



Immigration Insider

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- **2. USCIS to Expand Premium Processing Service to Most Employment-Based Green Card Petitions** - USCIS will soon open the agency's premium processing service to nearly all employment-based green card applications.
- **3. Senate Passes Immigration Legislation, Compromise With House Remains Uncertain** - The Senate has passed sweeping immigration reform legislation that includes both a guestworker program and enforcement components.
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Details...

1. H-1B Cap Reached

U.S. Citizenship and Immigration Services (USCIS) has announced that as of May 26, 2006, all of the "regular" H-1B visa numbers for start dates effective October 1, 2006, have been used up. The H-1B cap for FY 2007 was 58,200; the agency also added back 6,100 unused FY 2006 H-1B1 visa numbers, for a total of 64,300.

Any additional petitions subject to the fiscal year 2007 H-1B annual cap received after May 26, 2006, will be rejected and returned along with the filing fee. Petitions that were received on May 26, 2006, are being subjected to a computer-generated random selection process to enable USCIS to apply the remaining number of H-1B visas available on that date to those petitions. Petitioners may resubmit their petitions when H-1B visas become available for FY 2008. The earliest date for filing an H-1B petition subject to the FY 2008 cap, with an employment start date of October 1, 2007, is April 1, 2007.

The first 20,000 H-1B petitions filed on behalf of those with U.S.-earned master's or higher degrees are exempt from the fiscal year cap on available H-1B visas. The advanced degree cap could be met in September 2006, however. USCIS reports that it has received approximately 5,830 exempt petitions in that category so far. For that reason, any such person who is eligible to file for H-1B status should do so immediately.

It is still possible to obtain H-1B status with an immediate start date for "new" employees who currently maintain H-1B status with another employer, or who previously have been in H-1B status in the past six years and subsequently have been absent from the U.S. for less than one year.

Institutions of higher education, nonprofits related or affiliated to such institutions, and nonprofit or governmental research organizations are exempt from the cap and may continue to obtain H-1B status for new employees.

USCIS also will continue to process petitions filed to: (1) extend the amount of time a current H-1B worker may remain in the U.S.; (2) change the terms of employment for current H-1B workers; (3) allow current H-1B workers to change employers; or (4) allow current H-1B workers to work concurrently in a second H-1B position.

The USCIS's press release is at

http://www.uscis.gov/graphics/publicaffairs/newsrels/FY07H1Bcap_060106PR.pdf. Additional information regarding the specific number of H-1B petitions processed is at:

<http://www.uscis.gov/graphics/services/tempbenefits/cap.htm>.

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2. USCIS to Expand Premium Processing Service to Most Employment-Based Green Card Petitions

U.S. Citizenship and Immigration Services (USCIS) published a notice in the Federal Register on May 23, 2006, that will soon open the agency's premium processing service to nearly all

Form I-140 employment-based immigrant worker petitions (also known as green card applications). The agency also will extend premium processing to certain Form I-539 applications to change or extend nonimmigrant status, as well as to Form I-765 applications to renew employment authorization for foreign nationals with pending employment-based applications for adjustment of status.

USCIS's premium processing program allows petitioners and applicants to request expected adjudication of certain cases. Upon payment of a \$1,000 fee, designated applications and petitions are slated for adjudication within 15 calendar days of filing. If the agency does not act on the case within the stated period -- by issuing an approval, a denial or a request for evidence in the case -- the \$1,000 fee is refunded.

USCIS will extend premium processing service to Form I-765 applications to renew employment authorization for foreign nationals who have pending Form I-485 applications to adjust status that are supported by immigrant visa petitions in the EB-1 through EB-5 classifications.

In addition, USCIS will permit concurrent filing of Forms I-539 and I-765 for certain nonimmigrant classifications. Premium processing, if requested, will apply only to Form I-539. USCIS will not guarantee 15-day processing for an I-765 filed concurrently with a premium-processed I-539.

