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USCIS Proposes Fee Increase

In June, 2010 the United States Citizenship and Immigration Services (USCIS) announced it was seeking public comment on a proposed federal rule that would increase overall fees by a weighted average of about ten percent. According to USCIS, the fee increase is needed in order to close a projected \$200-million deficit for 2010-11. USCIS stated that its budget cuts of \$160 million were not enough to offset the gap between the agency's projected \$2.1 billion in revenue and \$2.3 billion in costs.

While the 10% increase may seem modest, it comes on the heels of 66% increase in immigration fees only three years ago. When added together, the increase is being deemed excessive by many especially considering

the quality and efficiency of service provided by USCIS.

One positive aspect of the proposal is that USCIS is not proposing an increase in fees for citizenship applications. Fees for citizenship applications were increased by 70% in 2007 and thus will not increase in the current proposal.

Examples of some of the proposed increases for some common immigration applications are: I-129 (Petition for Nonimmigrant worker) from \$320 to \$325; I-140 (Immigrant Petition for Alien Worker) from \$475 to \$580; I-130 (Petition for Alien Relative) from \$355 to \$420; I-765 (Application for Employment Authorization) from \$340 to \$380; I-90 (Application to Replace Permanent Resident Card) from \$290 to \$365.



USCIS will seek an average 10% increase in immigration fees in order to close a projected \$200 million deficit for 2010-2011

Our Firm Can Assist With:

- Employment based immigrant and nonimmigrant petitions
- Family based immigrant petitions
- Naturalization Applications
- Follow up with USCIS on pending petitions
- I-9, LCA and PERM audits
- Employment authorization and advance parole extensions
- I-9 training sessions for HR staff, internal I-9 audits, I-9 compliance policies
- General immigration questions and document review

New Green Card Lives Up To Its Name

The United States Citizenship and Immigration Services (USCIS) announced that beginning May 11, 2010 it would issue a redesigned Permanent Resident Card (commonly referred to as a "Green Card") which incorporates several new security features. The Green Card redesign is the latest ad-

vance in USCIS's ongoing efforts to deter immigration fraud.

"Redesigning the Green Card is a major achievement for USCIS," said Director Alejandro Mayorkas. "The new security technology makes a critical contribution to the integrity of the immigration system."

In keeping with the Permanent Resident Card's nickname, it will now be colored green for easy recognition. USCIS will replace Green Cards already in circulation as individuals apply for renewal or replacement.

Inside this issue:

Form I-9, Section 2 Errors are Substantive Violations	2
US DOL debar Asian Journal from H-1B Visas	2
VWP Visitors Must Pay New ESTA Fee	2
I-9 Practice Tip: Re-verification for TPS	3
E-Verify Enhancements	3
Guess Who's Coming to the U.S.?	3
US DOL Issues Fines to H-1B Employer	4

Form I-9, Section 2 Errors Are Substantive Violations



**Administrative Law
Judge rules on
failure to properly
complete Section 2
of Form I-9.**

On March 18, 2010, in *United States of America v. New China Buffet Restaurant*, 10 OCAHO No. 1132, the Office of the Chief Administrative Hearing Officer ("OCAHO") ruled that "Failure to properly complete section 2 of form I-9 within three business days of hiring an employee is a substantive violation, not a technical or procedural one."

This ruling is very important for employers because the statute governing Form I-9s provides that an entity charged with technical and

procedural failures in connection with the completion of an I-9 form must be afforded a 10 day period after being advised of the basis for the failure in which to correct such technical and procedural errors. However, no such relief is available when the violation is substantive in nature rather than technical or procedural.

Civil money penalties with respect to employment eligibility verification failures are assessed, for first time violators, at a minimum penalty of \$110, and a maximum penalty

of \$1,100 per Form I-9 which contains the substantive violation.

This ruling underscores the importance of completing Form I-9s carefully and completely and making sure your staff is properly trained in Form I-9 compliance requirements. Given the fines which are assessed per violation and the ongoing body of law which supports the requirement that employers be informed on the regulations which govern Form I-9s, Form I-9 compliance is critical for all businesses.

