

FROM THE EDITOR'S DESK

Dear Readers,

Like any aspect of business, business immigration exists in a state of constant flux. To help our clients better navigate the legislation and regulations that govern the various government agencies involved in the immigration process, Greenberg Traurig's Immigration Practice is pleased to bring you the first issue of the *Business Immigration Review*.

This newsletter, which will be published on a quarterly basis, will keep you informed of the latest U.S. business immigration news. It will detail emerging immigration laws and regulations and current events in Congress, as well as cover the INS, Department of Labor and other government agencies whose actions have bearing on business immigration. Our coverage of these issues will provide you with a better understanding of the immigration process so that you may better assist your foreign employees and serve your business's immigration needs.

For your convenience, you can access *Business Immigration Review* on the World Wide Web at www.gtlaw.com under our publications section. We hope you find this first issue informative and useful. Please feel free to contact any member of our International Business Immigration Practice with your immigration questions or concerns.

— Sean Sedam, Immigration Practice Group
Tysons Corner, VA

LEGISLATORS LOOKING TO INCREASE ACCESS TO FOREIGN EMPLOYEES WITH HIGH-TECH SKILLS

While another increase in the cap for H-1B nonimmigrant professional workers will not happen this year, pro-immigrant policies are gaining bipartisan support in Congress. The political climate in Washington and the battle for votes in the 2000 presidential election has meant that the ability of US businesses to gain access to highly skilled foreign specialists will become a hot-button issue in a volatile election year.

A flurry of legislative activity throughout the summer and fall has set the stage to revisit the issue of nonimmigrant professional workers, referred to as "H-1B specialty workers" from the specific section of law under which they are categorized. These professionals come to work for US companies for temporary periods in all industries.

Due to an economy demanding more workers, particularly those with high-tech skills, there has been an increased use of this category. Capped arbitrarily in 1990 at 65,000 annual admissions, the number was temporarily raised to 115,000 in 1999. However, even 115,000 was not enough admissions to fill the demand in 1999. Employers familiar with the program may recall that at the end of April, only seven months into the government's fiscal year, there were no more admissions available. Absent Congressional intervention, the 115,000 openings available in FY 2000 will also not be sufficient, and are likely to be exhausted even earlier in this fiscal year than last.

-Continued on page 2

IN THIS ISSUE:

- Legislators Looking to Increase Access to Foreign Employees with High-Tech Skills.....1**
- Agency Update.....2**
- New Business Immigration Group.....3**
- Permanent Resident Cards-Form I-551 Renewal.....4**
- The DC Inner Loop.....5**

REVIEW

INCREASING ACCESS TO FOREIGN HIGH-TECH WORKERS*-Continued from page 1*

Recent bills that sought to alleviate the situation, however, will have to wait until the politically disruptive election year. In July, Senator Phil Gramm (R-TX) introduced S. 1440, the "New Workers for Economic Growth Act" of 1999. The bill, co-sponsored by Sen. Trent Lott (R-MS) and Sen. Mitch McConnell (R-KY), would raise the number of H-1B visas to 200,000 for fiscal years 2000 through 2002. The bill would also make H-1B professionals with master's degrees or above receiving total annual compensation of \$60,000 or more, and those with bachelor's degrees or above who are employed at an institution of higher learning, exempt from the cap. Furthermore, it would free those with bachelor's degrees or higher who work at universities from the attestation requirements imposed by the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA"). Representative David Dreier (R-CA) introduced a similar bill in the House (H.R. 2698). Both bills must be reintroduced next session.

Meanwhile, Sen. John McCain (R-AZ), a presidential candidate, introduced "The 21st Century Technology Resources and Commercial Leadership Act" (S. 1804) on October 27. The bill, in an effort to increase the numbers of U.S. workers in key areas such as engineering and the sciences, would apply a portion of each visa fee to a fund for the provision of training and education programs for American children in kindergarten through 12th grade. As an interim measure, it would eliminate the cap through 2006.

The 2000 Presidential campaign may create enough political pressure to force Congress to raise the H-1B cap. Many high-tech companies have made large contributions to presidential campaigns and workforce issues lie at the top of the political agenda for many of these firms. But with organized labor against

any expansion of employment-based immigration, and Democratic presidential candidate Al Gore caught between high-tech and the AFL-CIO, the issue may become so politicized it will lose substantive meaning in the Congressional posturing—with potential for a final compromise that is far from the current proposals.

