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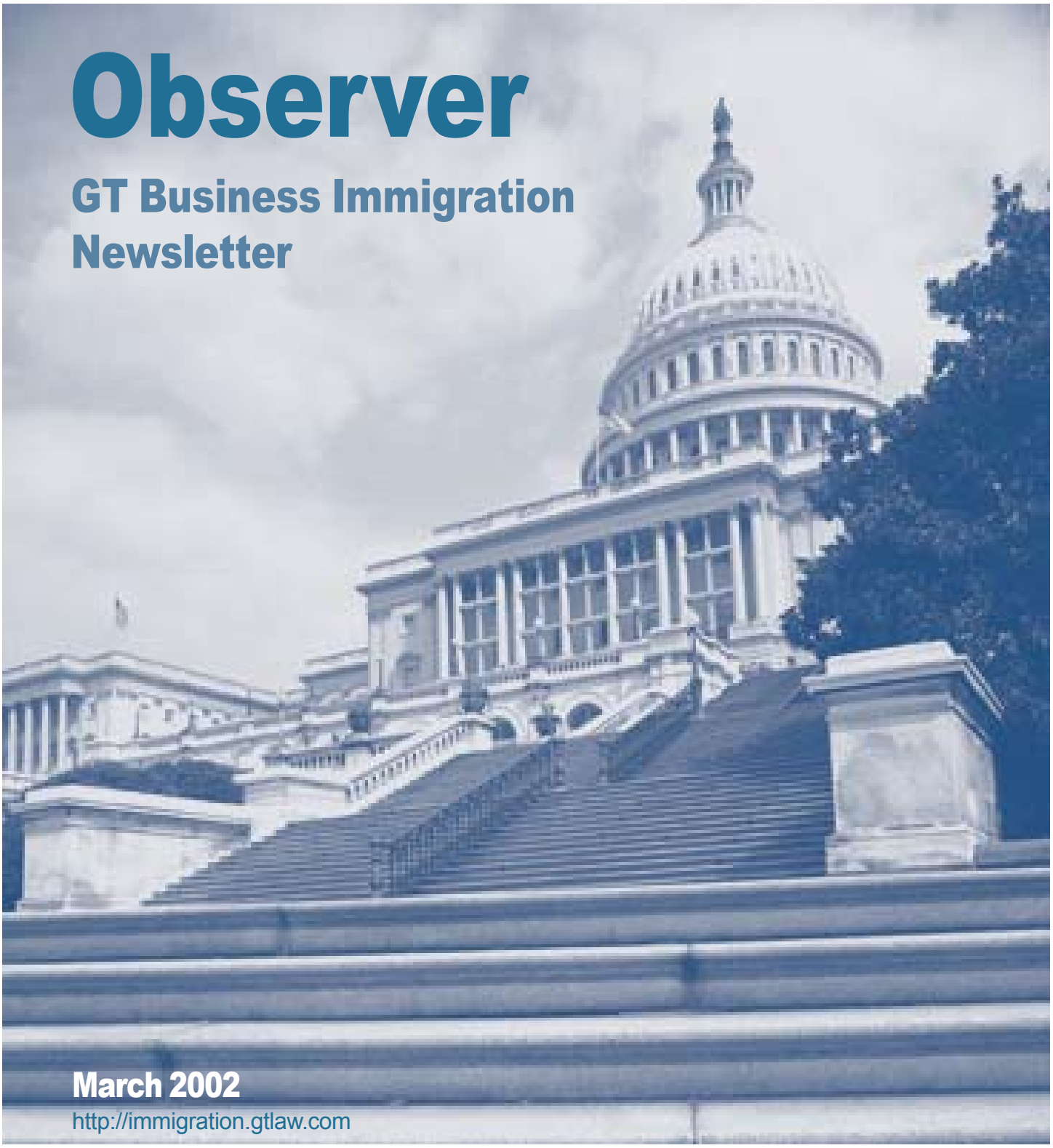

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http://immigration.gtlaw.com

Observer

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March 2002 State Department Visa Bulletin Link:
http://travel.state.gov/visa_bulletin.html

Service Center Processing Times

Vermont:
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California:
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Texas:
http://immigration.gtlaw.com/processing/ins/texas.htm

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Department of Labor Regional Processing Times:
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State Employment Agency Processing Times:
http://immigration.gtlaw.com/processing/sesa.htm

The GT Business Immigration Observer is published by the business immigration practice group at Greenberg Traurig http://www.gtlaw.com/about/overview.htm. GT Of Counsel, Dawn M. Lurie serves as the Editor of the Observer. The newsletter contains information concerning trends and recent developments in immigration law. Moreover, the authors analyze and report on relevant immigration related issues as well as legislative issues.

