



Immigration Insider

News from the Alliance of Business Immigration Lawyers Vol. 5, No. 12A · December 1, 2009

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- **2. USCIS Updates H-1B FY 2010 Cap Count** - The recent pace of filings suggests that H-1B numbers may be exhausted for this fiscal year very soon.
- **3. SEVP Announces New Mailing Address, Phone Number** - The Student and Exchange Visitor Program office has a new mailing address.
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- **5. Northern Mariana Islands Transition to U.S. Immigration Law; Guam Also Affected** - Although U.S. immigration law now applies to the Marianas, they will undergo a transition period with temporary measures ending December 31, 2014, to allow for an orderly transition.
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Details...

1. ICE Workplace Audits Stepped Up

U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton announced on November 19, 2009, the issuance of Notices of Inspection (NOIs) to approximately 1,000 employers across the U.S. associated with critical infrastructure, alerting business owners that ICE will audit their hiring records to determine compliance with employment eligibility verification laws.

The businesses served with audit notices were selected for inspection, ICE said, "as a result of investigative leads and intelligence and because of the

business' connection to public safety and national security -- for example, privately owned critical infrastructure and key resources." The names and locations of the businesses were not released "due to the ongoing, law enforcement sensitive nature of these audits."

Audits involve a comprehensive review of Forms I-9 (Employment Eligibility Verification). Audits may result in civil penalties and lay the groundwork for criminal prosecution of employers who knowingly violate the law. ICE identified I-9 audits as "the most important administrative tool in building criminal cases and bringing employers into compliance with the law."

Statistics resulting from 654 audits announced in July included:

- ICE agents reviewed more than 85,000 Form I-9s and identified more than 14,000 suspect documents, which was approximately 16 percent of the total number reviewed.
- As of November 19, 2009, 61 NIFs have been issued, resulting in \$2,310,255 in fines. In addition, 267 cases are being considered for NIFs.
- ICE closed 326 cases after businesses were found to be in compliance with employment laws or after businesses were served with a Warning Notice in expectation of future compliance.

The Alliance of Business Immigration Lawyers (ABIL) notes that some clients are reporting receipt of subpoenas for wage and related records. Relying on inexperienced counsel and self-audits is no longer sufficient. Contact your ABIL member for guidance in particular cases, including conducting proactive pre-audits.

The ICE announcement is at <http://www.ice.gov/pi/nr/0911/091119washingtondc2.htm>.

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2. USCIS Updates H-1B FY 2010 Cap Count

As of November 20, 2009, approximately 56,900 H-1B cap-subject petitions had been filed, U.S. Citizenship and Immigration Services (USCIS) announced. USCIS has approved sufficient H-1B petitions for those with advanced degrees to meet the exemption of 20,000 from the fiscal year 2010 cap. Any H-1B petitions filed on behalf of a worker with an advanced degree will now count toward the general H-1B cap of 65,000.

USCIS will continue to accept both cap-subject petitions and advanced degree petitions until a sufficient number of H-1B petitions has been received to reach the statutory limit, taking into account the fact that some of these petitions may be denied, revoked, or withdrawn.

The recent pace of filings suggests that H-1B numbers may be exhausted for this fiscal year very soon. After that, employers will be left with limited alternatives for hiring skilled foreign nationals when U.S. workers are unavailable until filings for the next fiscal year can be made.

For details, see http://www.uscis.gov/h-1b_count.

3. SEVP Announces New Mailing Address, Phone Number

The Student and Exchange Visitor Program office has a new mailing address. All correspondence should be mailed to: Student and Exchange Visitor Program, Attn: (Branch Name or Job Title), SEVP MS 5600, DHS/ICE, 500 12th Street, SW; Washington, DC 20598-5600. The new main telephone number is (703) 603-3400. E-mail addresses have not changed, so inquiries may be sent to SEVP via its previous e-mail address or via SEVIS.Source@dhs.gov. Also, the ICE Web site (<http://www.ice.gov>) layout has been updated, including the SEVP pages.

For a "faster resolution and response," SEVP recommends the following:

- For *I-901 fee questions, payment issues, transfer fee issues, and chargeback issues*, visit the I-901 section of the SEVP Web site (<http://www.ice.gov/sevis/i901/index.htm>), then e-mail fmjfee.SEVIS@dhs.gov.
- For *I-515A issues*, visit the I-515A Tool Kit on the SEVP Web site (<http://www.ice.gov/doclib/sevis/pdf/I515A%20tool%20kit.pdf>) for quick tips, or e-mail SEVIS.I-515@dhs.gov to ask about documents.

The announcement is available at <http://www.ice.gov/sevis/>.

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4. NEXUS Frequent Border Crossing Enrollment Center Moves

U.S. Customs and Border Protection announced that the enrollment center for U.S. Customs and Border Protection's frequent border crossing program (NEXUS) moved on November 30, 2009, from International Falls, Minnesota, to Fort Frances, Ontario, Canada.

