



# *Immigration Update*

FALL 2006

## **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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### **Diversity Visa Lottery**

The Department of State will accept applications for the 2008 Diversity Visa Lottery until noon EST, Sunday, December 3, 2006. The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for diversity visas. The visas, however, are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the U.S. over the period of the past five years.

This year, persons born in the following countries are ineligible to apply for Diversity Visa Lottery, unless the applicant's spouse was born in an eligible country: Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Applications must be filed online. Instructions on applying for the 2008 Diversity Visa Lottery may be found online at:  
[www.travel.state.gov/visa/immigrants](http://www.travel.state.gov/visa/immigrants).

### **Plan Now to File H-1B Petitions for FY2008**

*The time to plan is now!* The H-1B "blackout" will end on October 1, 2007. Employers may file up to six months in advance. April 1, 2007 is the first day that H-1B petitions may be filed for work start dates commencing October 1, 2007.

Why are there no H-1B numbers available now? On May 26, 2006, U.S. Citizenship and Immigration Services ("USCIS") announced that it had received enough petitions to exhaust available H-1B numbers for FY2007, which runs from October 1, 2006 through September 30, 2007. USCIS subsequently announced that, as of July 26, 2006, petitioners had also used the 20,000 H-1B numbers exempt from the 65,000 cap that are available to beneficiary-employees who earned a graduate or advance degree from a U.S. institution of higher education.

Through the H-1B program, U.S. employers are able to hire, on a temporary basis, highly educated foreign professionals for "specialty occupations"-- jobs that require at least a bachelor's degree or the equivalent in the field of specialty. Examples include doctors, engineers, professors and researchers in a wide variety of fields, accountants, medical personnel, and computer scientists.

## **DHS Unveils New Interior Enforcement Strategy**

Recently, DHS Secretary Michael Chertoff and Julie Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement (“ICE”), unveiled a new strategy to expand interior enforcement efforts. Known as the second phase of the DHS Secure Border Initiative, it will target employers of undocumented aliens, immigration violators inside the U.S., and criminal networks.

The announcement followed earlier employer raids that made national headlines and resulted in the arrests of over 1,000 alleged undocumented workers, and the arrest and criminal indictment of several corporate managers.

Since DHS announced its intent to beef up interior enforcement as part of the Secure Border Initiative, ICE has been conducting additional sweeps in communities in various parts of the country. Employers should ensure that their employment verification forms are completed properly for each employee.

## **USCIS Checks Criminal History of Petitioners**

The new International Marriage Broker Regulation Act (IMBRA) requires the USCIS to ask K-1 fiancé(e) petitioners for their criminal background information. Congress enacted the law to help prevent domestic violence and spousal abuse.

## **Employers May Electronically Sign and Retain I-9 Forms**

U.S. Immigration and Customs Enforcement recently published an interim rule which permits employers and recruiters or referrers for a fee who are required to complete and retain Forms I-9, Employment Eligibility Verification, to sign and retain these forms electronically. The interim rule implements statutory changes to the Form I-9 retention requirements by establishing standards for electronic signatures and the electronic retention.

## **H-2B “Returning Worker” Exemption Remains in Effect**

U.S. Citizenship and Immigration Services (USCIS) announced on October 26, 2006 that the “returning worker” exemption to the H-2B numerical limitation will remain in effect until September 30, 2007. The program provides 66,000 visas each fiscal year.

The H-2B program is available for individuals who will provide temporary or seasonal services to an employer. Employers must prove that U.S. workers are unavailable.

A returning worker, exempt from the cap, is defined as a worker who counted against the H-2B annual numerical limit during any one of the three fiscal years preceding the fiscal year of the requested start date.

## **USCIS Offers Faster Processing – For a Fee**

USCIS recently expanded the availability of its premium processing service, which provides a 15-calendar-day adjudication of designated petitions. The agency’s premium processing unit now accepts I-140 Petitions for Immigrant Workers for certain categories of beneficiaries. This development may assist companies in retaining talented professionals. Employees in the H-1B category are subject to a six-year limitation of stay, subject to certain exceptions. If the USCIS approves an Immigrant Petition (Form I-140) filed on behalf of an H-1B worker, and immigrant visas are unavailable in their classification, then the employer may petition to extend their stay for additional three-year increments beyond the six-year limit. Premium processing is available for an additional filing fee of \$1,000.

## **New Passport Requirements for Visa Waiver Travelers**

The Visa Waiver Program (VWP) permits citizens of 27 countries to travel to the U.S. for business or pleasure without first applying for a B-1/B-2 visitor visa at a U.S. Consulate. New passport requirements entered into effect for these travelers. Any passport issued on or after October 26, 2006 by a VWP country must be an e-Passport for travelers to be eligible to enter the U.S. without

a visa. E-Passports are not required until the traveler's existing passport expires in the following cases: a VWP traveler with a valid, machine-readable passport with a digital photograph where the passport was issued prior to October 26, and a VWP traveler with a valid, machine-readable passport without a digital photograph where the passport was issued prior to October 26.

## DOL Updates Status of Pending Labor Certification Applications

On March 28, 2005, the Department of Labor introduced a new labor certification program, known as PERM, and transferred all Labor Certification Applications pending as of that date to two Backlog Elimination Centers ("BECs"). Until recently, applicants and beneficiaries could not check the case status.

The DOL has updated its website to include an on-line BEC case status system, which is available at <http://workforsecsecurity.doleta.gov/foreign/times.asp>. The site contains a link to the Backlog Public Disclosure System, which may be used to determine the status of an application filed at a BEC. The site will indicate whether the case is "in data review", "in process" or "certified".

Applicants should immediately contact the BEC if they have had no communication regarding their application.

## PERM Update

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

Labor Certification is often the first of three steps towards obtaining status as a lawful permanent resident ("green card") 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 reduces processing times in the first step of the green card process by offering increased automation. DOL

adjudicates most applications within ten days to five months. In the previous program offered certifications took from one to three years or more.

The new regulation requires employers to conduct pre-filing recruitment for the position, including two Sunday advertisements and a job order with the State Workforce Agency. Employers of professionals must also conduct three additional forms of recruitment. The DOL requires employers to retain evidence of the recruitment efforts for a period of five years. Unlike the previous program, approvals under the new program are subject to a paper-based audit while the application is in process or following adjudication.

## Social Security Cards for E and L Spouses

The Social Security Administration recently updated its guidance concerning issuance of social security cards to spouses of E (treaty trader or investor) and L (intracompany transferee) nonimmigrants. The new guidance states that spouses are not required first to apply for an employment authorization card through USCIS in order to obtain a social security number. These individuals must submit proof of marriage to an E or L principal. The SSN card issued to an E or L spouse will state that it is "valid for work only with DHS authorization," which is the same restriction imposed on other nonimmigrants.

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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## **Virginia Carstens Joins Leete, Kosto & Wizner**

We are pleased to announce that Virginia Carstens joined the firm as an Associate Attorney. She received her bachelor's degree, cum laude, from Bryn Mawr College and her J.D. from Northeastern University School of Law.

Ms. Carstens has extensive experience representing non-citizens in immigration court.

## **Don't Forget: We've Moved!**

We're very happy in our new office space located on Asylum Hill in Hartford. Since June 5th, our new address is:

Leete, Kosto & Wizner, LLP  
999 Asylum Avenue, Suite 202  
Hartford, Connecticut 06105

Our phone and e-mail contact information have not changed.

## **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.