Greenberg Traurig

Immigration Newsletter

February - March 2008

IN THIS ISSUE:

1) The H-1B Cap Begins April 1, 2008: Make Sure Your Company Does Not Miss the Window For Filing

Now is the time to identify employees and potential new employees for whom you need to obtain H-1B visas. H-1B petitions can and should be submitted six months in advance of the start date. Since new cap slots cannot actually be used until October 1, 2008, that date is April 1, 2008. These H-1B petitions will be requesting a cap number for what will be Fiscal Year 2009, which begins on October 1, 2008. The available cap will be filled quickly, most likely on the same day it opens. Cap-subject H-1B visas are limited to 65,000 per year, with an additional cap of 20,000 visas available for beneficiaries who have earned a Masters degree from a U.S. institution. Since April 1, 2008 is a Tuesday, we will be sending cap subject petitions to the United States and Immigration Services (USCIS) on March 31, 2008 for next-day delivery.

Last year serves as an example of how critical it has become to file the cap-subject H-1B petition on the first date filing is available. Last year, the 65,000 cap was reached on April 2, 2008, which was the first day that petitions were accepted for the 2008 fiscal year. In fact, USCIS stated that it received over 120,000 petitions last year-exceeding the number of available H-1B visas by nearly 100%-in just the first two days of filing. Pursuant to the regulations, USCIS conducted a random selection from all the petitions received on the first two days of filing, and the selected petitions were adjudicated. Although the cap had been reached earlier and earlier during past years, last April's events were unprecedented. USCIS expects that the same scenario will occur this year. After the April 1, 2008 filing period closes, employers will not be able to start new cap-subject H-1B employees until October 1, 2010! It is thus critical that employers identify who they wish to sponsor for the H-1B visa and contact us as soon as possible. Employees should work with counsel to provide all necessary information and documentation to ensure that their H-1B petitions are ready to be filed by the April 1, 2008 deadline.

Preparing H-1B petitions now will be particularly important to the following categories of employees:

- Recent university graduates working in the U.S. in F-1 Optional Practical Training status;
- Candidates who are recruited abroad who are not eligible for any other type of work visa and will be subject to the cap numerical limitations; and

- Individuals in the United States working in another nonimmigrant status who will be ineligible to continue work in that status after October 1, 2008.

Individuals in the U.S. who are not chosen by the USCIS will either need to depart the United States if their current status is expiring or will need to make alternative arrangements to remain in the U.S. This issue often arises for students that are currently working on Optional Practical Training . Although there is no limit to how many times a company may petition for an individual to obtain H-1B status, these individuals must ensure that if they wish to remain in the U.S. for another year that they have valid status. Because the volume of H-1B petitions is anticipated once again to be very high we urge employers to contact their GT attorneys as soon as possible to prepare their cap cases.

2) Worksite Enforcement: Government Audits & In-house Reviews

Serious criminal charges previously reserved for drug traffickers and organized-crime figures continue to be brought against businesses that employ undocumented immigrants by the Department of Homeland Security (DHS). Based on its year-end review, the Department of Homeland Security announced that arrests nearly quadrupled in 2007 as compared to previous years. Over the past year, nearly 4,900 arrests were made involving unauthorized workers, providers of forged documents, and business owners, as well as company supervisors or hiring officials who employed unauthorized workers.

This climate of increased government pressure to verify the employment eligibility of all workers, coupled with conflicting state and local laws imposing severe penalties on hiring unauthorized workers, indicates that now more than ever employers should be conducting regular in-house reviews of hiring policies, I-9 employment eligibility verification processes, and document-retention policies and procedures. Many businesses are considering joining the government's E-Verify program in an attempt to reduce their possible liability. However, these businesses should also consider the likelihood that participating in E-Verify may give rise to potential liability for discrimination suits brought by employees erroneously determined not to be authorized to work, although the accuracy rate of E-Verify is increasing. Employers who elect to participate in E-verify should be aware that they participation may make audits and other enforcement actions easier on the part of the government, as employer records will be in a form that is easier to access. In fact, in past months we have seen increased scrutiny of E-Verify participating employers by Immigration and Customs Enforcement (ICE). Coincidence or not, USCIS and ICE appear to be sharing information to a certain extent. On the other hand there are many situations where E-Verify, even with its flaws, may be an option for employers to explore. Employers are advised to consult with immigration counsel prior to making the decision to participate in this federal program, as the consequences for their business and work-force can be significant.

