



Monthly News Update

Issue No.: June – July 2004

General News Update

Illinois Drivers License Bill Passed by Senate

The Illinois Senate recently passed a bill which would authorize foreign nationals who are legally present in the U.S., but who are ineligible to obtain a Social Security Number to obtain a temporary Illinois driver's license. As mentioned in the Website Update for week of April 12, 2004, this bill would allow the Illinois Secretary of State to issue a temporary driver's license to foreign nationals who are authorized by the U.S. Citizenship and Immigration Services (USCIS) to be lawfully present in the U.S. which would be valid for three years or for the period of time the individual is authorized to remain in the country, whichever ends sooner. If the bill is signed into law by the Governor of Illinois, it will allow many foreign nationals (including the dependents of H-1B nonimmigrants and F-1 students) to obtain a temporary Illinois driver's license even though they do not have employment authorization in the U.S. Currently, only foreign nationals who have employment authorization in the U.S. are able to obtain a Social Security Number, which is a prerequisite to obtain a Illinois driver's license. This bill will alleviate the hardship encountered by many foreign nationals in Illinois who have been precluded from obtaining an Illinois driver's license because they cannot obtain employment authorization from USCIS, even though they are legally residing in the U.S. However, at the present time, no information has been provided regarding how the provisions of this bill would be implemented if it becomes law. Therefore, the procedures and processes in obtaining a temporary Illinois driver's license pursuant to this bill remains to be seen. The status of the bill and information related to its implementation will be provided in future website updates when such information is made available.

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Immigration Law

OMB Completes Review of EAD Validity Regulation

The review by the Office of Management and Budget (OMB) of an interim final rule to change the validity period of certain Employment Authorization Documents (EADs) was completed on June 2, 2004. This rule, however, has not yet been published in the Federal Register. Accordingly, no changes are in effect as of this writing.

This interim final rule probably deals with the issue of increasing the validity timeframe for an EAD from just one year to up to 2 years. The annual renewals of the EAD are disruptive, time consuming, and expensive for all parties concerned - the employee, the employer, and the USCIS officers whose time and resources are being expended on the renewal process instead of the faster processing of other petitions and applications. Increasing the validity times for the EAD makes sense when the estimated processing time for the I-485, for example, has been exceeding 2 years at most USCIS Service Centers.

It appears that the OMB had a change to the interim final rule, but the nature of the change is, as yet, unclear. If the USCIS accepts this change, the interim final rule may be published soon. If they do not accept the change, it may still be some time before publication.



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InfoPass Expanding around the U.S.

The USCIS announced in early June 2004 that the InfoPass appointment system will continue to expand. The system is targeted for a July 31, 2004 start date in Baltimore and other USCIS offices along the east coast. According to the announcement, the program is expected to be in effect throughout the United States by the end of the year.

InfoPass is an online appointment system, designed to enhance the ability to communicate with the local USCIS offices about case-related matters. It also applies to appointments for requesting interim Advance Parole and Employment Authorization Documents. Currently, in most offices, the procedures involve long waiting lines and no system for setting an appointment.

The USCIS offices will have kiosks available for those without Internet access to set appointments. As we noted previously, many public libraries provide Internet facilities, often free of charge. One might also check with various ethnic community organizations and immigrant support groups that work to provide such access.

The ability to make an appointment will be an enormous benefit for all. The queues for waiting at some local USCIS offices tend to be extremely long. An appointment system will benefit everyone, including the USCIS employees who have had to face tired, frustrated individuals who may have waited outside in the elements for hours to ask a simple question. It appears there will be provisions for emergencies when it may be impossible to schedule an appointment ahead.

Green Card Replacement Pilot Project

There is yet another 2004 pilot project designed to enhance efficiency at the USCIS. Under this pilot program, it will now be possible to obtain a replacement or renewal of the I-551 card or "green card" in Los Angeles within less than a week.

The form that is used to request replacement for lost green cards or renewals for expiring green cards is the Form I-90. The I-90 typically takes substantial time to process, often in excess of a year. Under the pilot project, the application will be made electronically via the USCIS WebSite. Once the application is filed, the individual will simply make an appointment at the Application Support Center (ASC) nearest his/her residence for further processing. The appointments are made through a toll-free number provided on the transaction receipt given after the application is filed. At the appointment, the I-551 card or "green card" will be ordered by the ASC and should arrive in the mail in less than a week.

This pilot program is available only to people normally serviced by the Los Angeles District Office. It is scheduled to end on September 30, 2004. Eligible individuals with pending I-90s may wish to re-file using the new system. We note that electronic filing is not available to persons whose need is for new green cards because they have turned 14 years of age. Therefore, the program is not available for these renewal I-551 cards.

Although not stated specifically, we presume that, as with all pilot programs, if this trial is successful it would likely expand to other locations. If replacement green cards could be processed more quickly, it would reduce the need for obtaining temporary evidence stamps in passports as proof of status while waiting for the replacement card to allow one to work and travel without problems. This would decrease the number of people appearing at the local USCIS offices, taking up USCIS officers' time to obtain reissued temporary evidence stamps.