The USCIS premium processing notice is at: <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=398853149330+2+0+0&WAISaction=retrieve>. A separate USCIS notice clarified that USCIS Service Centers will not accept filings for any of these form types under the premium processing service until a formal announcement is made on the USCIS Web site announcing the specific start dates for acceptance of the new form types. Until that date is established and announced, USCIS Service Centers will reject any premium process filings for I-140s, I-539s or I-765s. That USCIS clarification is at <http://www.uscis.gov/graphics/publicaffairs/statements/PremProcess052406PN.pdf>.

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3. Senate Passes Immigration Legislation, Compromise With House Remains Uncertain

On May 25, 2006, after months of back-and-forth wrangling, the U.S. Senate passed S. 2611, a sweeping immigration reform package that includes both a guestworker program and border control and enforcement components. The House of Representatives passed its own version of immigration reform legislation last December (H.R. 4437). The House bill focuses on border enforcement and lacks a guestworker program. The two bills must be reconciled before a final bill can be enacted. In hopes of bringing the immigration reform legislation to a conclusion, Senate majority leader Bill Frist (R-Tenn.) is calling for swift negotiations with the House of Representatives.

Finding a compromise may be difficult because the two bills are so different. Rep. James Sensenbrenner, Jr. (R-Wis.), however, who will lead the House negotiators, signaled a general willingness to compromise: "I don't think anything is a deal-breaker. We can't have legal proceedings to deport 11 to 12 million people; that is evident."

The Senate bill contains numerous business-related provisions. For example, the Senate bill would:

- Raise the cap on H-1B nonimmigrant visas for highly educated temporary workers to 115,000 -- with a flexible market-based annual adjustment.
- Raise the employment-based green card cap and exempt key categories of workers from the cap.
- Provide exemptions for both H-1B and employment-based green card caps for certain workers who have earned an advanced degree in science, technology, engineering or mathematics.
- Allot two-thirds of the 50,000 green cards granted annually by the diversity visa lottery to those with advanced degrees.
- Establish a new electronic employment verification system that would replace the current paper-based I-9 system.

Meanwhile, the Bush administration said the "five clear objectives of comprehensive immigration reform" include "securing our borders, creating a temporary worker program, making it easier for employers to verify employment eligibility and continuing to hold them to account for the legal status of workers they hire, dealing with the millions of illegal immigrants who are already here, and honoring the great American tradition of the melting pot."

A White House fact sheet on comprehensive immigration reform is at:
<http://www.whitehouse.gov/news/releases/2006/05/20060515-7.html>.

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4. Many Hondurans, Nicaraguans in Danger of Losing Work Authorization; Salvadorans Face TPS Renewal Period at End of Summer

As of May 25, 2006, fewer than half of Hondurans in the U.S. under the temporary protected status (TPS) program have re-registered to meet the June 1 re-registration deadline, sources say. Many of the 75,000 eligible Hondurans reportedly are awaiting immigration legislation they believe is imminent, and they do not want to spend several hundred dollars to renew their TPS if they may have a chance to apply for permanent resident status under new legislation. Lawyers and advocates warn that many could lose their work authorization as a result, placing them in illegal status after their TPS expires on July 5, 2007, and thereby rendering them potentially ineligible for citizenship in the future. "It is a serious problem. We believe they are wasting their opportunity to continue having an employment authorization document," said Antonio Amaya, executive director of La Comunidad, Inc., an immigrant services organization in Massachusetts.

There also are about 4,000 Nicaraguans in the U.S. under TPS, with the same deadline as the Hondurans. Only 1,700 had renewed their TPS as of May 25. The later re-registration period for approximately 225,000 Salvadorans in the U.S. under TPS is expected at the end of this summer. Advocates report that Salvadorans seem more aware of the risk of allowing their TPS status to lapse. Salvadoran TPS expires on September 9, 2007.