Recent trends across the country indicate ICE has began to emphasize not only criminal audits but also administratively focused initiatives. With the addition of 41 Forensic auditors to ICE's local offices this year, it appears the agency is testing the waters in this arena. Sources at ICE local offices have confirmed that these administrative audits are being mandated across the country by ICE Headquarters. Paperwork and technical violations could be a lucrative business for ICE especially if companies with questionable workforces are targeted. GT attorneys have seen an increase in Administrative subpoenas coupled with a Notice of Inspection call for production of Forms I-9 for all current and terminated employees. Often the

date ranges for terminated employees are broad and the additional requests are wide ranging. Social Security no-match letters and payroll records are often on the list of documents contained in the ICE notice.

GT's Business Immigration Group has in-depth experience in evaluating companies' current business practices and policies to evaluate compliance with existing federal regulations pertaining to employment eligibility verification. Additionally, GT regularly develops best practices for employers to follow in the hiring and I-9 process. GT attorneys regularly assist companies in reducing their liability in cases of government audits or investigation.

For additional information on I-9 compliance, please refer to the following GT newsflashes:

Immigration Crackdown on Businesses Falls Short (http://www.gtlaw.com/practices/immigration/compliance/updates/20071227.htm),

Revised Employment Eligibility Verification Form I-9 Is Now Available (http://www.gtlaw.com/practices/immigration/news/2007/11/08.htm),

More ICE Raids (http://www.gtlaw.com/practices/immigration/news/2007/03/29.htm), and

I-9 Employment Verification Process Frequently-Asked Questions (http://www.gtlaw.com/practices/immigration/hr/guides/I9_FAQ.pdf).

* *

3) USCIS Reaches H-2B Cap

On January 3, 2008, the USCIS announced it had reached the H-2B cap for the second half of fiscal year 2008. This means that as of that date USCIS had received a sufficient number of petitions to reach the congressionally mandated cap. According to a recent statement, USCIS will reject petitions for new H-2B workers seeking employment start dates prior to October 1, 2008 that arrive after January 2, 2008. USCIS will apply a computer-generated random selection process to all petitions which are subject to the cap and were received on January 2, 2008.

The H-2B visa is available to employers with a temporary need for workers not working in agriculture. A maximum of 66,000 temporary workers can enter the US on H-2B visas yearly, and this annual cap is split into two biannual halves. This visa is ideal for employers with recurring seasonal needs, intermittent needs, and one-time occurrences. The duration of the visa is limited to the employer's need for the temporary workers, with a maximum authorized period of one year. However, the employer may extend the duration of the visa up to three years.

In response to the cap announcement, business industries such as restaurants and hotels, landscaping, and construction, pointed out Congress' failure to pass fair and reasonable immigration policy that meets the growing needs of an expanding U.S. economy. These businesses support an increase in the cap to better serve the need of U.S. employers for documented labor.

Unfortunately the collapse of Comprehensive Immigration Reform also meant that Congress passed on a chance to add a one-year fix to the H-2B nonimmigrant visa program. GT attorneys are currently working with Congressional and White House leaders to lobby for an increase in the cap numbers.

4) USCIS Application and Receipting Update

Last year, USCIS vacillated on whether to honor the July 2007 visa bulletin, which made current the EB-1, EB-2, and EB-3 immigrant visa categories. As may of our clients can remember the Service announced it would not accept applications for the month of July on the day that the bulletin became current, but subsequently reversed course and issued a press release stating that the Agency would honor the July 2007 bulletin until August 17, 2007. Today, the USCIS continues to process the petitions filed during that period, which number upwards of 300,000. On the heels of that episode, the USCIS fee increase took effect, prompting a last-minute rush of filings meant to avoid the new fees.

Due to this tremendous increase in the number of applications and petitions filed in 2007, the USCIS has advised customers that processing of fee payments and entry of cases into their tracking system is behind schedule. Consequently, applicants are experiencing significant delays in receiving receipt notices. Delay in fee processing and data entry will not affect an applicant's Change of Status or Extension of Stay eligibility so long as all other eligibility requirements are met. USCIS confirms it continues to process Premium Processing Service requests within 15 days.