US Department of Labor Debars Asian Journal from H-1B Visas

Asian Journal
agrees to pay
nearly
\$516,500 to 32
employees plus
a \$40,000
penalty.

The U.S. Department of Labor (DOL) announced on August 2, 2010 that it had debarred Asian Journal Publications from using the H-1B visa program.

An investigation conducted by the DOL's Wage and Hour Division determined that the employer did not properly pay the workers and misrepresented facts on the Labor Condition Application (LCA) filed with the department's Employment Training Administration.

The LCA is submitted to the DOL requesting approval to hire the H-1B workers. The debarment will remain in effect until July 30, 2012.

Asian Journal Publications submitted LCAs for numerous specialty occupation positions but the investigation found that most were working in sales. In addition the H-1 beneficiaries were not being paid the required wage nor was the employer maintaining

the required documentation.

The Asian Journal agreed to pay 22 H-1B employees \$473,218 in back wages plus a \$40,000 civil money penalty. The DOL also found that 10 non-H-1B employees were due \$43,276 in back wages resulting from violations of the Fair Labor Standards Act.

Many Business Visitors and Tourists Must Pay New Fee



Foreign Nationals entering the United States pursuant to the Visa Waiver Program will now have to pay a \$14 fee for ESTA registration.

Effective September 8, 2010, a \$14 fee will be charged for Electronic System for Travel Authorization (ESTA) registration. ESTA registration is mandatory for travel to the United States under the Visa Waiver Program (VWP).

A \$10 ESTA registration fee is required under the Travel Promotion Act (TPA) and will be used to fund initiatives designed to attract more interna-

tional travelers to the United States. A \$4 fee was added to cover ESTA expenses incurred by U.S. Customs and Border Protection (CBP) in managing the system, resulting in the total fee of \$14.

ESTA was made mandatory for VWP travelers in January, 2009. The VWP enables citizens and nationals from 36 countries to travel to and enter the United States for business

or visitor purposes for up to 90 days without obtaining a visa. ESTA registrations are typically valid for up to two years.

I-9 Practice Tip: Re-Verification of TPS Beneficiaries

Temporary Protected Status (TPS) is an immigration benefit granted by the Department of Homeland Security (DHS) to individuals in the US who are nationals of a country that has been designated for TPS. A country may be designated for TPS because of on-going armed conflict, environmental disaster or other extraordinary conditions that prevent such nationals from safely returning to their homelands. TPS is granted for time-limited periods, and may be extended.

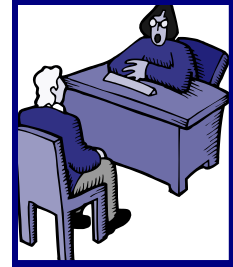
Individuals who have been

granted TPS may apply for employment authorization and receive an Employment Authorization Document (EAD). The EADs expire when the TPS designation expires.

When DHS extends a specific TPS country designation, it sometimes issues a Federal Register Notice containing a temporary blanket automatic extension of expiring EADs for TPS in order to allow DHS to issue new EAD cards for these beneficiaries. Recently, this blanket extension was issued for TPS beneficiaries from Hon-

duras, El Salvador and Nicaragua. The Federal Register Notice extends EAD for these beneficiaries for six months.

Employers who need to re-verify these EADS should first check the EAD to be certain that the category for the EAD is either "A-12" or "C-19". These are the TPS categories. If so, note on Section 3 of the I-9 that EAD is extended for six months through a Notice in the Federal Register. Calendar re-verification for six months at which time the beneficiary should have a new EAD card.



Employers need to know the new regulations for e-verification of employment authorization for beneficiaries of TPS

E-Verify Enhancements

On June 13, 2010, the United States Citizenship and Immigration Services ("USCIS") introduced its newly-enhanced online E-Verify system. The purpose of the enhancements were to improve its usability, security, accuracy and efficiency. The new system should aid employers in keeping track of when to re-verify employment authorization documents for I-9 purposes.

In general, the new system

simplifies the way that users can perform case queries and see verification results. The existing IDs and passwords for employers remain the same. However, the first time you log in after June 13, 2010 you are required to take a short tutorial to learn about the changes.

