



August 2010 Immigration Update

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Human Resources (HR) Tip of the Month:

We have noticed a slowdown in the processing of Employment Authorization Documents (EAD) and Advance Parole (AP) for employees who are waiting for approval of their Green Cards. U.S. Citizenship and Immigration Services (USCIS) is taking the full ninety (90) days to approve the EAD and AP. This can complicate compliance, work authorization and travel for foreign employees. Typically, these employees have filed for adjustment of status (Form I-485) and renew annually their EAD and AP, without which they cannot work or travel. In many cases, their H-1B temporary visas have long expired. Note that employers who want to plan ahead still cannot file the renewal applications for the EAD and AP any earlier than 120 days prior to expiration. Finally, under immigration employment enforcement rules governing I-9s and E-Verify, the employee cannot continue working without actually having the new EAD card in hand. The receipt notice is not sufficient. Further, an employee who is no longer in H-1B status and who travels without the AP due to a family emergency back in his home country risks being found to have abandoned his Green Card application when the case is finally adjudicated.

Our HR Tip of the Month:

(1) Change your tickler system so that your renewals are filed 119 days in advance of expiration. (2) After 75 days have expired and you still have not received the EAD or AP, look into available procedures for monitoring or expediting the process. Do not wait until the EAD card has expired to initiate an inquiry. (3) Many employees are responsible for paying for renewal of the EAD and the AP under company policies. The danger is that employees may try to save money by renewing the EAD and not the AP, assuming that they will not be travelling. Invariably, a relative becomes ill requiring an emergency trip and costly intervention by legal counsel who spends hours trying to get USCIS to make an exception and expedite the AP. Do not allow your employees to remain in the United States in your employ without having in hand at all times a valid AP as well as the EAD.

PRESIDENT OBAMA SIGNS FEE INCREASES FOR CERTAIN H-1B and L-1 PETITIONS

On Aug. 13, 2010, President Obama signed into law Public Law 111-230, which contains provisions to increase certain H-1B and L-1 petition fees. Effective immediately, Public Law 111-230 requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions postmarked on or after Aug. 14, 2010, and will remain in effect through Sept. 30, 2014. These additional fees apply only to petitioners who employ 50 or more employees in the United States with more than 50 percent of their employees in the United States in H-1B or L (including L-1A, L-1B

and L-2) nonimmigrant status. It is likely that only a very small number of U.S. employers will have to pay the new fees. To avoid confusion and rejections in the mail room at USCIS, we think it would be useful to mark petitions with the words: [ADDITIONAL H-1B/L-1 FEE UNDER PUBLIC LAW 111-230 NOT REQUIRED].

August 13, 2010 H-1B Cap Count

[As of Aug. 13, 2010, approximately 29,700 H-1B cap-subject petitions were receipted.](#) In addition, USCIS has receipted 12,300 H-1B petitions for aliens with advanced degrees. In short, based upon current numbers, the caps for H-1Bs will not be reached until December 2010 at the earliest.

DOL ENFORCEMENT OF H-1B PREVAILING WAGE RULES

Although the H-1B cap favors employers hiring professionals under the program, employers must be aware of the compliance risks. The current enforcement initiatives include closer scrutiny of use of the H-1B program. The Aug. 18, 2010 DOL news release announced that 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 employed under the H-1B visa program. See link at <http://www.aila.org/content/default.aspx?docid=32910>

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