

## IMMIGRATION UPDATES – TRUMP ADMINISTRATION CHANGES

(Updated 9/04/17)

### Increased Visa Scrutiny at Consulates:

- In August 2017, the U.S. Department of State made several revisions to the Foreign Affairs Manual (FAM) that are a direct result of the President's "Buy American and Hire American" Executive Order. The revisions appear to instruct officers to apply a more rigorous standard to determining whether an applicant meets the requirements of the visa category.
- The Executive Order impacts E-1, H-1B, L-1, O-1, and P visas and reiterates the protection of U.S. workers and protection of the immigration system from fraud or abuse.
- Employers should be aware that their employees may encounter increased scrutiny at the visa interview and prepare for potential setbacks for *all* visa application types, including TN (Mexico) and B visa applications.
- F-1 visas are also affected by new language giving officers more discretionary power to deny student visa applications if the officer is not "satisfied" with the applicant's evidence that he/she intends to depart the U.S. at the conclusion of his/her study or OPT.

### Expansion of In-Person Interviews for Certain I-485 Cases:

- Effective October 1, 2017, CIS will begin to phase-in interviews for Adjustment of Status applications (Form I-485 applicants) for employment-based green cards.
- This reverses the long-standing trend to waive such interviews except for unusual circumstances.

### Increase in L-1A and L-1B Delays and RFEs:

- CIS has recently begun to issue RFEs for a significant portion of L-1A and L-1B petitions, often resulting in denials (apparently impacting more than 60% of the petitions filed). For the L-1A and L-1B petitions, the issuance of these RFEs impacts the timeline for transferring managers and specialized knowledge employees to operations in the U.S.

### Increase in EB-1 Manager Delays and RFEs:

- The increase in RFE issuance has also been seen for EB-1 (green card) Manager and Executive Transferees during the employment based I-140 phase.
- These cases have become a more drawn-out and slower process. Premium processing is not available for these petitions.
- For example, the delays have been so significant that the Nebraska Service Center is currently processing EB-1 I-140 petitions from June 2, 2016, according to CIS.

### H-1B Wage Level I RFEs:

- CIS has issued widespread Requests for Evidence (RFEs) for H-1B petitions in which the service is either (1) claiming that a Level I wage is not appropriate given the complexity of the job duties listed on the petition, or (2) claiming that the position is not a specialty occupation because the Level I wage indicates that the position is "entry-level."
- The widespread issuance of these RFEs comes only a few months after CIS issued a new policy guidance on March 31, 2017, which raised questions as to whether an entry-level wage implies that the position is not a "professional" position, specifically with regard to computer programmers.

#### Reversal of Prior Practice and I-131 Denials:

- CIS has recently begun denying Form I-131 advance parole applications for abandonment in instances where the applicant traveled abroad during the pendency of the application, even in cases where the applicant had a separate valid advance parole document or valid H, K, L, or V visa to return to the U.S.
- By long-standing policy, CIS had approved advance parole renewal applications for individuals who traveled abroad during the pendency of the application with a valid Advance Parole Document or a valid H, K, L, or V visa. There is no discernable or logical reason for the policy change.

#### Reversal of DACA (Deferred Action for Childhood Arrivals):

- On September 3, 2017, national news services reported that the Trump Administration decided to end the DACA program which shields illegal immigrants from deportation and allows them to work and study *as long as they arrived as children*. Over 800,000 applications for DACA benefits (including work authorization) have been approved since its implementation.

#### U.S. Suspends Nonimmigrant Visa Issuance in Russia:

- On August 21, 2017, the U.S. Embassy in Russia announced that it would suspend the issuance of nonimmigrant visas (i.e. H-1B, L-1, or E visas) for 8 days starting on August, 23, in response to the recent Russian decision to reduce U.S. diplomatic staff.
- Employers should expect visa wait times to grow from 2 months to 5 months or more – currently all nonimmigrant visa appointments must be made in Moscow.
- Foreign nationals who have visa appointments can expect current appointments to be cancelled and could need to be rescheduled in Moscow or another country accepting jurisdiction over Russian nationals, depending on availability.

#### Proposed Changes to J-Visa Program:

- On August, 27, 2017 the *Wall Street Journal*, reported that a White House memo has proposed the complete elimination of the summer work travel, **intern, trainee**, and au pair programs.
- The J-1 visa program also includes 10 other categories that do not involve work, such as college students, which are not believed to be under review.

#### Renegotiate NAFTA

- Since his campaign, President Trump has consistently called NAFTA the “worst trade deal” that the U.S. has ever signed. The President has repeatedly stated his intentions to renegotiate the agreement.
- For immigration purposes, renegotiation of NAFTA could impact the processes and procedures for obtaining TN visas, B-1 visitor visas, and the ability of Canadian citizens to submit L-1 intracompany transferee petitions directly at U.S. ports of entry and pre-flight inspection stations.