

Newsletter

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Welcome to the June issue of our monthly newsletter! This is a complimentary service to clients and friends of the Firm to keep you informed of immigration law developments that may affect you or your organization. Please contact Munsch Hardt's Immigration Team with your comments and questions.

DEPARTMENT OF HOMELAND SECURITY (DHS) UPDATE:

- H-4 Employment Authorization Eligibility - Reminder. U.S. Citizenship and Immigration Services (USCIS) is currently accepting applications for employment authorization for H-4 dependent spouses of H-1B nonimmigrants. H-4 spouses are eligible to apply if the principal H-1B beneficiary either has an approved I-140 petition, or has been granted an H-1B extension beyond the 6-year H-1B time limit due to pending Green Card proceedings, pursuant to sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21).
- On May 21, 2015, USCIS issued interpretation and guidance related to the recent *In re Simeio Solutions, LLC* decision, which requires an amended H-1B Petition filing when an H-1B employee's worksite changes. USCIS later reissued the guidance as prospective (i.e., draft) guidance and noted that comments will be accepted until June 26, 2015. The draft guidance clarified that an amended H-1B Petition is necessary if an H-1B employee's worksite is going to change to a worksite outside of the metropolitan statistical area (MSA) or "area of intended employment," covered by the existing approved H-1B petition. If the employee is changing worksites within the same MSA, the H-1B employer should just post the previously certified LCA at the new place of employment.
- On June 5, 2015, USCIS announced it was reopening the congressionally mandated fiscal year (FY) 2015 cap for H-2B petitions. USCIS had previously announced that the H-2B FY 2015 annual cap had been reached and it was no longer accepting petitions, but determined that there were still available visas remaining as there were fewer requests for H-2B visas made than expected. On June 15, 2015, USCIS announced that it had received a sufficient number of petitions to reach the FY 2015 cap, and that June 11, 2015 was the final receipt date for new H-2B petitions requesting an employment start date before October 1, 2015.

DEPARTMENT OF JUSTICE (DOJ) UPDATE:

On May 27, 2015, the DOJ announced that its Office of Special Counsel (OSC) attained the department's largest civil penalty for an Immigration and Nationality Act bias claim, a move which may have been bolstered by access to E-Verify statistics. Luis Esparza Services Inc., a California farm labor contractor, agreed to pay \$320,000 to settle claims that it required U.S. permanent residents to present specific documents during the work authorization verification process because of their citizenship status. Employers may not specify what documents workers can present for work authorization, and must accept the documents presented so long as they comply with the list of acceptable documents noted on the Form I-9. Recently, the OSC has increased its enforcement efforts due to a 2010 agreement requiring USCIS to refer discrimination matters to the OSC along with relevant information from the E-Verify employment eligibility system, thus granting them greater access to information about potential discrimination violations.

DEPARTMENT OF STATE (DOS) UPDATE:

The DOS Visa Bulletin for July 2015 continues to bring mixed results. Unfortunately, EB-3 "Skilled Workers/Professionals" and "Other Workers" category for the Philippines became unavailable to account for

the continued demand of visa numbers. The DOS advises that if there are not enough unused immigrant visa numbers from EB-2 “Members holding Advanced Degrees or Persons of Exceptional Ability” category for the Philippines that can be utilized in the EB-3 category, the August 2015 may also show EB-3 Philippines as unavailable. EB-2 China continued its steady progression by advancing 4 months to a cut-off date of October 1, 2013, however, EB-3 China experienced no change. EB-3 “Skilled Workers/Professionals” and “Other Workers” category for the All Chargeability Areas and Mexico moved forward 6 weeks to April 1, 2015. The EB-3 category for India only moved forward 1 week. Overall, Family-Based preference categories experienced some forward movement ranging from 1 week to 6 weeks. Finally, the EB-5 China immigrant investor category jumped 4 months to a cut-off date of September 1, 2013. It is important to discuss these developments with your immigration counsel in order take advantage of the newly available immigrant visas.

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