ALERTS AND UPDATES

February Visa Bulletin, EB-2 For China And India Moves 12 Months And Other Immigration Law Updates

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February Visa Bulletin, EB-2 for China and India Moves 12 Months

The employment-based second preference category for Indian and Chinese nationals is scheduled for another significant advancement on February 1, 2012. All applicants who have priority dates on or before January 1, 2010, may submit adjustment of status applications (Form I-485) as soon after February 1, 2012, as possible. Due to the rapid forward movement in recent months, retrogression later in the year is quite possible. In the February 2012 *Visa Bulletin*, EB-3 cut-off dates continue to see slow but steady forward progress.

Employment-Based Preference Category	All Chargeability Areas Except Those Listed	China—Mainland Born	India	Mexico	Philippines
EB-1	Current	Current	Current	Current	Current
EB-2	Current	Jan. 1, 2010	Jan. 1, 2010	Current	Current
EB-3	Feb. 22, 2006	Dec. 1, 2004	Aug. 15, 2002	Feb. 22, 2006	Feb. 22, 2006

USCIS Ameliorates I-601 Waiver Policy for Immigrants Subject to the 3/10 Year Bar

On January 6, 2012, the Obama administration announced a key procedural change for immigrants who are subject to the 3/10 year bars for unlawful presence. In its press release, U.S. Citizenship and Immigration Services (USCIS) stated that it will begin adjudicating I-601 waiver applications at USCIS offices in the United States for these applicants. The rule change will have a significant positive impact on a large group of undocumented immigrants who are eligible for immigrant visas, but who are hesitant to leave the United States for consular processing, for fear that their I-601 waivers will not be granted and they will not be permitted to reenter. Without an approved I-601, these applicants would be required to wait in their home country for three or 10 years, depending on the length of their unlawful presence in the United States.

Under current procedural rules, these applicants may not submit their waiver applications until they have left the United States and have a visa interview at a U.S. consulate in their home country. Under the new proposal, they will be able to have their I-601 waivers pre-adjudicated in the United States prior to leaving, thus eliminating the uncertainty that currently surrounds the process, and encouraging eligible applicants to leave the United States and submit themselves to consular processing abroad to legalize their immigration status.

Five States Add E-Verify Requirements for Employers

On January 1, 2012, several new E-Verify laws became effective. Now many employers in Louisiana, Alabama, Tennessee, South Carolina and Georgia must use E-Verify; however, the terms of the E-Verify requirements vary from state to state. More particularly:

- **Alabama:** The new requirement goes into effect for state contractors on January 1, 2012, and for all employers and business entities on April 1, 2012.
- **Georgia:** The new E-Verify requirement requires employers with 500 or more workers to use E-Verify for their employees, starting on January 1, 2012. As of July 1, 2012, businesses of 100 or more employees will have to start using E-Verify as well, and as of January 2013, all businesses with 10 or more employees will have to use the system. Businesses of fewer than 10 employees are exempt from the E-Verify requirement.
- **Louisiana:** The new requirement applies to private employers who will bid on public entity projects or enter into such contracts on or after January 1, 2012. Under the new law, private employers who bid on or enter into a public entity contract for physical performance of services are required to confirm in a sworn affidavit that the employer is using E-Verify to validate the legal citizen or legal alien status for all employees in the United States. If the employer in question is awarded the contract, he or she has to conduct E-Verify queries for all new hires in Louisiana who will be used for the duration of the contract. This requirement applies to general contractors and subcontractors.

- **South Carolina:** The South Carolina Illegal Immigration and Reform Act requires all employers to enroll in E-Verify effective January 1. 2012, and to verify the legal status of all new hires via E-Verify within three business days.
- **Tennessee:** The Tennessee Lawful Employment Act of 2011 requires all state and local government agencies, as well as all private employers with 500 or more employees, to enroll and participate in E-Verify or request and maintain an identity/employment authorization document from all new hires, starting on January 1, 2012. The implementation date of a mandatory E-Verify requirement for private employers with 200 to 499 employees is July 1, 2012, and for employers with six to 199 employees, the requirement starts on or after January 1, 2013.

Department of Justice Efforts to Curb I-9–Related Employment Discrimination Intensify

In its latest investigation, the U.S. Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Discrimination has announced that it reached yet another "six-figure" anti-discrimination settlement agreement to resolve allegations that an employer had failed to comply with I-9 procedures for noncitizens authorized to work in the United States. The DOJ brought suit against the University of California San Diego Medical Center (UCSD), alleging a pattern or practice of requesting excessive I-9 documentation of non-citizens. Specifically, UCSD allegedly committed "document abuse" by maintaining a policy of requiring legal permanent residents to provide copies of their green cards, even though they had already met I-9 documentation requirements by presentation of a List B (driver's license) and List C (unrestricted Social Security card) document.

Under the settlement, the hospital has agreed to pay $115,000 in civil penalties, one of the highest penalties ever assessed. In addition, the hospital has agreed to give supplemental training to its human resources personnel so that such staff will avoid discriminatory practices in the employment eligibility verification process and work with the DOJ to ensure that fair and legal I-9 procedures are being used across all University of California campuses, medical centers and facilities.

Large healthcare organizations and higher education institutions have been especially targeted by the DOJ during the last 12 months, due to their diverse workforces and multiple hiring sites. All employers should take care to implement I-9 policies and procedures that walk the fine line between verifying employment eligibility and avoiding immigration-related discrimination.

Criminal Penalties Imposed on California Bakery Owner and Manager for Immigration Violations

In a case that has been chronicled in *The New York Times*, Michel Malecot, owner and president of The French Gourmet Inc., was recently sentenced to five years of supervised probation after pleading guilty to knowingly employing several undocumented workers over an extended period of time. Malecot was also

held responsible for paying a financial penalty of $396,575, including fines and forfeiture of profits earned through the work of undocumented employees. In addition, manager Richard Kauffmann, who pleaded to the same charge as Malecot, was sentenced to three years of supervised probation and fined $2,500.

The bakery, a longtime fixture in La Jolla, Calif., had been subjected to a four-year probe by the U.S. Department of Homeland Security, including several immigration raids, which uncovered undocumented workers on the premises. In addition, Malecot had ignored Social Security no-match letters, failed to complete I-9 forms and ignored other signs that his staff consisted of undocumented workers.

Like the Department of Justice, Homeland Security is using all tools at its disposal to penalize guilty employers and discourage others from employing undocumented workers. In other investigations, employers have served significant jail time and have been required to forfeit large amounts of personal and business property.

About Duane Morris Institute

On February 15, 2012, the Duane Morris Institute is presenting a one-hour webinar on "I-9 Self-Audits," discussing the basics of conducting an in-house I-9 audit, including what the audit should cover; who should conduct it; how and which I-9 corrections can be made; and how to document the audit results.

The Duane Morris Institute provides a wide range of training workshops, focused on employment, labor, benefits and immigration issues faced by human resources professionals, in-house counsel, benefits administrators and other senior managers.

For Further Information

If you have any questions about this *Alert*, please contact any of the attorneys in our Employment, Labor, Benefits and Immigration Practice Group or the attorney in the firm with whom you are regularly in contact.