Other legislators are also looking to expand access to those with much-needed technology skills. A bill proposed by Rep. Zoe Lofgren (D-CA) would clear the way for more nonimmigrant technology workers to remain in the United States, while establishing an account to fund U.S. schools. H.R. 2687, introduced in August, would create a new nonimmigrant "T visa" for foreign nationals completing a post-secondary degree for mathematics, science,

engineering or computer science at an American university. This pilot program would allow such nonimmigrant workers to remain in the U.S. for a five-year period. In exchange, the bill imposes a fee of \$1,000 (for an initial grant of status) and \$500 (to extend or change such status). These fees would fund a High Tech Education Fund that would award grants to elementary and secondary school students to foster math and science education. Senator Charles Robb (D-VA) has introduced a similar piece of legislation that is more limited in application (usable only by those with master's degrees or their equivalent) and more restrictive in use (imposing most of the same restrictions as on H-1B visas). Senator Robb's bill also would impose the same significant fee for the use of technology workers under the T visa.

*-Continued on page 3***AGENCY UPDATE****H-1B Numbers: Future Very Uncertain**

No one knows for certain when H-1B numbers will be exhausted this fiscal year, but everyone is aware that it will happen well in advance of the end of FY 2000. INS currently has no estimates on exactly how many applications were waiting or already processed on October 1, the beginning of this fiscal year. HR managers are cautioned that, with such uncertainties, it is advisable to process requests for new H-1B applicants as quickly as possible. If you currently have F-1 students on payroll (or in the hiring process) whose practical training will expire before October 1, 2000, they should be changed to H-1B status as quickly as possible to avoid being caught in the so-called "cap-gap," where they will lose employment authorization and perhaps even their ability to remain in the United States.

The INS recently announced (without documentation) that it believes it over-issued numbers against the FY99 gap and that it needs to reduce the FY 2000 numbers to compensate for the overage. The agency has no statutory authority to do so, and Senator Spencer Abraham (R-MI) recently publicly criticized the agency for considering this as an option.

Adjustment of Status: Advance Parole Requirements Revised

Effective July 1, 1999, the Immigration and Naturalization Service instituted a policy designed to amend and clarify regulations regarding H-1 and L-1 nonimmigrants who seek to continue nonimmigrant status while their adjustment of status application is pending. This interim rule eliminates the advance parole requirement for adjustment applicants and dependent family members who wish to travel outside the United States. The regulation makes it much easier on certain adjustment applicants, who no longer have to wait until receiving an advance parole before they can travel outside the U.S. In addition, the INS is considering an expansion of the "dual intent" concept to cover long-term nonimmigrants, such as those in E, F, J and M status, who then file for adjustment.

REVIEW

INCREASING ACCESS TO FOREIGN HIGH-TECH WORKERS

-Continued from page 2

The interest of this diverse group in the issue indicates the growing likelihood that Congress will need to address and resolve this situation faced by an ever-growing number of companies who are finding it difficult to meet their workforce needs.

Some experts see such legislation as vital to continued economic growth. Federal Reserve Chairman Alan Greenspan has linked worker shortages with a potential downsizing of the economy and has called for the U.S. to broaden its immigration policy. Laura D'Andrea Tyson, President Clinton's former chief economic adviser, has called on the government to lift the cap on H-

1B visas. "[For some technology jobs] the gestation period for skills lasts years and requires substantial improvements in math and science education even before college," Tyson wrote in a recent issue of *Business Weekly*. "In the meantime, immigrants who possess the requisite skills should be allowed—indeed encouraged—to fill the gap." With the potential for a political fight over the issue in an election year, however, it remains increasingly uncertain whether Congress and the President will heed this advice.

HR professionals who encounter these issues should notify their legislative departments, if their firm has one, in order to have the issue addressed by the company on Capitol Hill. If you

are interested in learning more about what you can do to let your representatives know your views on the need for fewer restrictions on business immigration, you can also contact the Recruitment Subcommittee of the Workforce Committee of the Northern Virginia Technology Council through Susan Baker, NVTC, 2214 Rock Hill Rd., Suite 300, Herndon, VA 20170. We also encourage you to become active in the legislative action through our work at AILA, AILF and ABLI.

NEW BUSINESS IMMIGRATION GROUP

Greenberg Traurig's International Business Immigration Practice has recently expanded from its Miami base, where it is headed by Shareholder Oscar Levin, to include offices in Tysons Corner, Virginia and Phoenix, Arizona.

In July, Greenberg Traurig welcomed new Shareholder Laura Foote Reiff and her Business Immigration Team to its

Tysons Corner, Virginia and Washington, D.C. offices.



