

Jackson Lewis Employers' Immigration Update - No. 19, September 2015

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Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status

U.S. Citizenship and Immigration Services and the Department of State [have announced new procedures](#) for determining visa availability for applicants waiting to file adjustment of status applications. Prior to this change, DOS had published a single chart in its visa bulletin each month indicating "Final Action Dates For Employment-Based Preference Cases." Commencing with the October 1, 2015, visa bulletin, a second chart will relate to existing DOS procedures for processing immigrant visas abroad and will govern which cases are eligible to file for adjustment of status in the U.S.

2008 STEM Extension Dealt a Setback

In *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, a federal judge for the U.S. District Court for the District of Columbia has found deficient the 2008 Department of Homeland Security (DHS) rule allowing certain F-1 visa students with Science, Technology, Engineering or Math (STEM) degrees to extend their stay in the U.S. for an additional 17 months of training related to their degrees. The judge concluded the DHS rule was not properly subjected to public notice and comment, but permitted the rule to remain temporarily in effect. The Court further determined that the DHS interpretation of the F-1 regulations, allowing for the 17-month STEM OPT extension, is "not unreasonable" and that a rule following the proper notice and comment process would be valid. The Washington Alliance of Technology Workers has appealed the District Court's finding that following the proper notice-and-comment process would validate this rule.

USCIS Issues Final Guidance on When to File Amended or New H-1B Petition

USCIS' [Administrative Appeals Office](#) has clarified that an employer must file an amended or new H-1B petition when a new Labor Condition Application (LCA) for nonimmigrant workers is required due to a change in the H-1B worker's place of employment. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015). A petitioner must file an amended or new H-1B petition if the H-1B employee changes his or her place of employment to a location that requires a corresponding LCA, even if a new LCA is already certified with the Department of Labor. A petitioner does not need to file an amended petition if (a) there is a move "within the intended area of employment," (b) the placement is short term, and (c) the H-1B employee is going to a non-worksite location.

DHS to Implement Security Enhancements to Visa Waiver Program

DHS Secretary Jeh C. Johnson has [announced](#) that DHS and other federal agencies will be introducing new security measures for the Visa Waiver Program. Changes to the program will include:

- Required use of e-passports for all Visa Waiver Program travelers coming to the United States,
- Required use of the INTERPOL Lost and Stolen Passport Database to screen travelers crossing a Visa Waiver country's borders, and
- Permission for the expanded use of U.S. federal air marshals on international flights from Visa Waiver countries to the United States.

USCIS Issues L-1B Adjudications Policy

Uncertainty as to exactly what constitutes specialized knowledge under the L-1B classification and USCIS' burdensome requests for evidence of specialized knowledge has compelled the agency to release its new [L-1B Adjudications Policy](#), dated August 17, 2015, to provide guidance and clarification. The classification permits multinational companies to transfer employees who possess "specialized knowledge" to their operations in the United States.

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