Finally, the GT Observer serves as an invaluable resource to individuals, and human resource managers, recruiters and company executives who must keep current on these matters.

SPREAD THE WORD

If you have enjoyed reading this newsletter and have found useful information in it, we'd greatly appreciate your help in spreading the word about it. You can do this by forwarding a copy to your friends and professional peers and telling them about it.

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March 7, 2002 is Annual DC Lobby Day

Join us in Washington D.C. on March 7 for the American Immigration Lawyers Association's annual D.C. Lobby Day. AILA Members, many with their clients, will be traveling to Washington from across the nation to alert their Representatives and Senators to important issues including: immigration and national security, INS reorganization, the need for due process reform, the extension of Section 245(i), and immigration reform as part of the U.S./Mexico discussions. If you are interested in participating and having your Senator or Representative hear your voice, please contact our office.

INS Releases FY 2000 Legal Immigration Numbers

The INS recently released a report on the numbers for legal immigration in FY 2000 based on CLAIMS (Computer Linked Applicant Information Management System) information. These numbers include individuals who obtained immigrant visas abroad and newly entered the U.S. and those who were already in the U.S. and adjusted status.

At the beginning of the report, the INS states that the numbers of legal immigrants in FY 2000 and in other recent years, has been affected by the backlog of adjustment of status applications still pending with the INS. According to the INS, the effect of the backlog in trying to determine the composition of legal immigrants is undeterminable.

According to the Report, a total of 849,807 individuals were granted legal permanent residence in the U.S. in 2000, an increase of just over 200,000 individuals from 1999's number of 646,568. The 200,000 increase was concentrated in adjustment of status of applicants. At the end of FY 2000, there were approximately 1 million adjustment applications pending at the INS.

Of the legal immigrants, 69% were family sponsored, 13% were employment preferences, and 8% were refugees or asylees.

The primary destinations for immigrants in FY 2000 were concentrated in six states, as it has been since 1971. These states are California (217,753) New York (106,061), Florida (98,391), Texas (63,840), New Jersey (40,013) and Illinois (36,180). Overall, these six states are the primary destinations for over 66% of immigrants.

Immigrants from Mexico, P.R. China, the Philippines, India, and Vietnam constituted 39% of the total immigrants in 2000 with the following numbers: Mexico (173,919), P.R. China (45,652), the Philippines (42,474), India (42,046) and Vietnam (26,747). As in 1999, these five countries where were the largest percentage of immigrants came.

For more information go to: http://www.ins.usdoj.gov/graphics/aboutins/statistics/IMM2000AR.pdf

Airport Security Concerns Post Sept 11

In the aftermath of the September 11, 2001 attacks, the world has evaluated its immigration and security policies. The British government is looking into using biometric cards with passports. These cards would possibly contain fingerprints, iris scans and other personal information. A feasibility study has been conducted at Heathrow airport in London.

Virgin Atlantic Airways and British Airways are also conducting a trial that involves iris recognition at Heathrow airport. The trial is taking place in two terminals where transatlantic flights are operated. The iris scan is logged in to the immigration system. Upon arrival in the UK, if the iris scan is confirmed, the passenger is allowed to pass through immigration.

These security methods have been under intense debate since September 11, 2001. Some believe the security methods will serve as effective ways of trying to stop terrorist activity. Others are concerned that the collection of personal data presents a privacy issue for everyone. Issues of who will collect, store and monitor the data will have to be resolved prior to full implementation of any new biometric security methods.

Ashcroft Proposes Changes to BIA

Attorney General John Ashcroft has proposed a rule to make changes to the Board of Immigration Appeals (BIA). The stated purpose of the changes is to eliminate the backlog of cases, enhance the quality of BIA decisions, focus BIA resources on cases which present disputed legal issues, eliminate delays in adjudicating administrative appeals and more efficient utilization of BIA resources.