Laura Reiff

Laura comes to Greenberg from a Washington law firm where she had been a partner since 1997 and the director

of the immigration practice since 1992. Her practice focuses on U.S. law and regulations affecting international immigration and employment issues.

Laura believes that immigration should be a facilitator to U.S. business and structures her immigration practice accordingly. The practice has three distinct components: administrative application for blanket and individual visa benefits; legislative advocacy for business immigration concerns; and counseling on employer sanctions and compliance.

Laura has written extensively on immigration issues relating to employment and has served as a guest speaker at numerous conferences worldwide. She also remains active in several organizations, serving on the American Immigration Lawyers Association (AILA)'s Board of Governors and as Chair of the Government Liaison Committee for AILA. In addition, Laura serves on the Board of Governors for the American Immigration Law Foundation and is the Chair of the Global Competitiveness Project.

Laura also holds membership on the Workforce Steering Committee of the Northern Virginia Technology Council and serves as Co-Chair of the Subcommittee on Recruitment of Workers. She is the past President of the Washington, D.C. chapter of AILA, and co-recipient of the AILA's 1996 Outstanding Young Lawyer Award.

Elissa McGovern comes to Greenberg after five years as



Elissa McGovern

Associate Director of Advocacy for Liaison for the AILA. She has worked extensively as an advocate for business immigration issues before

federal agencies and Congress.

-Continued on page 4

REVIEW

-Continued from page 3

Elissa focuses her practice on U.S. law and regulations affecting immigration, with an emphasis on policy and regulatory advocacy. She joins the Greenberg Traurig immigration practice to counsel employers on their immigration needs, obtain individual and blanket visa benefits and to direct legislative and agency advocacy efforts on immigration issues affecting employers in the global marketplace.

Elissa has spoken extensively on U.S. immigration law and policy before diverse audiences, as well as writing on immigration issues affecting employment and legislation affecting immigration. She serves on AILA committees and on the steering committee of the American Business for Legal Immigration (ABLI) coalition, a coalition of over 200 businesses and trade associations that actively lobby for better solutions for business immigration.

Associate Attorney Carol L. Williams joins the GT business immigration practice. Prior to her previous legal

experience, Williams worked with the immigration group at the firm of Fulbright and Jaworski, where she



Carol Williams

prepared H-1B, L-1, TN and J-1 petitions. Carol focuses on immigrant and nonimmigrant petitions for employees of international corporations. She has been active in planning forums between the Immigration and Naturalization Service and representatives of international corporations in response to the ever-changing immigration legislation that affects large corporations.

The GT business immigration team also includes Senior Immigration Specialists Barbara Goldwasser and Kristin Bolayir; Immigration Specialist Patty DeFrank; Immigration Paralegal and Group Coordinator Lisa Toomer; Immigration Paralegals Maria Newsom and Sean Sedam; and Executive Administrative

Assistant Marie Martini and Immigration Administrative Assistant Molly Blasko in the Tysons Corner office. They will coordinate their efforts with Immigration Paralegals Kay Relvas and Tina Simonetti, who are based in the GT offices in Phoenix, Arizona.

The group assists clients in a broad range of immigration matters, including: corporate planning, advocacy and representation, compliance with export control requirements, obtaining permanent U.S. residence, outbound assistance with visa needs, compliance with employer sanctions and anti-discrimination provisions, litigation, and advice concerning withholding of social security and taxation. The group also specializes in obtaining all types of U.S. nonimmigrant visas, including professional H-1Bs, intracompany transfer L-1s, treaty trader/investor E-1s and E-2s, student F-1s, scholar and exchange J-1s, and extraordinary ability artist/athlete Os and Ps.

For more information about GT's immigration practice, please see our Website at www.gtlaw.com/practices.htm.

PERMANENT RESIDENT CARDS—FORM I-551 RENEWAL

In 1989, the INS began issuing Permanent Resident Cards (Form I-551) with a 10-year validity period and specific expiration dates. A decade later, with the first series of cards issued expiring, the INS finds itself faced with a flood of aliens in need of card renewals.

To deal with this flood, the INS has announced it will implement a new two-phase processing plan, starting in 2000. In the meantime, the INS has established several policies and procedures for processing green card renewal applications at its District Offices, as a way of providing interim documentation of status for Lawful Permanent Residents (LPRs).

While LPR status is not affected by the expiration of the card itself, LPRs need cards as evidence of their status for employment and travel purposes, as well as to obtain other benefits. This interim

documentation will satisfy those needs as well as the requirement that LPRs carry evidence of their alien registration on their person at all times.

