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## Immigration eNews

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### **New PIMS System Could Mean Longer Visa Processing Times at Consular Posts**

The Department of State (DOS) has recently started requiring that before a visa is granted, the U.S. Embassy or Consular Post must first confirm the validity of the petition through the United States Citizenship and Immigration Services' Petition Information Management System (PIMS).

Under PIMS, I-129 petitions (which include H-1B and L petitions among others) requesting consular notification as the procedural benefit (not an extension or a change of status at this time) are sent to the Kentucky Consulate Center (KCC) after approval. The KCC enters key data from the petition into PIMS and scans in key documents such as I-129 form, employer support letter, and identification documents of beneficiary. The KCC also performs some database checks looking for evidence of fraud, violations, or other adverse history and records its findings in PIMS. When a consular post is ready to grant a visa based on a petition, it must first confirm the petition in PIMS before issuance. When a consular post does not find a petition in PIMS, it must send an email to the KCC requesting the key data. Until the consular post sees the petition in PIMS, the visa cannot be granted.

The DOS has indicated that the KCC is responding to the posts' inquiries within 48 hours, however, there have been reports of longer delays. Visa applicants should anticipate a possible delay in the issuance of visas due to the implementation of PIMS.

### **No April Fools! Don't Let Your Employees be Victims of the H-1B Cap**

April 1, 2008 is fast approaching. It is the first day the United States Citizenship and Immigration Service (USCIS) will receive H-1B petitions on behalf of foreign nationals who need H-1B status with a start date of October 1, 2008, which would include individuals who have never had H-1B status before, and most commonly students in J-1 or F-1 status.

The federal government's 2009 fiscal year commences on October 1, 2008, and H-1B petition may be filed with the USCIS no earlier than six months prior to the requested start date, therefore, H-1B petitions may be filed on April 1, 2008 requesting a start date of October 1, 2008.

Last year, the annual cap of 58,200 available H-1B numbers was reached in record time, on the very first day the USCIS began accepting H-1B petitions. As the USCIS received over 120,000 H-1B petitions within the first day, the USCIS resorted to a "lottery" system to determine which of the petitions would be accepted under the cap. Therefore, even if a petition was received on the very first day of filing, there was no guarantee that the petition would be accepted for processing. Further, the additional 20,000 available H-1B numbers for those who possess a master's degree or higher from a U.S. educational institution were also used in record time—within several weeks of the first day of accepting petitions. Accordingly, even if a student has Optional Practical Training and a valid Employment Authorization Document (EAD) until May 2009, an employer still needs to seriously consider filing an H-1B petition on the student's behalf for an April 1, 2008 receipt date. If an employer waits too long to file an H-1B petition on behalf of a student who has an EAD valid until May 31, 2009 and is caught outside of the 2008 H-1B cap, the employer will then have to wait until April 1, 2009 to file an H-1B petition (seeking an October 1, 2009 start date). The student in this situation would not be eligible to work from June 1, 2009 through September 30, 2009 (assuming the H-1B petition was selected and approved). While filing early for H-1B status may result in the loss of a student's Optional Practical Training time under an EAD, the employer can try to avoid a situation where the employee may have to stop working for several months and might even have to leave the U.S. for some period of time.

### **Reminder-Employers Must Use New I-9 Form**

As of December 26, 2007, employers who fail to use the revised form will be subject to applicable penalties.

Both the revised form and the "Handbook for Employers, Instructions for Completing the Form I-9" are available online at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. In addition, the related USCIS fact sheet which details the changes is available at <http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf>. To order forms, call USCIS toll-free at (800) 870-3676.

### **Update Regarding Department of Homeland Security's E-Verification System for Employers**

E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees.

For employers with multiple sites, the DHS has recently indicated that one site may verify new hires at all sites. When registering, the individual at the site that will be verifying new hires should select "multiple site registration" and give the number of sites per states it will be verifying. For further information regarding how employers can register and frequently asked questions regarding the DHS' E-verification system, please visit [www.dhs.gov/E-verify](http://www.dhs.gov/E-verify).

### **Travel Reminder for Canadian Citizens Traveling to the U.S.**

As of January 31, 2008, Canadian Nationals traveling to the U.S. by air must present a passport in order to enter the U.S. If traveling by land, Canadian Nationals must present a government issued ID and a birth certificate/citizenship card; or, a valid passport; or a NEXUS or a Free and Secure Trade card.

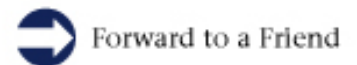
### **Visa Bulletin for January 2008**

The Immigration and Nationality Act (INA) sets an annual minimum for both family-based and employment-based immigrant visas ("green cards"), prescribed by categories and per-country limits. A prospective immigrant can apply to become a permanent resident only when a visa number is available in his/her respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers, listing the cut-off priority. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

The complete Visa Bulletin is available at the Department of State's website at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3841.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3841.html) Below is an excerpt from the January 2008 Visa Bulletin pertaining to the employment-based categories.

	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01JAN03	01JAN00	C	C
3rd	15 OCT02	01NOV01	01MAY01	22APR01	15OCT02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

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