The proposed rule includes some major changes. First, when an appeals case comes to the BIA, instead of automatically being reviewed by a panel of three members, an appeal would now be sent to a review panel made up of five BIA members. The case would then be reviewed by only one member of the initial review panel to determine if it merits a full review by a three-member panel. In order to qualify for a three-member panel review a case would have to present one of the following issues: 1) be a case which could settle inconsistencies between different rulings by immigration judges; 2) be a case which could clarify ambiguous laws, regulations or proceedings; 3) be case in which the initial decision by the immigration judge clearly does not conform with the law; 4) be a case that presents an issue or controversy which has national importance; or 5) be a case that clearly contains a wrong factual determination by the immigration judge.

Another change would be to eliminate the BIA's current power of de novo review of factual issues. Under the proposed rule, the BIA would have to accept the factual findings of the immigration judges and could only review them in instances where the factual findings were clearly wrong. Therefore, no new evidence could be introduced or considered by the BIA in most cases.

Under the proposed rule, a new timeline is established for the hearing of appeals starting with parties given 30 days to file a notice of appeal from a decision by an immigration judge. Immigration judges would have 14 days to complete a review of the decision transcript. In addition, parties to the case would have to simultaneously brief the case within 21 days for the BIA. Once the BIA received the appeal, a single member would have 90 days either to decide the case or decide that the case needed review by a three-member panel. Finally, the three-member panel would initially have 180 days to make a decision and issue their opinion. After the initial period, the member who is in charge of authoring the opinion could request a 60 day extension. If at the end of the 60 day extension, the opinion still is not completed, the BIA Chairman must decide the case himself in 14 days or send the case the Attorney General to make a decision. In addition, if at the end of the 60 day extension, the concurring or dissenting opinion has not been completed, then the majority opinion will be published by itself.

In instances where a member has a pattern of missing deadlines, the Chairman must notify the Director of EOIR and the Attorney General and missed deadlines will also be reported in the members' annual performance

Update on SEVIS "Student and Exchange Visitor Information System" Program

Work on establishing and implementing the SEVIS system is moving steadily along. INS and educators across the country are working together to meet the January 1, 2003 deadline. While many issues are not yet resolved, INS has made steady progress with the SEVIS system.

The program is currently being tested in the Boston area. This testing time will aid INS and the educators determine any technical and practical difficulties in the system. Currently the target release date for the interactive web based version portion of SEVIS is July 1, 2002.

In an attempt to facilitate a smooth transition and continue working with educators the INS will have five regional coordinators that will work with their regions to implement the system, educate and train the users of SEVIS and maintain a constant dialogue regarding the system.

The fee required for the use of the SEVIS system has not been finalized yet. However, it is expected that the INS will issue an interim final rule in the Federal Register. It is also not known when each school would have to be fully compliant and using the SEVIS system. This information has not yet been released by INS.

In addition, each school will have to receive authorization to use the SEVIS system. The authorization for using the SEVIS system has not been determined yet.

Refresher on Hiring International Students

With the school year coming to a close, international students are looking for internship, summer and post-completion positions. We thought now would be a good time to provide a brief refresher on the conditions under which international students may work.

When a student is studying pursuant to an F-1 visa they are allowed employment under limited conditions. Two of these options are curricular practical training and optional practical training.

Curricular Practical Training
This type of employment is available to a student as long as it is related to the student's course of study, such as an internship/externship coordinated between the school and the employer, or is mandated by the school in order to fulfill the degree requirements. In order to be eligible for curricular practical training, the student must have completed nine months of study at the undergraduate level. There is no such eligibility requirement for a graduate student.

The employment opportunity must qualify for academic credit and be listed in the course description book as employment with a purpose of promoting hands-on experience where a faculty member monitors the progress of the student. While there is no limit to the time a student may be employed in curricular practical training, if the student remains in curricular practical training for more than twelve months he or she will later be ineligible for optional practical training.

Optional Practical Training
This type of employment of a student is more common than curricular practical training. As with curricular practical training, optional practical training should relate to the course of study. Unlike curricular practical training, the school does not have to approve of or monitor the student's progress while employed. The student must have pursued a full-time course of study for nine consecutive months prior to obtaining optional practical training and is limited to one year of employment.