U.S. Citizenship and Immigration Services (USCIS) instructs Hondurans and Nicaraguans who are re-registering for TPS after the June 1 re-registration deadline to submit their applications with a letter explaining a "good cause for failure to timely file" (by USPS or other carrier) to:

Vermont Service Center
Attn: TPS Good Cause Exception
75 Lower Welden Street
St. Albans, VT 05479-0001

Additional information and details on the TPS requirements and deadlines for the three groups, including information on late initial registration and links to the relevant Federal Register notices, are available at: http://www.usdoj.gov/crt/osc/htm/work_extension.html and http://www.uscis.gov/graphics/services/tps_hond.htm.

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5. USCIS Reminds Adjustment Applicants to Obtain Advance Parole Before Summer Travel

U.S. Citizenship and Immigration Services issued a statement on May 24, 2006, reminding those who have: (1) been granted temporary protected status; (2) applied for adjustment of status; (3) applied for relief under the Nicaraguan Adjustment and Central American Relief Act; or (4) filed asylum applications that they must apply for and obtain advance parole (permission to re-enter the U.S.) at a USCIS Service Center before traveling abroad. Persons failing to do so may have their immigration benefit applications denied.

The announcement is available at:

<http://www.uscis.gov/graphics/publicaffairs/newsrels/TravAdvisory052406PR.pdf>. Additional information on how to apply for various travel documents is at: <http://www.uscis.gov/graphics/howdoi/travdoc.htm>. The I-131 Application for Travel Document is at: <http://www.uscis.gov/graphics/formsfee/forms/files/I-131.pdf>.

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6. Hearings Focus on Physicians for Underserved Areas, Impact of Visa Delays

The House Judiciary committee held a hearing on May 18, 2006, on H.R. 4997, the Physicians for Underserved Areas Act. The bill would reauthorize the J-1 visa waiver program, which provides opportunities for graduates of foreign medical schools who have trained in U.S. medical residency programs on J-1 cultural exchange visas to stay in the U.S. if they serve for three years in a designated health professional shortage area. Such areas are located in both rural and urban areas.

Leslie G. Aronovitz, Director of Health Care for the U.S. Government Accountability Office, (GAO) testified that the use of J-1 waivers remains a major means of placing physicians in underserved areas of the U.S., with more than 1,000 waivers requested in each of the past three years for physicians to practice in nearly every state. About 44 percent of states' waiver requests in fiscal year 2005 were for physicians to practice exclusively in primary care, while about 41 percent were for physicians to practice in nonprimary care specialties such as anesthesiology or cardiology. An additional seven percent were for physicians to practice psychiatry. More than three-fourths of the states' waiver requests were for physicians to work in hospitals or private practices. The GAO also noted that over 6,100 foreign physicians with J-1 visas took part in U.S. graduate medical education programs during academic year 2004-05, which was about 40

percent lower than was the case a decade earlier. The reasons for the decline are not completely understood.

The GAO noted that some states filled the per-state 30-waiver limit, but others reported needing more. Some states that had a sufficient allotment expressed their willingness under certain circumstances to share their allotment, but such redistribution would require legislation.

The GAO's testimony is at: <http://www.gao.gov/new.items/d06773t.pdf>. The hearing testimony on physicians in underserved areas is at: <http://judiciary.house.gov/hearings.aspx?ID=142>.

Also, the House Government Reform committee held a hearing recently on the impact of visa processing delays on the arts, education, and American innovation. Committee chairman Tom Davis (R-Va.) noted that U.S. businesses need to be able to bring foreign partners and customers in on short notice; U.S. universities need to continue attracting top foreign students, many of whom will choose to stay in the U.S. and bolster the economy as a result; and "the U.S. cultural scene will continue to remain vibrant only as long as foreign artists are able to bring their work to American stages and galleries." He also noted that trade shows and arts presenters in particular "represent a significant segment of the U.S. economy, comprised largely of small businesses that don't always have the resources to cope with the significant additional expense of an inefficient visa process."

The hearing testimony on visa delays, which includes a statement by famed cellist Yo-Yo Ma, among others, is available at: <http://reform.house.gov/GovReform/Hearings/EventSingle.aspx?EventID=41471>.