USCIS will honor the actual date an application is received in their mailroom. This date will be indicated on the receipt when the Form I-797, Notice of Action, is mailed. Until this situation is resolved, USCIS promises to provide weekly updates on progress in issuing receipt notices. As of **January 4, 2008,** the USCIS has completed initial data entry and issued receipt notices for applications and petitions received between August and December 2007, with the exception of I-130, Immigrant Petitions for Alien Relative, filed at the Chicago Lockbox facility. Applicants who have not yet received their receipt notices should contact their immigration counsel.

5) New 10-Fingerprint Collection Implemented at U.S. Airports

On November 29, 2007, Dulles International Airport in Virginia became the first U.S. port of entry to collect all ten fingerprints from international visitors, marking a departure from the previous two-print system. Collected as part of the US-VISIT process, which employs biometrics (fingerprint and digital photograph), the goal is to verify the identity of visitors and assesses whether they pose a threat to national security. Department of Homeland Security (DHS) Secretary Michael Chertoff touted the upgrade as efficient and more effective in providing security at U.S. ports of entry. Since that time, International airports in Atlanta, Boston, Chicago, Houston, and San Francisco have begin collecting what are known as “10-prints.” Miami, Detroit, Orlando, and New York’s JFK Airport are scheduled to begin collecting 10-prints in the coming months. All remaining air, sea, and land ports of entry are scheduled to begin collecting 10-prints by the end of this year.

The new 10-print system resulted from intergovernmental cooperation between the DHS, the FBI, and the State Department. Customs and Border Protection (CBP) officers use this technology at U.S. ports of entry and State Department consular officers use it at visa-issuing posts. Moreover, the transition to a 10-

fingerprint collection conforms to the existing FBI 10-print standard and allows for more effective information-sharing between agency databases. For example, fingerprints collected by US-VISIT can be compared against latent prints lifted from vehicles or pieces of paper found at crime scenes or scenes of terrorist attacks. Secretary Chertoff also added that other countries, including the United Kingdom and the European Union, are moving toward the 10-fingerprint collection for their immigration and border management as well.

6) Passport Requirement for Canada and Mexico Delayed

Congress recently delayed the requirement that U.S., Mexican, Canadian, and Caribbean citizens entering the United States from Canada, Mexico or the Caribbean present a passport when arriving by land or sea. The Department of Homeland Security (DHS) intended to implement the passport requirement from such travelers beginning June 2008 as part of the Western Hemisphere Travel Initiative (WHTI). DHS regulations implementing the WHTI already require citizens of those countries to show a passport when they fly into the United States. Yet people arriving by air account for only ten percent of individuals crossing the border.

If President Bush signs the delaying legislation, U.S., Canadian, Mexican, and Caribbean nationals will not need to show a passport when entering the United States by land or sea until at least June 2009. Despite the one-year delay, the DHS says it plans to require most people from the United States, Canada, Mexico, and the Caribbean to present a birth certificate or some other document establishing their citizenship when they enter the United States on or after January 31, 2008.

On a related matter, Customs and Border Protection (CBP) Officers will no longer accept oral declarations as satisfactory evidence of citizenship and identity from travelers claiming to be U.S., Canadian, or Bermudian citizens. Effective January 31, 2008, all travelers, including those claiming to be U.S., Canadian, or Bermudan citizens, arriving by land and sea must present documents proving both citizenship and identity. Valid documents establishing citizenship include a birth certificate, and government-issued documents such as a driver's license will establish identity.

For further information, please read our newsflash discussing new document requirements for travelers, effective January 1, 2008. http://www.gtlaw.com/practices/immigration/news/2007/12/07.htm

7) 2009 Diversity VISA Lottery Program

The U.S. Department of State received applications for the 2009 Diversity Visa Lottery through December 2, 2007 and required entries to be submitted electronically. The Lottery Program allocates permanent residence visas (green cards) to applicants from six different geographic world regions. Visas are allocated according to the rates of immigration from each region. Thus, applicants from countries with lowest immigration rates to the United States receive the most visas. No diversity visas are allocated to countries that sent more than 50,000 immigrants to the U.S. over a period of five years. Consequently, this excludes applicants from Brazil, Canada, China (mainland born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, Russia, South Korea, United Kingdom (except Northern Ireland), and Vietnam.

Individuals will be selected randomly by computer and will be notified by mail between May and July 2008. Applicants who win the diversity lottery are eligible to be accompanied to the U.S. by their spouse and any

unmarried children under the age of 21 years. GT attorneys regularly assist diversity visa lottery winners with filing their cases for consular processing or Adjustment of Status.

