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immigration alert

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Immigration Reforms and Updates from DHS and DOS

Proposed DHS administrative reforms designed to attract and retain highly skilled foreign nationals; DOS changes aim to improve visa and foreign visitor processing.

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DHS Announces Proposed Administrative Reforms

In a press release dated January 31, the Department of Homeland Security (DHS) announced a number of proposed administrative reforms designed to enable the United States to attract and retain highly skilled foreign nationals. These reforms, which will not be effective until regulatory or administrative action is taken to implement them, include the following:

- Eligibility for a 17-month extension of Optional Practical Training (OPT) employment authorization would be expanded to include students who have a prior degree in a science, technology, engineering, or mathematics (STEM) field and would not be limited to those who have just graduated with a degree in a STEM field. At present, only students whose most recent degree is in a designated STEM field may obtain a 17-month OPT extension. Under this proposed change, for example, a student that has just graduated with degree in business administration, but earlier obtained a degree in electrical engineering, would be eligible for a 17-month OPT extension. It is not clear if DHS plans to allow individuals whose earlier degrees in STEM fields were obtained overseas to qualify for this extension. DHS also indicated that it will review "emerging fields" of study for possible inclusion in the list of designated STEM fields.

- H-4 dependent spouses of H-1B employees would be allowed to work once the principal H-1B visa holder has begun the employment-based permanent resident process, provided that the H1-B spouse has completed a yet-to-be-determined minimum period of H-1B status in the United States. At present, H-4 dependents may only work once they have filed an adjustment of status application and received an Employment Authorization Document. The proposed change might allow H-4 dependents to accept employment while their H-1B spouses are undergoing the PERM labor certification application or immigrant petition process, provided the H-1B spouse has held H-1B status for the requisite period of time.

- Additional part-time study for spouses of F-1 students would be permitted. At present, F-2 spouses may only engage in recreational or vocational study.

- The scope of acceptable evidence for foreign nationals applying for permanent residence in the EB-1 Outstanding Professor/Researcher immigrant category would be expanded. At present, such persons may establish their eligibility for this category only through specific types of evidence prescribed by regulation. The proposed change would allow "comparable evidence" beyond the prescribed types of evidence to be used to demonstrate eligibility. The use of such "comparable evidence" is currently permitted for petitions filed under the EB-1 Extraordinary Ability immigrant category.

- Foreign nationals from Australia in E-3 status and Chilean and Singaporean nationals in H-1B1 status would be allowed to receive an extension of work authorization for up to 240 days upon the timely filing of an extension-of-stay petition. At present, this 240-day extension is available only to persons holding

certain nonimmigrant statuses such as E-1 and E-2, H-1B, L-1, P, and O statuses. No mention was made in the release of allowing the Premium Processing service to be expanded to E-3 and H-1B1 petitions.

Although these changes are very welcome, it should be emphasized, as indicated above, that these are only proposed reforms and are not effective yet. We will continue to monitor the situation and update you if the DHS or an agency within it takes steps to implement these reforms.

Executive Order Signed to Improve Visa Processing

On January 19, President Obama signed an executive order to "improve visa and foreign visitor processing and travel promotion." The executive order requires the Department of State (DOS) and DHS to develop a plan to ensure that 80% of applicants for nonimmigrant visas are interviewed within three weeks of their application. The order also mandates a pilot program in China and Brazil to increase nonimmigrant visa processing capacity by 40% in the coming year. In addition, the order requires an increase in efforts to expand the Visa Waiver Program (although it is not mentioned in the order, Taiwan is expected soon to be allowed to participate in this program) and to expand the Global Entry Program—a streamlined inspection and admission program at certain airports that is currently available only to citizens of Mexico and the Netherlands, as well as to U.S. citizens and permanent residents.

DOS Announces "Visa Pilot Program"

In a January 19, 2012, announcement, DOS unveiled a new initiative under which, "in select circumstances," certain visa applicants who were previously interviewed and screened by a consulate may be allowed to renew their visas without undergoing another interview. It is not clear from the text of the announcement if this pilot program will be limited to Chinese and Brazilian visa applicants. A number of U.S. consulates already allow such visa renewals without personal interviews, provided the applicant's 10 fingerprints were previously taken and he or she is present in the country in which the consulate is located at the time of application. More specific information regarding the pilot program will be released at a later date.

DOS Issues Final Rule to Allow Issuance of L Visas for Full Reciprocity Periods

On January 31, DOS issued a Final Rule that amends its regulations to require that L intracompany transferee visas be issued for the full validity period allowed by the relevant visa reciprocity schedule. At present, L visas may be issued for a maximum validity period of three years, with the validity period of such a visa generally being determined by the validity period of the underlying nonimmigrant petition approved by United States Citizenship and Immigration Services (USCIS). Under this new rule, an L-1 beneficiary may receive an L visa that is valid beyond the validity period of the underlying nonimmigrant petition and would not be required to obtain a new visa upon receiving an extension of stay from the USCIS. Thus, an Indian citizen may obtain approval of an L-1 petition for a period of three years. When he or she applies for an L visa to enter the United States, he or she may be issued a visa that is valid for five years. If this person subsequently receives an extension of his or her L period of stay for two years, he or she would not need to obtain a new L visa to reenter the United States. It should be noted that having an unexpired L visa does not authorize admission to, or employment in, the United States in the absence of a valid nonimmigrant petition. The new rule will obviously not benefit nationals of countries (such as Mexico) with a visa reciprocity agreement with the United States that allows for a shorter visa validity period than the petition validity period. It remains to be seen how this new rule will affect holders of L visas issued under a blanket petition.

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