Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner & Associates. L.L.C.

This periodic newsletter features current developments in employment-based immigration. It is designed to inform you of changes in immigration law that may affect your business.

April 2004

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties. If you have any questions, please do not hesitate to contact us.

Filing Fee Increases Effective 4/30/2004

Effective this Friday, April 30, 2004, US Citizenship and Immigration Services (USCIS) will implement filing fee increases for immigrant and nonimmigrant filings in all categories. The fee increase is approximately $55 across the board.

New fees for commonly used forms are listed below. Form I-129 is filed in applications for H, L, E, O and TN status and Form I-539 is filed for derivative status in those categories. Form I-485 is used in adjustment of status cases and Forms I-131 and I-765 are applications for Travel Documents and Employment Authorization, respectively. Form N-400 is an application for naturalization. The biometric fee, which accompanies applications for permanent residence and naturalization, among others, will be raised from $50 to $70.

Form	*Current Fee*	*New Fee*
Form I-129	$130	$185
Form I-539	$140	$195
Form I-485	$160/$255	$215/$315
Form I-765	$120	$175
Form I-131	$110	$165
Form I-140	$135	$190
Form I-130	$130	$185
Form N-400	$260	$320

For a complete list of new filing fees, please visit the USCIS website at http://uscis.gov.

PERM Sent to OMB

On February 23, 2004 the U.S. Department of Labor (DOL) sent its final rule on the revised Labor Certification system to the Office of Management and Budget (OMB) for review. When published, this rule will substantially alter the Labor Certification process, possibly shortening the length of the process by diminishing the role of state agencies in adjudications.

The rule, known as the Program Electronic Review Management System, or PERM, reportedly proposes changes to several aspects of the Labor Certification process, including processing times, the role of state agencies and prevailing wage. Among many changes that the published rule is expected to implement are possible changes in the eligibility of employees who rely on past experience with their sponsoring employer to qualify for labor certification.

Under the current Labor Certification system, prior experience with a sponsoring employer will qualify as past experience under certain conditions. Under PERM, past experience with a sponsoring employer may be barred as qualifying experience. Consequently, it is possible that some foreign workers who qualify for Labor Certification under the regulations as they currently exist will no longer qualify after PERM is published in its final form.

Although sources at the DOL have indicated that the regulation has been revised to allow some experience from sponsoring employers, at this point the parameters of allowable past experience are unclear. It is possible that the OMB may send the regulation back to the DOL for further revisions, or the regulation may be published by the end of May, with implementation as early as October 1.

Our expectation is that PERM will be operative by October 1, 2004. Without knowing the exact provisions of the rule, it is hard to say with precision how PERM will affect our clients. However, in order to avoid any adverse affects on currently available immigration options, we suggest that employers of foreign workers who anticipate sponsoring them for permanent residence in the United States through labor certification should avoid delay in beginning the process. If applicable foreign workers are eligible under current regulations, employers should consider starting as soon as possible.

If you have employees who you believe may be affected by changing experience requirements, we urge you to contact Rosner & Associates as soon as possible to discuss this matter.

I-9 Compliance Requires Careful Attention

The Immigration Reform and Control Act of 1986 made all U.S. employers responsible for verifying the employment eligibility and identity of employees hired after November 6, 1986. Although enforcement of I-9 compliance has been sporadic to date, we have recently received anecdotal evidence of increased I-9 audits initiated by USICE, the immigration enforcement arm of the Department of Homeland Security.

In the event of an audit, employers may face substantial fines and penalties for failing to properly complete and maintain I-9 records, even where no unauthorized or illegal employment is found.

As a reminder, the best time to correct an I-9 is before you are audited. Our firm is willing and able to assist you in conducting an internal I-9 audit. For more information, please contact Rosner & Associates.

The H-1B Cap: Implications for FY' 05

In February, USCIS reported that the H-1B cap of 65,000 had been reached for Fiscal Year 2004. As there is no indication that

the cap will be raised for Fiscal Year 2005, it is very important that sponsoring employers plan ahead in petitioning for H-1B employees for the coming year.

The government's 2005 fiscal year begins October 1, 2004. Petitions for H-1B status subject to the cap began to be accepted on April 1, 2004. The next several months will see an influx of H-1B petitions submitted to USCIS for FY 2005. Although USCIS reported recently that the number of FY2005 H-1B filings since April 1 has been lower than expected, there is a very real possibility that the cap will be exhausted prior to the commencement of the next fiscal year.

We strongly suggest that employers who would like to hire or extend the employment of cap-subject workers for positions beginning in late 2004 or 2005 should file petitions now to ensure that employment is not barred by the FY 2005 cap. Employers may wish to consider submitting the extra $1,000 fee for premium processing to ensure priority adjudication in individual cases, although at the present time we do not believe this is necessary.

As a reminder, the cap applies to new H-1B employees only. Petitions for individuals currently working in H-1B status are not subject to the cap. Consequently, employees who wish to extend their employment with the same employer OR who wish to extend their H-1B employment with a different employer are generally not barred by the cap.

If you believe that you or an employee could potentially be barred for employment in 2005 by operation of the H-1B cap, please contact us immediately to discuss available options.

If you value the H-1B visa as a tool for hiring foreign labor in your company, please consider contacting your Congressional representative to advocate raising the cap. Please contact us for sample letters.

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Rosner and Associates helps corporations to bring foreign nationals to the U.S., and to obtain employment visas for U.S. citizens transferred abroad. We an also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation. Please consider us for your immigration law needs.

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