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7. DHS Cracks Down on Nonimmigrant Visa Overstays, Worksite Violations

According to reports from the field, U.S. Immigration and Customs Enforcement (ICE) has been visiting those whose nonimmigrant visa status has expired, even if such a person has obtained another status. In some cases, ICE agents are unable to verify the new status. Meanwhile, the Department of Homeland Security (DHS) announced last month that it is stepping up enforcement efforts against employers who knowingly hire undocumented workers. In addition, the DHS plans to work with Congress to build employer compliance systems. "Employers who want to stay within the law need a clear set of rules to follow. ICE and DHS will seek to develop an administrative regulatory program to provide clearer guidance to employers," the DHS said.

For more on the DHS's new efforts, see <http://www.dhs.gov/dhspublic/display?content=5546>.

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8. Third Preference "Other Worker" Green Card Category Becomes Unavailable

The Department of State announced that continued heavy demand for visa numbers in the employment-based third preference category for unskilled workers will result in the 5,000 annual numerical limit for that category being reached during the month of May. Therefore, the employment-based third preference "Other Worker" category has become "unavailable" for June and will remain so for the remainder of the fiscal year.

The Visa Bulletin for June is available at:
http://travel.state.gov/visa/frvi/bulletin/bulletin_2924.html.

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9. Labor Dept. to Close America's Job Bank

Citing costs that outweigh benefits, the Department of Labor recently informed states that America's Job Bank (AJB) will be phased out gradually and will close by June 30, 2007. AJB, which aggregates job listings online of 2,000 state employment offices nationwide, lists more than 682,000 resumes and 2.1 million job openings. "The Department recognizes there will be a periodic need for a national job board due to unique circumstances, such as the recent dislocations related to the hurricanes in the Gulf Coast," the notice said. "It is the Department's assessment that it will be more cost effective to contract for this type of service with the private sector on an 'as needed basis.' "

AJB is often used by lower-skilled workers seeking jobs through state agencies and by employers seeking such workers to meet labor certification recruitment requirements or to demonstrate good-faith compliance with federal hiring guidelines.

AJB is at: <http://www.ajb.dni.us/>.

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10. DOS Amends Regulations to Require Mexican Passport for BCC/Laser Visa Application

On May 30, 2006, the Department of State (DOS) issued a final rule, effective the same day, to require the presentation of a Mexican federal passport as a necessary condition for Mexican citizens applying for combined Border Crossing Cards (BCCs) and B-1/B-2 visas (laser visas). The final rule also removes the conditions under which certain beneficiaries of waivers of ineligibility may receive laser visas.

The DOS noted that most Mexican visitors to the U.S., whether traveling to the border region or beyond, receive a laser visa. The DOS and U.S. Citizenship and Immigration Services jointly administer the laser visa program; the DOS issues the combined BCC/B-1/2 under its exclusive authority over visa issuance. The DOS cited national security concerns, among other reasons, for the change in documentation requirements.

The full text of the final rule is available at
<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-8288.pdf>.

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Recent News from ABIL Members

Mark A. Ivener, Managing Partner of Ivener & Fullmer LLP, has been named one of the top 100 wealth advisors and managers in the Americas by *Citywealth* magazine's poll of 2,000 wealth advisors around the world. Mr. Ivener, the only immigration attorney on the list, has practiced immigration law exclusively for more than 30 years and has authored five books on the subject. Ivener & Fullmer is headquartered in Los Angeles, with offices in New York, Tokyo, and Vancouver. Mr. Ivener told *Citywealth* that immigration issues "can tremendously impact foreign nationals of high net worth, and an important green card option is often overlooked. For example, through [a U.S. Citizenship and Immigration Services] Regional Center, an individual can apply under the EB-5 investor category by making an investment in a real estate limited partnership, and greatly accelerate the process of obtaining a green card." For more information on Ivener & Fullmer, see <http://www.usworkvisa.com>.

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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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