



Immigration Update

—SPRING 2007

Leete, Kosto & Wizner, LLP

Practice Limited to Immigration Law

Leete, Kosto & Wizner, LLP is pleased to provide clients and friends with information about recent changes in immigration law.

We limit our practice to immigration law.

Please feel free to contact one of our attorneys with any related questions or to schedule a consultation:

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Employers Should Act Now for H-1B Numbers

Employers who file H-1B petitions with United States Citizenship and Immigration Services (USCIS) on or shortly after April 2nd will have the best chance to secure one of the available H-1B numbers for new H-1B workers. Following USCIS approval of these petitions, the employee-beneficiaries may commence work on October 1, 2007, the start of the new fiscal year.

The H-1B program allots 65,000 temporary visas each year for foreign professionals to fill "specialty occupations," jobs that require at least a bachelor's degree or the equivalent in a field of study related to the job duties. Examples include doctors, engineers, IT professionals, professors, and researchers in a wide variety of fields.

In 2005, Congress exempted 20,000 additional H-1B visas from the 65,000 cap for petitions filed on behalf of employees who have earned an advanced degree in the U.S.

Completely exempt from the numerical cap, however, are petitions on behalf of employees who will work for or at institutions of higher education or nonprofits affiliated with such institutions, nonprofit research organizations or governmental research organizations.

USCIS Proposes to Hike Filing Fees Significantly

On January 26th, USCIS announced that it intends to raise filing fees for most immigration applications. The proposed increases are dramatic. For example, the fee to file a petition for most temporary workers would increase from \$190 to \$320, for fiancé visas from \$170 to \$455. Fees for Applications to Adjust Status (for the "Green Card") filed by adults would increase from \$395 to \$995, and applications by children under 14 would increase from \$225 to \$805. Fees for citizenship applications would rise from \$400 to \$675.

In a related development, on March 7th, Senators Obama (D-IL), Menendez (D-NJ), Salazar (D-CO), and Bingaman (D-NM), and Representatives Gutierrez (D-IL), Honda (D-CA), Abercrombie (D-HI), Grijalva (D-AZ), Schakowsky (D-IL), Solis (D-CA), and Pastor (D-AZ) introduced The Citizenship Promotion Act of 2007, which would keep USCIS from raising its already-substantial fees until Congress develops an appropriate fee structure.

Critics protest that such high fees will deter naturalization and other legal applications. Leete, Kosto & Wizner, LLP will be submitting comments opposing the proposed fee increases.

Petitioning for a Foreign Spouse When You Live Abroad

Until recently, a U.S. citizen living in a foreign country who sought to obtain a permanent visa (Green Card) for a spouse could file a Petition for Alien Relative at a U.S. consulate abroad. However, in January 2007, the Department of State announced that the Adam Walsh Child Protection and Safety Act (enacted in July 2006) precluded U.S. consulates from accepting immediate relative petitions.

USCIS announced that U.S. citizens who live abroad must instead file petitions with a USCIS international office. A list of offices and the countries they serve may be found at <http://www.uscis.gov>. U.S. citizens living in the U.S., even if they travel overseas, must always file with a regional USCIS Service Center in the U.S.

Program for Doctors Extended

President Bush has signed the "Physicians for Underserved Areas Act", which reauthorizes the waiver of the two-year home-stay requirement for foreign doctors who came to the U.S. for training on an exchange visitor program requiring them to return to their home country for two years after completion. Each doctor must agree to work in a medically underserved area of the U.S. for three to five years.

USCIS Visiting Work Sites of Petitioners

USCIS recently initiated random audits of petitioners who filed petitions on behalf of H-1B and L-1 workers. It is reported that USCIS has contacted over 200 work sites, including those of well-established companies, generally to check on wages and work duties.

The agency has also announced that all petitioners seeking temporary work authorization for religious workers must be visited before their petitions can be approved. It is expected that the new policy will result in lengthy processing delays. The new directive followed a fraud assessment by USCIS.

China Restricts Adoptions

Effective May 1, 2007, parents wishing to adopt a Chinese baby will be subject to new criteria to determine their eligibility. The parents must be heterosexuals in a stable marriage, aged 30 to 50 (55 for special-needs children), have a high school or equivalent vocational education, be mentally and physically fit, have a family income of \$10,000 per family member (including the new baby) and have no more than five other children under 18, have no or a minimal criminal record, and meet other more subjective requirements as stipulated by the Chinese government. These criteria will be subject to change.

