposed legislation sparked some of the largest protests in U.S. history. "I've been on the force 38 years and I've never seen a rally this big," said Louis Gray, Jr., incident commander at the March 25 rally held in Los Angeles, at which an estimated 500,000 people turned out.

The earlier text of the various pieces of the proposed legislation can be found at <http://thomas.loc.gov> (type the bill number in the search field): H.R. 4437 (Sensenbrenner bill); S. 1438 (Cornyn-Kyl bill); S. 2454 (Frist bill) (PDF available at http://frist.senate.gov/_files/031706bill.pdf); and S. 1033 (Kennedy-McCain bill). A PDF of the unnumbered Specter bill is available at <http://www.aila.org/content/default.aspx?docid=18639>.

In addition, the House immigration subcommittee held a hearing on March 30 to discuss raising the H-1B cap. In other congressional news, a House panel approved a variety of measures to reform and strengthen management of the Department of Homeland Security. An amendment to merge the Customs and Border Protection and Immigration and Customs Enforcement agencies was withdrawn after an agreement to hold a hearing on the subject. A report by the DHS's Inspector General on the proposal is available at http://www.dhs.gov/interweb/assetlibrary/OIG_06-04_Nov05.pdf. The DHS reform legislation has been sent to the full House Committee on Homeland Security for consideration. More details are available at <http://www.govexec.com/dailyfed/0306/031606c1.htm>.

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2. USCIS Notifies Employers of Filing Changes

On March 24, 2006, U.S. Citizenship and Immigration Services (USCIS) announced changes to the filing locations for two popular employer-sponsored immigration forms. Beginning April 1, 2006, employers filing a Petition for a Nonimmigrant Worker (Form I-129) should mail it to the Vermont Service Center. Also beginning April 1, 2006, employers filing an Immigrant Petition for an Alien Worker (Form I-140) should mail it to the Nebraska Service Center. Employers should file any accompanying forms at these same centralized locations.

USCIS explained that these changes mark the first phase of an initiative to use centralized filing and "bi-specialized" adjudication. USCIS plans to align similar workloads between two "sister" service centers. After April 1, the Vermont and California Service Centers will process all I-129s and related dependent applications, and the Nebraska and Texas Service Centers will process all I-140s and related permanent residence applications. Applicants and petitioners should note that the filing location for the form type is not necessarily the Service Center that will decide the case; the "sister" service center may perform the actual processing. Applicants will be sent a receipt notice from the service center that will process their cases.

USCIS will continue to process cases received before April 1 using pre-existing procedures. Once the amended filing instructions take effect on April 1, the agency will not reject any I-129s or I-140s sent to the incorrect service center. Instead, USCIS will accept the filing, redirect it to the correct location, and honor the initial receipt date. The new filing locations do not affect other aspects of the forms' instructions and do not change the forms themselves. USCIS will continue to honor previous versions of the forms.

Additional details, such as information on premium processing and where to file dependent applications when the principal application has already been filed, are included in a USCIS fact sheet available at http://uscis.gov/graphics/publicaffairs/factsheets/BiSpecPh01_24Mar06FS.pdf.

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3. USCIS Issues Sample H-2B Attestation

U.S. Citizenship and Immigration Services (USCIS) issued a sample H-2B returning worker attestation on March 16, 2006, for employers to follow when filing petitions including returning

H-2B workers. Petitions for returning H-2B workers do not count toward the congressionally mandated biannual H-2B cap. The H-2B category is for temporary nonprofessional workers.

To qualify as a returning worker, a worker must have counted against the H-2B numerical cap during any one of the three fiscal years before the fiscal year of the approved start date of the H-2B petition. For example, to qualify as a returning worker for fiscal year 2006, a worker must have counted against the H-2B cap between October 1, 2002, and September 30, 2005.

The sample attestation is available at

http://www.uscis.gov/graphics/formsfee/forms/files/H2B_Attestation.pdf.

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4. State Dept. Announces Changes in Earliest Issuance Dates for F, M Visas

The Department of State (DOS) recently announced that persons applying for initial-entry F-1, F-2, M-1 and M-2 visas now may be issued these visas up to 120 days before the program start date as listed on their I-20s, although such students may not enter the U.S. more than 30 days in advance of the beginning of studies. These changes apply only to initial-entry students; continuing students may apply for new F or M visas at any time, as long as they have been maintaining student status and their SEVIS records are current. Continuing students may enter the U.S. at any time before their classes start.

