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RECENT IMMIGRATION DEVELOPMENTS

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While the delays and backlogs (and the accompanying headaches) typically described in these pages refuse to disappear, all is not grim in the world of immigration. Fall is here, and with it comes vibrant colors, cooler temperatures and the diversity immigrant visa lottery, where an internet connection, high school diploma or work experience, and a bit of luck can get you a green card. Machine-readable passports will *not* be required of most visa waiver travelers until October 2004, and H-1B filing fees will soon be \$1,000 cheaper. The Immigrant Workers Freedom Ride is rolling into a city near you this week, and congressional and media advocacy is now just a few clicks away.

Diversity Immigrant Visa Lottery

Each year, the U.S. government makes available 50,000 permanent resident visas (“green cards”) to individuals from countries with low rates of immigration to the U.S. (see below) and who have a high school diploma or its equivalent, or two years of work experience within the past five years in an occupation requiring at least two years of training or experience. Eligible applicants are entered into a computer-generated lottery drawing, and the winners are randomly selected. The lucky 50,000 will be notified between May and July 2004.

All entries for this year’s visa lottery must be submitted electronically between November 1, 2003 and December 30, 2003. Paper entries will not be accepted. Our office will be sending a separate e-mail in the coming days with details regarding the application process and procedures. In the meantime, those who want more information can visit the State Department’s Visa Lottery website at <http://travel.state.gov/dv2005.html>.

Please note that for this year’s lottery, natives of the following countries are not eligible to apply (because these countries sent a total of more than 50,000 immigrants to the U.S. in the previous five years): Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Individuals born in Hong Kong Special Administrative Region (SAR), Macau SAR and Taiwan are eligible.

Update on Machine-Readable Passports for Visa Waiver Applicants

As reported in our last update, beginning October 1, 2003, the State Department was prepared to require all travelers seeking admission to the U.S. on the visa waiver program to present a machine-readable passport (MRP) in order to enter the U.S. without a visa. As a reminder, the visa waiver program is available to nationals of Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland,

France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

The State Department recently announced that it has postponed the MRP deadline until October 26, 2004 for the 21 participating countries that formally submitted a postponement request. The five countries that did not request postponement (because nearly all of their citizens already possess an MRP) are Andorra, Brunei, Liechtenstein, Luxembourg and Slovenia. Belgium was not eligible for the postponement because its citizens entering the U.S. on the visa waiver program have been required to present an MRP since May 15, 2003.

In order to avoid unforeseen delays or last minute anxiety, we strongly advise travelers from visa waiver countries who do not already have an MRP to obtain one well in advance of the October 2004 deadline.

October 1st Changes to H-1B Program: Annual Cap and Filing Fees

As a reminder, the number of available H-1B visas will revert from an annual cap of 195,000 to 65,000 beginning October 1, 2003. Foreign nationals currently working in the U.S. in H-1B status who need to file an application to extend their stay or change employers are not affected by the drop in H-1B numbers. Also exempted from the cap are individuals seeking employment with institutions of higher education, nonprofit research organizations and government research organizations.

At the same time, the law authorizing the \$1,000 employer surcharge imposed on most H-1B petitions is set to expire on October 1st. As a result, the H-1B filing fee will decrease from \$1,130 to \$130 for all H-1B petitions filed after October 1st. The \$1,000 surcharge, which was used to fund U.S. worker training programs, generated more than \$200 million last year. Because it is unlikely that the government will allow such a significant revenue stream to lapse, we expect Congressional action (to re-impose all or part of the surcharge) at some point in the future.

Given the decrease in available H-1B numbers and the (possibly temporary) \$1,000 “savings” on H-1B petitions, employers interested in sponsoring individuals for H-1B employment and foreign nationals seeking such employment are strongly encouraged to plan ahead and file their H-1B petitions at the earliest date possible. Since it appears likely that H-1B numbers will run out before the end of FY 2004 (possibly as early as next March or April), we urge you to contact your congressional representatives to support legislation increasing the annual cap.

Immigrant Workers Freedom Ride

Drawing inspiration from the Freedom Rides of the early 1960's, the Immigrant Workers Freedom Ride (IWFR) is a two-week trek across America to highlight the plight of immigrant workers while celebrating their contributions to American society. Since September 20th, nearly one thousand immigrant workers and their allies have been making their way by bus to the east coast. Stopping in cities, towns and workplaces, the IWFR will attempt to expose the injustice of current policies toward immigrants while seeking to change hearts, minds and laws.

For those in the New York area, the caravan rolls into Liberty State Park in New Jersey on October 3rd, followed by a closing ceremony on Saturday, October 4th in Flushing Meadows Park in Queens, New York. The closing ceremony, which will be hosted by New York's Edward Cardinal Egan and feature musical performances by Wyclef Jean and other artists from around the world, is expected to draw tens of thousands of people. For more information, including a schedule of stops across the country, please visit the IWFR's website at www.iwfr.org.

Make Your Voice Heard: Advocacy Update

As a service to individuals interested in taking a stand on immigration issues, the American Immigration Lawyers Association (AILA) has updated its website to include opportunities for congressional and media advocacy. The user-friendly website allows visitors to read about AILA's position on numerous topics, and provides easy e-mail access for sounding out on issues of importance. To make your voice heard, simply follow these three steps: (1) go to www.aila.org; (2) on the left side of the page, select "Advocacy Center"; (3) scroll down and select "Contact Congress/Media" (to send an email supporting or opposing a particular issue) or "AILA on the Issues" (for additional background). Since the website is frequently updated to reflect newly proposed legislation and timely issues, we encourage you to visit often.

NOTES

This Immigration Update serves only as a brief summary of some of the more noteworthy developments in the immigration laws of the United States. It does not constitute legal advice, and should not be acted upon without further professional assistance or understanding.

We are available to provide immigration advice to employers, immigrants, and others, and invite you to call us with any questions you may have.

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