I-9 Employment Verification ALERT!

After years of paying minimal attention to the laws against employing illegal aliens, U.S. Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security, has been taking aggressive action. Congress has provided new funding for audits, and employers of low-wage workers are likely to be among the first targets. ICE is selecting employers for audits, either as a result of complaints by U.S. workers or on the basis of a profile. Upon starting an audit, ICE can work with the Social Security Administration to obtain access to "no-match letters". Undercover agents have in some cases posed as job applicants to obtain incriminating evidence using hidden wires. The agency is filing civil charges not only against corporate entities, but also against directors and officers, since knowledge of lower-level employees is imputed to company leadership.

Employers may prepare for an inspection by conducting a professional audit of I-9 forms and compliance systems.

Fast-Track for FOIA Requests

Individuals who request access to their immigration files through the Freedom-of-Information Act (FOIA) often must wait more than a year for the government to respond.

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USCIS recently introduced a new two-tier system, effective March 30. The new 'Notice to Appear' FOIA track will be established for individuals who are scheduled to appear before an immigration judge. To be placed in the new track for accelerated access to their file, requesters must provide one of four specified documents that prove that the individual is in immigration court proceedings. Such individuals, or their representatives, may submit a FOIA request to USCIS seeking access to their files using a letter or a FOIA/Privacy Act request form.

PERM Update

The Department of Labor (DOL) has been slowly improving the operation of the PERM online system, which is the standard method for obtaining approval of an Application for Permanent Employment Certification. DOL implemented the new system on March 28, 2005. Touted as a streamlined, fast, online process intended to reduce agency backlogs, the new program experienced serious processing issues in its first months of operation.

Labor Certification is often the first of three steps towards obtaining status as a lawful permanent resident ("Green Card" holder) for many intending immigrants. First, the employer must obtain a certified Application for Permanent Employment Certification (ETA-9089).

Through this process, the employer requests the DOL Employment and Training Administration to certify that there are no qualified U.S. workers available in the geographic area of intended employment. Second, the employer must file an Immigrant Petition for Alien Worker (I-140). Third, the foreign worker either submits an Immigrant Visa Application (DS-230) to the U.S. Consulate or, if present in the U.S., an Application to Adjust Status (I-485) to the USCIS.

Our experience to date indicates that the new PERM program significantly reduces processing times in the first step of the green card process by virtue of its increased automation.

New Passport Requirement for U.S. Citizens and Others Arriving by Air from within the Western Hemisphere

As of January 23, 2007, every person entering the United States by air from within the Western Hemisphere will be required to present a valid passport.

Passport application fees are \$97 for adults and \$82 for children under 15.

Previously, travelers arriving from other continents were required to

present valid passports when entering the United States. The law exempted U.S. citizens from this requirement if arriving from countries within the Western Hemisphere (other than Cuba). Canadian citizens or citizens of Bermuda entering by air previously were not required to present passports when entering the United States as visitors from countries in the Western Hemisphere. Mexican citizens arriving in the United States by air at ports-of-entry also had been allowed in certain circumstances to enter without presenting valid passports if they were coming from Canada or Mexico.

The new passport requirement applies to all travelers who enter the United States by air. It does not yet apply to United States citizens and nonimmigrants from Canada, Bermuda, and Mexico who arrive at land and sea ports-of-entry. New requirements for land and sea ports-of-entry will be addressed in a future rule.

The Department of Homeland Security announced it will propose allowing children under 16 with parental consent, and children, ages 16 through 18, traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth-athletics organizations, to cross the land and sea borders with a certified copy of a birth certificate. A passport would still be required for air travel.

Leete, Kosto & Wizner, LLP provides a wide range of immigration legal services to businesses and individuals throughout the United States and around the globe. The firm's five attorneys limit their practice to immigration law.

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Partners Listed in "Best Lawyers" Survey

The editors of *The Best Lawyers in America* have announced that three partners of the firm of Leete, Kosto & Wizner LLP have been selected for inclusion in the 2007 edition.

Elizabeth Leete, Andrew Wizner, and Eric Fleischmann have all been selected by their peers as leading practitioners of immigration law.

Meet your Immigration Department



From left to right: Virginia Carstens, Elizabeth Leete, Andrew Wizner, Gale Kosto, and Eric Fleischmann

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