Optional practical training may only be pursued at the following four times during a course of study: 1) during the school year while classes are in session (part-time only), 2) during the times when school is not in session (i.e.: summer vacations or other regularly scheduled vacations), 3) after all course requirements are completed if the student is pursuing a bachelor's, master's or doctoral degree and 4) after the degree is obtained.

An important item to remember with optional practical training is that if the INS grants work authorization for optional practical training and the student decides not to work or cannot find employment they have lost their opportunity to pursue optional practical training. They will not be able to apply later or recapture unused time.

Please contact us if you would like to employ an international student and require assistance.

PERM Clears the Office of Budget Management

The Program Electronic Review Management System (known as "PERM") has finally cleared the Office of Management and Budget. This step in the process clears the way for publication of the proposed rule in the Federal Register, an action we have been awaiting for years. The purpose of the PERM program is to create a quick electronic attestation and audit program for permanent employment cases, similar to the electronic system for labor condition applications (LCA) used in temporary employment cases. It is projected that the cost of the filing of a labor certification application under this program will require a $1,000 fee. Upon receipt of the electronic application, a computer system will process the application within seven (7) to twenty-one (21) days from the time of submission. A tremendous difference from the current processing times of a year or two in many jurisdictions.

Under this PERM program, a prevailing wage will be secured and recruitment conducted during the six month period prior to filing. Supervised recruitment will be necessary only in problematic cases. The Department of Labor (DOL) plans to publish a specific list of mandatory recruitment steps and alternatives to those steps. Where the system finds a problem in an application, it will be forwarded for an audit. There will also be random audits, for quality control. The DOL has indicated that this program will depend on its post-approval enforcement actions to assure the integrity of the system, as the original applications will receive little or no human review. The DOL has also stated that post-approval investigations will not jeopardize a foreign national's permanent resident status.

The technology for this program will be similar to the current LCA faxback system, though the DOL anticipates that it will expand its phone lines and fax equipment sufficiently to successfully implement the system. The PERM program will allow for fax filings as well as hard copy filings at a central processing location. The application for this program will involve a multi-page form, which should be filed without supporting documentation; if supporting documentation becomes necessary, the DOL can request it after the initial filing. Additionally, the DOL expects to eventually expand the PERM program for Internet filing.

Now that the proposed rule for the PERM program has cleared the Office of Management and Budget, the rule has returned to the DOL for final approval and publication in the Federal Register. It is anticipated that the Federal Register publication will take place by June of this year. It is important to note, however, that actual implementation of the program is expected to commence no earlier than in the latter part of the second quarter of the year 2003.

U.S. Department of State Issues Increased Criminal History Screening Regulations

The events of September 11, 2001 resulted in the USA Patriot Act which, among many other directives, requires the Federal Bureau of Investigation ("FBI") to give the U.S. Department of State ("State Department") access to certain criminal history records and other databases maintained and controlled by the FBI.

On February 25, 2002, the State Department issued an interim final rule, effective immediately, regarding its new procedures for obtaining and using criminal history information from the FBI for immigrant and nonimmigrant visa applications.

The interim final rule amends the State Department regulations regarding fingerprinting and establishes regulations to control the use, protection, dissemination, and destruction of any of the records provided to the State Department by the FBI.

The State Department will now have access, through its automated Lookout database, to criminal history record extracts from the FBI's National Crime Information Center ("NCIC"). All visa applicants and applicants to admission to the U.S. will be subject to name-check queries against the extract information in order to determine if the applicant may have a criminal history or other record.

If the extract information indicates that an applicant may have a criminal history, the State Department will require the applicant to submit fingerprints and pay the $25.00 fingerprint processing fee. The State Department will then send the fingerprints to the FBI for purposes of verifying that the information shown in the extract matches the applicant in question. Once the identification is confirmed, the FBI will forward to the State Department the full content criminal history record.

This criminal history information is considered law enforcement sensitive and is subject to conditions for its use and procedures for its destruction. Therefore, the interim final rule requires the State Department to: 1) limit the re-dissemination of the information, 2) use the information solely to determine whether or not to issue a visa to an alien or to admit the alien to the U.S., 3) ensure the security, confidentiality and destruction of such information, and 4) protect the privacy rights of individuals who have NCIC criminal history records.