8) Employment and Enforcement Update: Across the States

Judge Rules on Merits of Arizona Immigration Law

A new Arizona law, considered to be one of the nation's most aggressive immigration enforcement laws, went into effect on January 1, 2008. The "Legal Arizona Workers Law" mandates suspension of the business license of any employer found to have knowingly hired an undocumented worker, and upon a second offense, calls for a full revocation of the employer's business license. The new law also requires that Arizona employers use E-Verify, an electronic employment verification system administered by U.S. Citizenship and Immigration Services and the Social Security Administration.

Federal courts in Phoenix and San Francisco, ruling on separate lawsuits brought by business and civil rights groups, refused to block the Arizona law before the effective date. First, Judge Neil Wake of the U.S. District Court in Phoenix, refused to issue a temporary restraining order because the balance of hardships did not tip in favor of the plaintiffs and they did not show a likelihood of success on the merits. Then, on December 21, 2007, the United States Court of Appeals for the Ninth Circuit deferred a decision on an injunction until after a hearing by Judge Wake on January 16, provided a "decision is reached with reasonable promptness." Then on January 16, it was decided by the Court that there will be no prosecutions under the employer-sanctions law until after March 1. The Court promised to rule on the landmark hiring law by early February. On February 7, Judge Wake ruled on the merits of the lawsuit, ruling in favor of the defendants that the law is valid as written and does not conflict with federal law. The next day, the plaintiffs in the case filed an appeal of that decision on the Ninth Circuit. Ever since the sanctions bill became law in July, attorneys for the business and civil-rights groups have argued that it is unconstitutional because it allows the state to regulate an area that is exclusively reserved for the federal government. The state Attorney General's Office has countered that the Arizona law correctly uses the one exception in the federal law left to the states: sanctions on business licenses. Judge Wake agreed with this argument. The ruling is discussed in more detail in a recent GT Alert dated February 8, 2008.

The ruling opens the way for prosecutions under the new law beginning March 1, barring further action to prevent prosecutions by the Ninth Circuit.

Even as the courtroom arguments proceeded, Arizona lawmakers introduced a series of bills that would amend the provisions of the law that have drawn the most criticism from the public.

The bills are sponsored by a bipartisan group of lawmakers, including two Republicans who voted for the original legislation and have since publicly stated that they regretted their votes in favor of the legislation.

The Act also requires employers to screen all new hires through the federal E-Verify program, which checks the validity of a new hire's Social Security number for employment in the United States as well as their immigration status by checking the number against a Department of Homeland Security database to see if the hire is eligible to work in the U.S. If the system issues a non-confirmation, it is the employee's responsibility to fix any errors.

House Bill 2346 recently introduced in Arizona would change the law to state that an employer shall not "hire" an unauthorized alien, striking the verb "employ."

GT will continue to provide updates on the status of the Arizona legislation.

Illinois Prohibits Employers From Using E-Verify

The Illinois law prohibiting employers from using E-Verify to confirm employment authorization for newly-hired employees was scheduled to take effect on January 1, 2008. However, Illinois agreed to not enforce this law until the pending lawsuit filed by the U.S. Department of Justice (DOJ) reaches resolution. Illinois also agreed not penalize employers simply for participating in the program, and its state legislature is now considering possible changes to the law.

On September 24, 2007, the DOJ sued Illinois accusing the state of obstructing efforts to curb illegal immigration. The federal government wants the Court to declare invalid and unenforceable the Illinois' Right to Privacy at Work Act, which prevents employers from checking the immigration status of new employees through the federal E-Verify database. The Illinois Act stipulates that employers are prohibited from enrolling in any employment eligibility verification system, including E-Verify, until the program is more efficient. Illinois officials report that the E-Verify has a 50 percent accuracy rate, and takes approximately ten days to respond to employers. Businesses and labor organizations support the Illinois Act, citing the program's low accuracy rate as harmful to business.

The suit, filed in the Federal District Court for the Central District of Illinois, challenges the state statute as unconstitutional because it pre-empts federal laws that established the worker verification program. But because immigration law falls exclusively under federal jurisdiction, many states have struggled with the issue, as evidenced by recent surge in state-drafted immigration laws. For example, in contrast to Illinois, Arizona adopted a law mandating all employers to use the E-Verify system or lose their business licenses. To date, the DHS has not taken action against Arizona. With the defeat of a broad immigration bill in the Senate, states will continue to tread through the current immigration quagmire.