The DOS also announced a plan to allow initial-entry students to apply for admission to the U.S. up to 45 days before their program start dates, although the Department of Homeland Security (DHS) must publish a regulation to implement this change. The Department of State said it would notify posts when the DHS does so. Until then, posts were instructed to continue informing initial-entry students that they may not enter the U.S. more than 30 days before their program start dates.

The DOS's announcement, which also includes information on J visas, is available at

http://travel.state.gov/visa/laws/telegrams/telegrams_2843.html.

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5. Reminders Issued on Eve of New H-1B Filing Period

U.S. Citizenship and Immigration Services (USCIS) issued reminders of important regulatory requirements in anticipation of the agency's acceptance of H-1B filings under the fiscal year 2007 cap beginning on April 1, 2006. H-1B petitioners should keep these requirements in mind to avoid delays in processing and possible requests for evidence.

USCIS noted that if work is to be performed in more than one location, H-1B petitioners must provide a detailed itinerary of the dates and places where the work will be performed. For example, a labor contractor or consultant who hires H-1B workers to work at client sites must provide in advance an itinerary with the dates and places where the worker will perform services for the clients.

Also, in situations in which an H-1B worker is changing to an employer other than the one for which the initial H-1B petition was approved, the worker must demonstrate that he or she performed work for the original petitioning employer for a "significant length of time." If the H-

1B worker is processing abroad, USCIS will work with the Department of State to ensure that the same level of scrutiny is applied to consular-processed H-1Bs.

The reminder notice is available at

http://uscis.gov/graphics/publicaffairs/statements/H1Bnotice_24Mar06PN.pdf.

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6. Cut-Off Dates Advance in Several Employment Preference Categories

The Department of State announced in the April Visa Bulletin that cut-off dates for the China employment-based first preference (EB-1) category have advanced six months, to January 1, 2004. The India EB-1 category also has moved ahead six months, to January 1, 2005. Six-month advances are also noted in the employment-based second preference category (EB-2) for both China (January 1, 2003) and India (July 1, 2002). All other EB-1 and EB-2 categories remain Current. The full text of the April Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_2847.html.

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7. Labor Dept. Releases FAQs on Labor Certifications

The Department of Labor has released guidance on procedures for requesting a duplicate labor certification when the original has been lost or misplaced. The guidance is available at http://workforcesecurity.doleta.gov/foreign/pdf/perm_faqs_3-20-06.pdf. Other recent FAQs on labor certifications are available at http://workforcesecurity.doleta.gov/foreign/pdf/perm_faqs_2-21-06.pdf and http://workforcesecurity.doleta.gov/foreign/pdf/perm_faqs_2-14-06.pdf. The full set of PERM FAQs in PDF format is available for download at <http://workforcesecurity.doleta.gov/foreign/> (scroll to Quick Links).

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8. New Report Counters Perception That H-1B Workers Harm U.S. Labor

The National Foundation for American Policy released a policy brief countering the perception that the entry of skilled H-1B professionals harms native U.S. workers. The brief discusses common misconceptions and fallacies that affect people's understanding of high-skilled immigration, and research showing no negative impact of H-1B professionals on native workers' opportunities and wages. The policy brief, *H-1B Professionals and Wages: Setting the Record Straight*, is available at <http://www.nfap.com/researchactivities/articles/NFAPPolicyBriefH1BProfessionalsAndWages0306.pdf>.

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9. DHS Releases Report on L-1 Visa Fraud; Other Reports Rebut Allegations

The Department of Homeland Security's Inspector General's new report, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, charges that the L-1 program is vulnerable to fraud in several respects. For example, adjudicators "find it difficult to be confident" that a firm truly intends to use an imported worker in a managerial or executive capacity as claimed. Also, "specialized knowledge" is so broadly defined that adjudicators "believe they have little choice but to approve almost all petitions." Further, adjudicators have little ability to evaluate the substantiality of foreign operations, and the program encompasses petitioners who do not yet have their first U.S. office and permits petitioners to transfer themselves to the U.S. The report makes several recommendations, including that U.S. Citizenship and Immigration Services (USCIS) establish a procedure to obtain overseas verification of pending H and L petitions by Department of State officers; that USCIS explore with U.S. Immigration and Customs Enforcement whether experienced criminal investigators assigned abroad could check the bona fides of L petitions submitted by petitioners in the countries in which the officers are assigned; and that USCIS seek "legislative clarification" of various terms, concepts, and criteria used in the L program.