The NEXUS Enrollment Center is now located at 301 Scott Street, Fort Frances, Ontario, Canada P9A 1H1. The hours of operation are Monday and Wednesday, 9 a.m. to 4 p.m., and Thursday, 11 a.m. to 7 p.m.

The NEXUS program allows pre-screened, low-risk travelers to be processed with less delay by U.S. and Canadian officials at designated highway lanes at high-volume border crossing locations. Approved applicants are issued a photo identification/proximity card. Participants present their NEXUS card and make a declaration. They are then released, unless chosen for a more stringent inspection.

Both the U.S. and Canada must approve an individual's application. Denial of an application by either country will prevent an individual from participating in the NEXUS program. NEXUS is a binational program and applicants need to complete only a single application form, which can be filled out online, mailed, or faxed.

Qualified applicants are required to come to a NEXUS Enrollment Center for an interview. Interviews can be scheduled online using the Global Online Enrollment system located on the NEXUS Web site (http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/).

The announcement is available at http://www.cbp.gov/xp/cgov/newsroom/news_releases/11242009_9.xml.

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5. Northern Mariana Islands Transition to U.S. Immigration Law; Guam Also Affected

On November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) transitioned to U.S. immigration law under the Consolidated Natural Resources Act of 2008 (CNRA). Although U.S. immigration law now applies to the CNMI, it will undergo a transition period with temporary measures ending December 31, 2014, to allow for an orderly transition and give individuals time to identify an appropriate visa classification, U.S. Immigration and Customs Enforcement (ICE) announced.

Recognizing that some unique situations would result as the CNMI transitions to U.S. immigration law, ICE said that the Department of Homeland Security may grant parole to applicants for admission on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Parole authority will be used in two specific situations in the CNMI: eligible Chinese and Russian nationals visiting for business or pleasure will be

eligible for U.S. Customs and Border Protection (CBP)-administered parole into the CNMI on a case-by-case basis, and certain affected people, including CNMI permanent residents and various categories of immediate relatives, will be eligible for parole on a case-by-case basis.

The CNRA also contains two provisions that affect the U.S. Territory of Guam: elimination of the current Guam Visa Waiver Program and creation of a new Guam-CNMI Visa Waiver Program, under which eligible nationals of program countries and geographic areas may be authorized to visit Guam and/or the CNMI for up to 45 days; and elimination of the statutory cap on the number of H nonimmigrant worker petitions that can be filed by employers in Guam and the CNMI.

CBP has begun inspecting all passengers arriving at CNMI airports on flights from outside the U.S. CNMI authorities will continue to conduct customs inspections.

Additional information is available at <http://www.ice.gov/pi/nr/0911/091127washingtondc.htm> and http://www.ice.gov/doclib/pi/news/factsheets/cnmi_fact_sheet.pdf.

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6. ABIL Global: Long Stay Business Visas in Australia

The most common visa used to transfer corporate employees to Australia is the Subclass 457 Business (Long Stay) Visa. If granted, the visa enables the visa holder to live and work in Australia for a period of up to four years. Family members are included in the visa grant. Spouses have full work rights.

There are essentially three applications to be made: the Sponsorship, the Nomination, and the Visa Application.

The *Sponsorship Application* is made by the prospective Australian employer to be approved as a Sponsor. In brief, an Applicant for Sponsorship is required to establish that it has been lawfully operating a business in Australia. In certain circumstances, overseas businesses that do not trade in Australia are also entitled to apply for sponsorship. The business must demonstrate a strong record of, or commitment to, local recruitment. Training benchmarks also must be met. If granted, the sponsorship approval is valid for three years.

The approved Sponsor then makes a *Nomination Application*, or Applications, depending upon the number of positions to be filled by the prospective

employee or employees. Only certain positions may be nominated and recent amendments have imposed stringent requirements on the salary levels and conditions of employment that are proposed to be offered to the employee. In essence, the employee should not be employed at a lesser salary or subject to less favorable terms of employment than an Australian hire and the base salary must be equal to or exceed the Temporary Skilled Migration Income Threshold.

If a Nomination Application is approved, the employee is then entitled to file a *Visa Application*. In certain circumstances, the employee will be required to meet specified English language standards.

In practice, all three applications are electronically filed simultaneously. In most cases, the employee is entitled to be in Australia at the time of application.

It should be stressed that there are substantial complexities to this subclass of visa that are beyond the scope of this brief overview.

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Government Agency 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 online:

<https://egov.uscis.gov/cris/processTimesDisplay.do>

Department of Labor processing times and information on backlogs:

<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

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The Alliance of Business Immigration Lawyers (ABIL) is an entity that offers a single point of contact for customer needs, news alerts, staff training and other programs that benefit the client through the collaboration of the 140 member attorneys and their 460 staff. Corporate counsel, human resource professionals, in-house immigration managers and other corporate decision-makers turn to ABIL attorneys for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing

books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' Web site is:

<http://www.abil.com/>.

Disclaimer/Reminder

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