Georgia

The second phase of Georgia's employment enforcement legislation will become effective on July 1, 2008. This legislation requires that Georgia employers with over 100 employees who enter into a public service contract with the state to verify the employment eligibility of new hires through E-Verify. The first phase of the legislation became effective on July 1, 2007 and applied these requirements to all public contractors with over 500 employees. The third phase will apply to employers with less than 100 employees on the effective date who enter into a public service contract and will take effect on July 1, 2009. The verification requirements also apply to sub-contractors. Employers must also sign a memorandum of understanding with the state and provide attestations regarding their compliance with the law.

Minnesota

Minnesota will also soon join the states that mandate the use of E-Verify. In an Executive Order issued on January 7, 2008, Governor Pawlenty directed the Minnesota Department of Employee Relations, the Department of Administration, and the Department of Employment and Economic Development to electronically verify employment eligibility by using the E-Verify program. Electronic verification will apply to all new state employees and contractors doing business with the state, and recipients of state business incentives.

Oklahoma

The Oklahoma Taxpayer and Citizen Protection Act of 2007, which became effective on November 1, 2007, requires state and local government law enforcement officers to enforce federal immigration law. The law makes it a felony to harbor, transport, conceal or shelter unauthorized immigrants and provides for fines. It creates a rebuttable presumption that unauthorized immigrants are a flight risk with respect to bond determinations. Moreover, the Act requires the verification of employment eligibility using the electronic employment verification system (E-Verify) for government contractors and provides for a discrimination cause of action for the discharge of a U.S. citizen while retaining an unauthorized immigrant on the payroll. This passage and implementation of this legislation further shows the states' dissatisfaction with the collapse of Comprehensive Immigration Reform in Congress and their intention to take matters into their own hands.

For additional information on the E-Verify Program, please visit our informational page.

* * * * * * * * * * * * * * * * * * *

9) VISA SOLUTION: Play Ball! - But Not Without the Proper Visa: the O and P Visa Categories

Although sometimes not considered until the last minute, foreign athletes and entertainers are required to obtain a visa in order to perform in the United States. GT attorneys regularly represent entertainers, musicians and athletes traveling to the United States. Many performers and athletes must enter the United States on certain dates in order to perform and as such proper and timely visa planning is critical. The nonimmigrant visas of choice for these individuals and certain support personnel are the O and P nonimmigrant visa categories.

The P Visa

The P-1 visa is available to athletes who perform at an internationally recognized level and group entertainers who have been recognized internationally as being outstanding in their discipline. For an applicant to qualify, their skill and recognition must be substantially above that ordinarily encountered. P-3 visas can be utilized for groups coming to participate in a cultural exchange program.

To qualify for the P visa as a professional athlete, the athlete will need to demonstrate that they have a tendered contract with a major U.S. sports league or team and that they have, among other things, participated to a significant extent in a prior season with a major U.S. sports league or for a U.S. college in intercollegiate competition. They may also provide a statement from an official of the governing body of the sport which details how they are internationally recognized or demonstrate their receipt of a significant award or honor in the sport. In 2006, the COMPETE Act expanded the P-1 category to include professional athletes competing in the minor leagues who generally required H-2B visas before the enactment of the COMPETE Act. The Act also made eligible for the P-1 visa certain amateur and professional ice skaters performing in theatrical ice skating performances or tours.

To qualify for the P visa as an entertainment group, the group must demonstrate, among other things, that they have been internationally recognized as outstanding for a substantial period of time and that performers have been with the group for at least one year.

USCIS has also indicated recently that it is willing to consider expanding the concept of "recapture" time to the P-1 visa to match the broader application it has given to that concept in the H-1B and L

nonimmigrant visa context. "Recapture" allows a nonimmigrant to reclaim time spent outside the United States from counting against the time limits that apply to the visa classification.

The O Visa

In the entertainment area, the O-1 visa is reserved for aliens of extraordinary ability in the arts who have reached a level of distinction which demonstrates a high level of achievement in the field. This level of distinction is evidenced by a degree of skill and recognition substantially above that ordinarily encountered. What does that mean? It means that unless a musician, artist or performer can establish that they are prominent in their field of endeavor or that they have in essence "made it" then they probably do not qualify for the O-1 visa. If they *have* reached a high level of achievement in their field and they can prove it by demonstrating, among other things, that they have been nominated to receive a significant international or national award (think Emmy, Grammy, Academy Award or foreign equivalent), or that they have performed in a leading role in distinguished productions or organizations and/or they have a record of major commercial or critically acclaimed success, then the O-1 visa is probably within their reach. Since distinction in the "field" is key to success, an important part of the O-1 petition is defining and narrowing the scope of the relevant "field" when necessary in order to establish that the beneficiary is at the top of that field.