The Inspector General's report, including USCIS's responses to the Inspector General's recommendations, is available at http://www.dhs.gov/interweb/assetlibrary/OIG_06-22_Jan06.pdf.

The National Foundation for American Policy issued a report on the L visa program that questions aspects of the Inspector General's recommendations and counters claims of widespread abuse. That report, *Understanding L-1 Visas and the Recent OIG Report*, is available at <http://www.nfap.com/researchactivities/articles/NFAPPolicyBriefUnderstandingL1Visas0306.pdf>.

The Global Personnel Alliance (GPA) reiterated in a rebuttal to the Inspector General's report that there is no widespread evidence of L program misuse and noted that the Inspector General's office did not speak to any users of the L-1 program. Had it done so, GPA said, it would have found that L-1 users have had petitions rejected for incorrect or unclear reasons and have been subjected to repeated requests for additional supporting evidence and required to make trips overseas to satisfy consular officers' skepticism. The report also notes that smaller businesses, such as those started by a handful of managers and executives sent to the U.S. to expand operations, provide much of the new employment available to U.S. workers. The GPA's report, *Mixed Messages in DHS Office of Inspector General's Report on L-1 Program*, is available at <http://www.aila.org/content/fileviewer.aspx?docid=18810&linkid=143200>. For more on the importance of small business to American enterprise and invention, see *Inventors, Inventions, and Innovative Small Business*, http://www.sba.gov/advo/factsinventors06_03.pdf.

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10. GAO Issues Report on Benefit Fraud

The U.S. Government Accountability Office (GAO)'s new report, "Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud," recommends that U.S. Citizenship and Immigration Services implement additional internal fraud controls and best practices, and develop a strategy for implementing a sanctions program that includes a mechanism for assessing the effectiveness and considering the costs and benefits of sanctions, including their deterrence value. The GAO report, *Immigration Benefits:*

Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud, is available at <http://www.gao.gov/new.items/d06259.pdf>.

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Recent Articles & News from ABIL Members

ABIL co-sponsors seminar on Global Migration Issues. While members of the Academy of Business Immigration Lawyers are in London to attend their semi-annual meeting, they will co-sponsor a seminar, "Managing Global Mobility," with British American Business Inc. (BABI). The seminar will be held on April 20, 2006, at the Marriott Hotel, Grosvenor Square, London, from 2:00 to 5:30 p.m. Panels will address Effective Global Migration Management - An Essential Element for Competitive Success; Compensation, Benefits and Tax Planning for International Assignments; and Global Immigration Systems - Similarities and Differences. ABIL moderators and faculty will include Angelo A. Paparelli, Steven Trow, H. Ronald Klasko, Laura Danielson, and Bryan Funai. The program chair is Kehrela Hodkinson. For additional information and to register, call +44 20 7493-0381 or see <http://www.babinc.org/events/loneneventcalendar.html>.

ABIL co-sponsors seminar on labor certification. The Alliance of Business Immigration Lawyers will co-sponsor a seminar with the Association of the Bar of the City of New York on "Labor Certification Fundamentals and Best Practice Under the New PERM System to Benefit Your Client and Your Immigration Practice," on Wednesday and Thursday, May 10-11, 2006, from 6 to 9 p.m. at the New York City Bar, 42 West 44th Street. The program chair is Cyrus D. Mehta; moderators include H. Ronald Klasko and Stephen Yale-Loehr. Among the faculty are ABIL members Charles H. Kuck, Edward R. Litwin, and Angelo A. Paparelli. For more information or to register, call (212) 382-6663 or see https://www.nycbar.org/CLE/show_course.php?cnameid=1213.

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Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times and case status online:

<https://egov.immigration.gov/cris/jsps/index.jsp>

Department of Labor processing times and information on backlogs:

<http://www.ows.doleta.gov/foreign/times.asp>

Department of State Visa Bulletin: http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

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coalition of U.S. business immigration attorneys who have a demonstrated history of client service and a dedication to providing the best and most effective solutions to your immigration concerns. Each of ABIL's Founding Fellows is committed to the highest standards of professionalism, to maintaining the most up-to-date knowledge in the field of U.S. immigration law, and to providing the kind of accessibility you expect from the best in the field.

The Alliance of Business Immigration Lawyers' website is: <http://www.abil.com/>.

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