



Breaking News

February 21, 2014

Don't Miss Out! H-1B Cap Filing Season Begins Soon!

The next H-1B work visa filing season begins April 1, 2014 for petitions subject to the visa limitation of 78,200 new cases. There will most certainly be a lottery for the small number of H visas available, as there was last year. In all likelihood, USCIS will permit filing during the first five business days of the month, that is, Tuesday, April 1 through Monday April 7.

It is vital for employers and their affected employees to get their paperwork to a qualified immigration attorney as soon as possible so that they don't miss this once-a-year chance for the H-1B.

Those not subject to the H-1B quota don't have to worry about filing during this period. This includes persons previously counted against the quota within the past six years, persons who work for institutions of higher education and affiliated non profits, persons who work for nonprofit research or government research organizations, and persons who work on the premises of a quota exempt employer for another entity. Certain physicians who came to the US for graduate medical training on J visas, are also not subject to the cap, once they receive a waiver of the two year home residence requirement.

If Barbaricum Calls, Don't Panic!

On February 10, USCIS announced that it hired Barbaricum, a professional research group with a very

About Us

Ware|Gasparian has expertise in all areas of immigration law ranging from business and education to asylum and deportation. We provide comprehensive immigration-related services to clients around the world representing corporations, educational institutions, businesses, and individual clients.

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Locations

MAIN OFFICE

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Tel: 504/830-5900
Fax: 504/830-5909
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BIRMINGHAM, AL

4000 Eagle Point
Corporate Drive
Birmingham, AL 35242
Tel: (205) 521-0007

PENSACOLA, FL

201 E. Government
Street

strange name, to conduct phone and email surveys with USCIS "customers". If you receive an email or phone call from Barbaricum regarding your experiences with USCIS, feel free to answer the survey or decline, whatever your preference. USCIS hopes the information will be helpful in improving customer service in the future. To see more visit the USCIS [website](#).

New Appeal Form Released for Use

USCIS has issued a new version of form I-290B, Notice of Appeal or Motion, to be used when filing an appeal, or a motion to reopen or reconsider an adverse determination by USCIS. USCIS will continue to accept the older version of the form until April 5, 2014. After that date only the updated version will be accepted. It is important to note the deadlines for appeal or reopening and to keep in mind that an appeal or motion to reopen or reconsider is not available for all types of applications. For example, you may not appeal the denial of a provisional waiver of unlawful presence or an application for Deferred Action for Childhood Arrivals (DACA). For the new form and information, click [here](#).

DOS Acknowledges Fears of LGBT Family-Based Immigrants

In a recent liaison meeting with the American Immigration Lawyers' Association, the Department of State discussed how to request a change of consular post for immigrant visa processing of LGBT family based immigrants. The DOS process responds to the subjective fears of LGBT visa applicants, as well as the very real danger presented to some visa applicants by discriminatory statutes, policies, or government inaction in the face of threats or violence.

To prevent immigrants abroad from being exposed to potentially dangerous situations, the Department of State has developed a protocol with the National Visa Center (NVC) to request that an immigrant visa interview be conducted at another consulate. The initial visa petition should still be filed with the individual's home country designated for processing to avoid any delay at NVC. After the visa petition is approved, an email may be sent to the NVC giving the individual's case information and explaining the reasons why he/she is afraid to return home for their interview. While requests should include

Pensacola, FL 32501
Tel: 850/434-9094

BATON ROUGE, LA

Two United Plaza
8550 United Plaza
Boulevard
Suite 702
Baton Rouge, LA 70809
Tel: 225/292-9091

JACKSON, MS

Tombigbee #405
Jackson, MS 39225
Tel: 601/352-0048

SEATTLE, WA

Hiawatha Place South,
Suite 807
Seattle, WA 98144
202/746 8427

current conditions in the country and detail the individual's personal reasons for fearing return, it does not have to rise to the same level of fear as is required for an asylum application. The email should include up to three preferred alternate locations in order of preference. The NVC will contact the relevant posts and make attempts to reassign the interview location based on availability. Keep in mind that some individuals may also need visas to travel to a third party country, which may be difficult to obtain for the limited purpose of attending an interview.

One H-1B Complaint Can Open the Door to a Full Investigation

A recent case should make employers of H-1B temporary workers aware of the critical need for thorough H-1B compliance. The Department of Labor Administrative Review Board, in [Greater Missouri Medical Pro-Care Providers, Inc.](#), ARB Case No. 12-015, ALJ Case No. 2008-LCA-26 (2014) held that the Department of Labor may investigate all H-1B practices for the preceding 12 months based on the sole complaint of a single individual or organization. The case stemmed from one employee's complaint about the company's employment practices, resulting in an order to pay more than \$300,000 in back wages.