If a musician, artist, entertainer, athlete or entertainment group appears to qualify for the O or P visa, a petition is prepared and filed with the U.S. Citizenship and Immigration Services (USCIS). The team or U.S. agent serves as the petitioning sponsor and provides qualifying evidence listed as well as additional information and/or materials including a letter in support of the petition, a schedule of events, concert dates or team schedule and information regarding the organization of the petitioning entity. These visas also require a written advisory opinion from an appropriate union regarding the nature of the work to be performed and the person's qualifications.

Visa Highlights

- O and P visa petitions qualify for the USCIS Premium Processing Program under which the visa petition will be adjudicated within 15 days of receipt by the USCIS for an additional $1,000 filing fee. In extreme cases discretion can be granted to expedite processing where warranted.
- The length of stay in the United States petitioned for on behalf of the beneficiary can be as short as for a performance in one competition, event or show or can be as long as an entire season or the length of an entire contract, up to three years for an O petition and up to five years for a P petition. Extensions of stay can be obtained for both visa categories if new events or contracts are available to the performer.
- The P visa includes provisions for continued employment authorization when a professional athlete is traded from one organization to another organization.
- Although all O and P visa applicants must have a foreign residence which they do not intend to abandon, the regulations permit dual intent - meaning the professional athlete may hold the nonimmigrant P visa and at the same time intend to, and proceed to, obtain permanent residence in the United States.

Clearly the O and P visa categories have been carved out for those who have reached the top of their chosen discipline. Holders of these visas include NHL Hockey Players, Major League Baseball Players, NBA Basketball players, PGA Golfers, and top musicians, music groups, film stars, and entertainers from around the world.

10) Spotlight on Efren Hernandez III

The Greenberg Traurig Business Immigration and Compliance group is proud to announce the addition of Efren Hernandez to our practice, headquartered at the Tyson's Corner office in the Washington, DC/Virginia metropolitan area. Prior to joining Greenberg Traurig, Efren was Director of Business and Trade for U. S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security. At USCIS, Efren was responsible for both policy and operational oversight of all employment-based immigration, including the H-1B program. He also served as the subject matter expert for all employment-based immigration matters. While at USCIS, Efren frequently advised human resource executives, in-house counsel and immigration attorneys on novel and cutting-edge immigration issues. Efren has expertise in immigration issues affecting a broad range of industry sectors such as technology, arts and entertainment, professional sports, manufacturing, and the hospitality industry. Efren was also a key part of the planning and preparation for immigration reform legislation within USCIS and the Department of Homeland Security.

Additionally, Efren served in the former INS' General Counsel's office and was a trial attorney in the INS New York District office. Efren is a spectacular addition to our group and further expands the capabilities offered by our nationally renowned immigration law experts. Efren's expertise will be particularly valuable to assist clients with complex immigration matters including USCIS appeals, expedited sports and entertainment visas, as well as general business immigration matters.

Efren may be contacted at hernandeze@gtlaw.com.

11) Global Visa News: The Schengen Treaty Expansion

To date, a total of 26 countries have signed the Schengen Treaty, and as of the end of December 2007, 24 States implemented it. The original Schengen Treaty members include: Austria, Belgium, Denmark, France, Finland, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden. The following states acceded to the Schengen area on December 21, 2007: the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia, and Hungary. The implementation date of the Treaty by Cyprus is not yet determined.

Under the Schengen Treaty, a foreigner may enter any of the member states for tourist or business purposes for up to 90 days every six months. The 90 day period is cumulative of all stays in member states during the six-month period. In other words, if a foreigner spends 30 days in Spain and immediately travels to Italy for 60 days, he must then leave all Schengen States, which today is comprised of 24 countries, for ninety days before he is able to return to any of the countries that comprise the Schengen area. An exception would apply for those tourists secures a visa, or in the case of visa nationals, obtains a new visa allowing the tourist to return.