Naturalization Applicants

These interim renewal procedures may affect naturalization applicants depending on when their applications for naturalization were filed. Aliens who applied for naturalization six months or more prior to the expiration date on their Form I-551 and have not yet received a decision on their naturalization application may wait for a decision or, if they wish, apply for a renewal Form I-551. Aliens who filed for naturalization within the six month period preceding the expiration date on their Form I-551, or who now wish to file for naturalization, must still first file for a renewal card.

Re-entry into the United States

During this interim period, LPRs with expired 10-year Form I-551s who return to the U.S. at all Ports of Entry (POEs) are not in violation of any law that would bar them from entering. At land-border POEs, officers will advise the LPR of the need to renew his or her card and will provide the LPR with Form I-551. At air POEs, officers will advise LPRs arriving from abroad of the need to renew their cards and will process Form I-90 applications only at the time of arrival, given that the LPR fills out the Form I-90 application and provides the proper filing fee. While LPRs with expired cards will still be admitted entrance at seaports, POE officers there will not provide Form I-551 or process any applications.

INS policy stipulates that all Form I-90 applications must be filed at local offices, but adjudicated at Service Centers. The current processing fee is \$110.00.

REVIEW

THE DC INNER LOOP

News from the Nation's Capital

H-1B Over-Issue May Cut FY2000 Availability

In early October the INS confirmed that it issued as many as 10,000 to 20,000 H-1B visas over the number allotted for the fiscal year ending September 30. The agency indicated that it may reduce the number of H-1Bs available for FY2000 in order to compensate for the miscount, prompting angry reactions from companies and Congress alike.

While the INS lacks the statutory authority to take such measures, it has applied over-issued H-1Bs to the next year's quota in the past, most recently applying 19,000 visas issued after meeting the 1998 cap against the cap for FY1999. However, taking similar action in FY2000 could severely cripple the ability of many companies to hire much-needed foreign labor to help fill the shortage of technical workers in the U.S.

The Congressional committee that oversees the INS has questioned the agency's ability to slash the FY2000 quota, but has not taken actions against the agency.

ACWIA: Still Without Regulations

The Department of Labor and the INS have yet to issue final regulations implementing the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), legislation that Congress passed in October 1998 raising the H-1B cap to 115,000 for FY99 and 2000. DOL originally planned to issue its regulations as early as April; draft regulations were promulgated in January of this year. Some INS regulations (such acceptance of and exemptions from the training fee) are in place, but others have not been issued even in draft.

Business Visitor Controversy

The American Competitiveness and

Workforce Improvement Act of 1998 (ACWIA) enabled colleges and universities to provide honoraria to short-term scholars without having them first obtain a work-authorized status. A year after its passage, however, there are no regulations to help schools pay the honoraria to B-1 "business visitors" and not run afoul of immigration law. INS is delaying regulations on this issue, believing that such visitors are employees of the school and that the school must therefore complete employment verification documents or run the risk of employer sanctions.

Employment Authorization Document

The INS is attempting to resolve its slow turnaround on generating Employment Authorization Documents (EADs). Many foreign workers have had to apply for renewal EADs because their originals EADs have expired before their I-485 adjustments have been approved. Consequently, nonimmigrant workers are falling out of employment eligibility status because of EAD processing delays. Two possible solutions include extending EADs to cover a period greater than the time the INS currently takes to process I-485s or using approved I-765, Employment Authorization approval notices as temporary EADs.

November Immigrant Numbers Are Current But Misleading

The INS has put processing of I-485 Applications to Register Permanent Residence or Adjust Status on hold at all service centers until processing for all H-1B applications becomes current. Meanwhile, the INS has accumulated a backlog of over 1.2 million I-485s that await processing. Still, the Department of State's November 1999 Visa Bulletin shows that visas are available in all business-based categories.

EEOC Issues Guidance on Unauthorized Workers

As a result of recently released enforcement guidance, employers may find themselves torn between compliance with INS work authorization regulations and the Equal Employment Opportunity Commission. "[The EEOC's guidance regarding unauthorized workers] makes clear that the anti-discrimination laws under the Commission's jurisdiction protect all employees across the country, regardless of their work status," EEOC Chairwoman Ida L. Castro said in a statement issued October 26. As a result, employers who dismiss unauthorized workers in compliance with INS regulations could end up facing anti-discrimination lawsuits brought by the dismissed employees.

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