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Recent DOS Developments

We want to update with readers on some recent developments with respect to the U.S. Department of State (DOS) and visa issuance worldwide. Secretary of State Colin Powell reported that the number of persons filing for tourist visas has begun to rise once again. This number had dropped significantly after September 11, 2001. He also commented that the number of persons seeking student visas continues to increase, but at a slower rate of increase than in previous years. Secretary Powell encouraged DOS employees to help make the student visa process easier for applicants, in order to assure that coming to the United States to study remains an attractive option for those seeking outstanding educational opportunities.

In the June 2004 edition of the DOS magazine, Secretary Powell commented on these recent trends and developments. While recognizing that an increase in visitors and students is good for the United States, Secretary Powell indicated that security remains the top priority. The DOS provided its TIPOFF terrorist database as the basis for a national terrorist watch list. Fingerprinting at the consulates continues to increase. It is projected that all consular posts that issue visas will have fingerprinting facilities by November 2004.

PERM Update – May 2004

William Carlson, Chief of the Alien Labor Certification Unit at DOL, stated that he could not give a definite date that PERM will be published, but he expects it to be in the very near future. At that time, a date of implementation for PERM will be included. His expectations are still that this will be 120 days after the publication date. During that 120 days, the DOL plans to hold four training meetings throughout the United States to answer immigration attorneys' questions regarding the processes and procedures of the PERM system. There will be two PERM centers, one in Atlanta and one in Chicago, to handle central processing for all PERM cases. Mr. Carlson indicated that most of the input needed by the DOL and other affected agencies has already been obtained. It is not clear exactly how soon publication might occur. Indications are that it will not be before the AILA national conference in mid-June 2004 but that it will likely be before the end of this summer.

Harry Scheinfeld, Solicitor for the ETA at DOL, mentioned that the earlier expectation of PERM cases being processed within 21 days of filing is probably unrealistic, though he could not comment on what the processing time might be. He assured those of us in attendance that PERM processing times would be shorter than current labor certification processing times. One reason that the 21-day turnaround will not be feasible is that fraud detection and prevention cannot be reasonably accommodated in this timeframe. Mr. Carlson added that it is likely that the PERM regulations will contain strong penalties against those employers or employees who commit fraud in the Labor Certification processing under the PERM program.

Many individuals are under the impression that cases filed under regular processing and RIR processing now may be simply "converted" to PERM processing. Mr. Scheinfeld explained that the cases are not actually converted, though the processing date (priority date) for the previously filed regular or RIR labor certification case may be transferred to the newly filed PERM case after PERM becomes implemented. The PERM case, however, must independently be approvable. There were some questions about the mechanism for filing a new case under PERM, preserving the priority date while also preserving the prior regular or RIR filing until a decision is made on the PERM case. There was some conflict and uncertainty in the answers given. This is likely to be an important issue for those considering changing their cases over to PERM because many people will not want to risk an existing, approvable case and file under PERM only to be denied, since the criteria may be stricter under PERM.



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LC/RIR Backlog Reduction Program

Mr. Carlson announced that the DOL is opening two Backlog Reduction Centers in Dallas and Philadelphia. Together, these centers will handle about 300,000 backlogged cases. These centers will be managed with the help of private contractors with adequate supervision by DOL personnel as required by law. As with all new staff, it will take time to train these individuals in the labor certification process. The cases will be selected from across the country on a first-in / first-out basis. Therefore, it seems that most of the cases would be coming from those areas most backlogged. The DOL indicated a goal of clearing all labor certification or RIR case backlogs within two years of PERM's implementation.

DOL and USCIS Discussions

There was some discussion about how the forward movement and increased speed in labor certifications would impact the workload of the USCIS. There are apparently ongoing discussions related to this, but no insight into any further changes at USCIS was provided. Clearly, if PERM becomes reality and the currently pending labor certifications start moving more rapidly, the workload of USCIS in terms of I-140/I-485 filings will spike significantly, at least in the near future, just as the USCIS starts streamlining its processing procedures for concurrently filed cases.

Central Processing Group

As many readers know, the DOL had an experimental labor certification processing unit known as the Central Processing Group (CPG). Charlene Giles shared an update with us on the CPG processing. The CPG stopped its operations on December 31, 2003, but it still had the 3,000 cases from some of the highest volume labor certification areas in the country. These cases were then sent to the DOL national headquarters for final resolution. Ms. Giles reported that all of these cases should be returned to their regions or states within the next few weeks. Some of the cases will still require additional action at the state or regional level. The DOL stated that they learned a great deal of valuable information from the CPG experiment, but will not use most of its methods in the new Backlog Reduction Centers. It appeared that most of what was learned was instructive as to how not to conduct central processing of labor certification cases.