12) March 2008 Visa Bulletin

The March Visa Bulletin shows that visa numbers are current for the Employment-based First Preference categories. Visa numbers are also current for Mexico, the Philippines, and all other areas (not including China or India) in the Employment-based Second Preference categories. During early January, the India Employment-based Second Preference visas became the only unavailable category. The EB-2 category for China showed some movement, advancing almost a full year to a December 1, 2003 priority date from the previous month's date of January 1, 2003. There was marginal movement in the EB-3 category with the exception of the Philippines, which moved to a January 1, 2005 date from the previous month's November 1, 2002 date.

The bulletin indicates that the USCIS made allocations for the demand received by February 8, 2008 in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be included within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

March cutoff dates for common employment-based green card categories are shown below. The listing of a date in any class indicates that the class is oversubscribed. The letter "C" signifies the visa numbers are available for all qualified applicants. Please note that visa numbers are available only for applicants whose priority date is earlier than the cut-off dates listed below.

Category	China	India	Mexico	Philippines	All Other Areas
EB1	C	C	C	C	C
EB2	01-Dec-03	U	C	C	C
EB3	01-Dec-02	01-Aug-01	01-May-01	01-Jan-05	01-Jan-05
EB4	C	C	C	C	C
EB5	C	C	C	C	C

*Greenberg Traurig continues to partner with industry coalitions and key Congressmen to advocate for immigration relief from these annual quotas on employment-based immigration.

13) Consular Corner

Normal Processing Time for Passport Services Restored

The Department of State has now restored passport service to their normal standard of six to eight weeks processing time for routine passport applications and no more than three weeks for expedited service.

Nonimmigrant Visa Processing

Most visa applicants will be required to provide ten finger scans with their first visa application following the transition. The Department began deployment of the ten finger scan system to all visa issuing consular posts abroad in April 2007, with completion scheduled for early 2008.

Nonimmigrant Visa Application Forms

Most Embassies/Consulates are using the Electronic Visa Application Form, DS-156. This form was introduced by the Department of State to help reduce the time spent on visa data entry. Applicants should complete the electronic application form and print out the three-page document. The first portion comprises the two-page DS-156 application form, where the applicant will place their signature and photo. The third page contains a bar code, which will be scanned at the Embassy or Consulate in order for the data to be automatically transferred to the consular computer system. Please ensure that bar codes on pages 1 and 3 are clear. For now, DS-157 and DS-158 application forms are still non-electronic.

Also, in planning international travel, all foreign national must ensure that carefully review their current immigration documentation to make sure that they have the appropriate travel documentation required to return to the United States. Advanced planning can make the visa application process less stressful. The top Visa Wait Times at U.S. Consular Posts are: Cuba, Venezuela, Haiti, Brazil, Dominican Republic, Israel, Brazil, Saudi Arabia, Kenya, Brazil and Mexico.

* *

The Business Immigration Observer is published by GT's Business Immigration & Compliance practice. The newsletter contains information regarding trends and recent developments in immigration law and an analysis of legislation reported by immigration law professionals.

SPREAD THE WORD

The Observer serves as an invaluable resource to individuals, human resource managers and recruiters, in-house legal professionals and company executives for whom keeping up with the most current immigration information is a professional imperative.

If you have enjoyed reading this newsletter and have found useful information in it, we would greatly appreciate your help in spreading the word. You can do this by forwarding a copy to your friends and colleagues.

We are also happy to mail a print copy of our newsletter should you prefer. Please email your request to http://www.gtlaw.com or hoobank@gtlaw.com.

SUBSCRIBING / UNSUBSCRIBING

To subscribe or unsubscribe, please click here.

GENERAL INFORMATION

Questions or comments? Please send email to: imminfo@gtlaw.com

Want to schedule a consultation? Contact us at immconsult@gtlaw.com

RESOURCES

March 2008 DOS Visa Bulletin:
http://travel.state.gov/visa/frvi/bulletin/bulletin_3953.html

Visa Wait Times:
http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php

Service Center Processing Times:

Vermont:
https://egov.uscis.gov/cris/jsps/Processtimes.jsp?SeviceCenter=VSC

Texas:
https://egov.uscis.gov/cris/jsps/Processtimes.jsp?SeviceCenter=TSC

Nebraska:
https://egov.uscis.gov/cris/jsps/Processtimes.jsp?SeviceCenter=NSC

California:
https://egov.uscis.gov/cris/jsps/Processtimes.jsp?SeviceCenter=CSC

National Benefits Center:
https://egov.uscis.gov/cris/jsps/NBCprocesstimes.jsp