INS Guidance on Employment Authorization for Spouses of E and L Visa Holders and Blanket L Visa Petitions

As reported earlier on Greenberg Traurig's Immigration website, the President recently signed into law two new pieces of legislation which amend the Immigration and Nationality Act ("INA") by authorizing the employment of spouses of E-1 treaty traders, E-2 treaty investors, and L-1 intracompany transferees, as well as reducing the amount of pre-employment an alien needs to qualify under a Blanket L from one year to six months.

William Yates, Deputy Executive Associate Commissioner of the INS, recently issued a memo providing guidance on the INS's implementation of these new laws. This memo is immediately effective. The memo states that in order to obtain employment authorization, an individual must apply for an Employment Authorization Document ("EAD") by filing a Form I-765 with the Service Center having jurisdiction over the individual's place of residence. However, if a person concurrently files an I-129 requesting dependent E-1 or E-2 status and an I-765 requesting an EAD, they must file this application at either the California or Texas Service Center. The EAD will provide the spouse with "open-market" employment authorization.

The applicant must provide documentation proving their marriage to an E or L principal alien, and documentation proving they were admitted as a dependent E or L and that their spouse was admitted as a principal E or L. This documentation will normally consist of copies of a certificate of marriage, approval notices and I-94 cards. Please note that the memo does not state that applicants have to submit documentation, such as pay stubs, to show that the principal alien is *maintaining* E or L status.

Dependent spouses will be authorized for employment for the period of admission and/or status of their spouses, not to exceed two years. The applications for employment authorization are supposed to be processed within 90 days. In the event that the spouse does not receive the employment authorization documents within this 90-day period, he or she can go to a district office and receive the document that is valid for up to 240 days.

The memo also covers implementation of the new law reducing the amount of pre-employment an individual needs under a Blanket L visa petition. The law amended the INA by adding a new sentence which states that the one year period of continuous employment with the related foreign entity required under such section is reduced to a 6 month period if the importing employer has filed a blanket petition and met the requirements for expedited processing of aliens covered under the petition. The memo states that this new standard should be applied to any currently pending petitions.

INS CONFIRMS PLANS TO ACCEPT PREMIUM PROCESSING REQUESTS FOR I-140'S BEGINNING IN APRIL 2002

Crystal Williams of the Immigration and Naturalization Service confirmed today at the U.S. Chamber of Commerce Subcommittee on Immigration meeting that all four INS regional service centers will begin to accept premium processing requests for Petitions for Alien Worker (Form I-140) in April of 2002. Premium processing is the term used by INS to describe its expedited service in regards to certain types of employment-based petitions. To obtain premium processing service, a petitioner pays $1000 per petition and the INS will review the case within 15 days of receipt. Currently, the INS will only accept premium processing requests for nonimmigrant petitions.

However, with Ms. Williams' announcement, it is anticipated that the INS will phase in I-140 premium processing in stages. It is believed that I-140's based on a labor certification application that has been approved by the DOL will be the first type of case for which INS will expedite review.

It is important to note that premium processing does not guarantee that the petition will be approved or that a final decision will be rendered in 15 days. The premium processing guarantees that the INS will conduct an initial review of the case within 15 days of receipt of the premium processing request. Moreover, within 15 days, the INS is required to mail a notice to the petitioner regarding the case. The notice may be a notice of approval, request for evidence, intent to deny or notice of investigation of fraud or misrepresentation. Petitioners who receive notices requesting additional evidence, or intentions to deny, or an investigation of fraud will be given additional time to respond. Upon receipt of the petitioner's response, the INS has an additional 15 days to respond.

GUEST WORKER ESSENTIAL WORKER IMMIGRATION STILL NEEDED

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled ("essential worker") labor.
Greenberg Traurig Shareholder Laura Reiff is a co-chair of the coalition.

The immigration debate on the U.S./Mexico front is back on track and the administration is seriously looking at something in the context of this debate over the next several months. President Bush will be in Mexico the third week of March on a U.S. mission, but will meet separately with President Fox on domestic issues.

We will keep you updated and hope to see a movement in new legislation.

For more information see www.EWIC.org

Immigration News

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