One important note: Under the newly-enhanced system, employers who make inquiries after the third day of an em-

ployee's hire date must now provide the USCIS with the reason for the late inquiry. These employers will also run the risk of incurring penalties for failure to properly comply with the Memorandum of Understanding which the Employer agrees to when it registers with E-Verify.

Caution!
New enhancements to E-verify require employers to explain if they E-verify a new employee more than three days after the hire date.

Guess Who's Coming to the United States?

Ever wonder how many people become lawful permanent residents (get their green card) in a year? In 2009, 1.1 million people received green cards which is slightly higher than the number of people that received green cards in 2007 and 2008.

Ever wonder what country most green card holders come from? Fifteen percent of the new immigrants were born in

Mexico. The other top countries were China, the Philippines, India and the Dominican Republic, each of which accounted for 4-6% of the new immigrants. In total, 37% of the new immigrants are Asian and 31% are from North America.

Wonder where the country's new immigrants decide to settle? Probably not Arizona! The top five states in which

new immigrants settled were California (20%), New York (13%), Florida (11%), Texas (8%) and New Jersey (5%).

More new immigrants are women—52%. Almost 58% of the new immigrants are married. The median age of new immigrants is 31 years.



Lady Liberty greeted 1.1 million new lawful permanent residents in 2009.



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Specializing in employment based and family based Immigration and Nationality law and the general representation of small businesses.

Just A Note...

As the articles in this newsletter highlight, the biggest area of growth in immigration law is enforcement. ICE continues to bear down on I-9 enforcement with random Notices of Inspection (NOIs) as well as NOIs to businesses under investigation. The word in the industry is that once the new Fiscal Year begins for the government on October 1st, a new barrage of NOIs will go out nationwide. These NOIs are supposedly wider in scope than those we have seen in the past. Businesses need to make certain that they are I-9 compliant. I-9 fines can put a company out of business.

DHS also has a large budget for H-1B and H-2 site visits to ascertain whether employers are honoring their obligations under these visa programs. Especially in this economy, with wage and hour reductions, H-1B and H-2 employers need to confirm that they are in compliance with the wages and other attestations made in the petitions they filed with Immigration.

We can help your business address these needs. We provide comprehensive I-9 training and compliance services. We can also review your H-1B and H-2 filings to ascertain whether you are meeting the required obligations.

Being proactive can save your company thousands of dollars in fines.

Patricia

US Department of Labor Issues Fines to H-1B Employer

Smartsoft International Inc., a computer consulting company based in Suwanee, GA, has agreed to pay nearly \$1 million in back wages and interest to 135 nonimmigrant workers temporarily employed by the company pursuant to H-1B visas. The U.S. Department of Labor's Office of the Solicitor reached this agreement following a determination by the department's Wage and Hour Division that the company violated the H-1B program's rules.

Secretary of Labor Hilda L. Solis said, "The resolution of this case underscores the Labor Department's commitment to enforcing our nation's employment laws, including those designed to protect H-1B program participants."

A Wage and Hour Division investigator determined that some employees were not paid any wages at the beginning of their employment, were paid on a part-time basis despite being hired under a full-time employment agreement, and were paid less than the prevailing wage applicable to the geographic locations where they performed their work.

An employer who sponsors a foreign worker on an H-1B "specialty occupation" visa agrees to certain wage requirements as part of the H-1B petition process. Employers must attest to the Labor Department that they will pay wages to the H-1B nonimmigrant workers that are at least equal to the actual

wages paid to other workers with similar experience and qualifications for the job in question, or the prevailing wage for the occupation in the area of intended employment, whichever is greater. Failure to comply with the attestations made to the Department of Labor can result in an award of back wages, interest and fines.

Employers who sponsor H-1B workers need to conduct regular reviews of the attestations they have made and compare them with the worker's rate of pay and hours in order to confirm that they are complying with the terms of the H-1B petition.



US Department of Labor obtains nearly \$1 million in back wages and interest for 135 H-1B workers of Smartsoft International