The company tried to argue that allowing the investigation to extend months prior to the single complaint was contrary to law and regulation and that the initial determination of the Wage and Hour Division of the US Department of Labor should be overruled. The Board noted that there is no statutory guidance on the issue and determined that allowing the investigation to expand beyond the single aggrieved party was more conducive to Congressional intent to deter abuse and facilitate enforcement. This broad view of investigative and enforcement powers serves as a strong reminder that employers should be reviewing H-1B compliance regularly to avoid possible investigations.

OPT Denied Because Work is Unpaid?

Many students in the United States seek permission to do up to 12 months of Optional Practical Training (OPT) after completion of their studies. Students in STEM fields can also seek a one time 17 month extension. While on OPT,

students ideally take what they have learned in school and apply it in a real world setting. USCIS and SEVP have affirmed that work done during this time may be paid or unpaid as a volunteer or unpaid intern.

Recently, U.S. Citizenship and Immigration Services Service Center Operations (SCOPS) became aware that requests for OPT and STEM extensions were being denied because either the student had not been paid for work during the previous 12 months, or prospective employment on the STEM extension was to be unpaid. SEVP guidance has for several years provided that OPT may entail unpaid internships or volunteer work as long as the student is able to verify employment of at least 20 hours per week.

SCOPS has reiterated this guidance to the Service Centers. If an application for extension was denied only because the work was to be unpaid then the student may address the issue by contacting the appropriate ServiceCenter via email. The email should include the student's full name and the receipt number of his/her denied application. The appropriate emails for the service centers are listed below.

Texas Service Center: TSC.Schools@uscis.dhs.gov

Nebraska Service Center: NSC.Schools@uscis.dhs.gov

California Service Center: CSC.StudentEAD@uscis.dhs.gov

Vermont Service Center: VSC.Schools@uscis.dhs.gov

March 2014 Visa Bulletin Conveys Mixed Messages

The Department of State Visa Bulletin for the month of March continues to show slow movement across most categories. On the family side the 2A Preference, for spouses and unmarried children under 21 of permanent residents remains, for most of the world, at September 8, 2013, but there is retrogression in F2A for Mexico, by over a year, to April 1, 2012. Mexico F2B, unmarried adult sons and daughters of permanent residents, will remain at May 1, 1993 after retrogressing almost a year for February. The rest of the family based categories show movement of a few weeks in most cases.

On the employment-based side, EB 2 for India remains at November 15, 2004 and China EB 2 advances five weeks to February 15, 2009. China EB 3 advances a full three

months to September 1, 2012. EB 3 for India will move to September 15, 2003, and EB 3 (including "other workers") for the rest of the world advances three months to September 1, 2012, except for the Philippines which moves forward to May 1, 2007.

The Visa Bulletin confirms many of the predictions we reported at the beginning of the fiscal year, including: EB2 worldwide is expected to remain current throughout FY 2014. EB2 for India is not likely to advance until May of 2014. EB2 for China is expected to continue to advance by three to five weeks a month. EB2 for China will continue to have a longer waiting list than EB3.

Amazingly, in March that means EB3 is three and a half years ahead of EB2 for China. This difference in dates can pose a quandary for those seeking to move "up" to EB2 from EB3: stay or move? This also presents an opportunity for those Chinese with an approved labor certification who are already approved in EB 2, or having an approved labor certification, are trying to decide in which preference category to apply: obviously at the moment EB 3 makes the most sense. Moreover, applying in both the EB 2 and EB 3 categories is in no way prohibited or harmful. So among our clients, many are employing this strategy, and even concurrently filing their applications for adjustment of status, applying their old EB 2 priority date to their new EB 3 petition.

Note that persons in the US whose priority dates will become current in March cannot file an application for adjustment of status until March 1, except for Diversity Visa applicants, who can file a month in advance of their priority date becoming current. We expect that once an application is filed, in order to use all the available visa numbers, USCIS will aggressively move to schedule applicants for biometrics and adjudicate these cases quickly. Applicants should ensure that their attorneys push USCIS to move on their cases before any retrogression can occur.

We will keep you posted as we receive more information on future predictions of visa availability.

Attorney Speaking Engagements

Our attorneys frequently present on a wide range of immigration issues at no charge to diverse professional

and community groups, institutions of higher education,
and many types of businesses.

If you are interested in attending a presentation or inviting
one of our attorneys to speak to your group, institution or
business, please contact [Yolanda Mata](#) to discuss
available dates and topics of interest.

[Here](#) are some of the upcoming engagements.

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