

ROSNER PARTNERS

COUNSEL FOR CORPORATE IMMIGRATION



September 12, 2012 Serving the immigration needs of businesses and individuals Phone: (216) 771-5588

- ▶ home
- ▶ job openings
- ▶ staff
- ▶ newsletters
- ▶ request for consultation
- ▶ directions

useful links

- ▶ US Citizenship & Immigration Services
- ▶ US State Department
- ▶ Embassy World
- ▶ Department of Labor ETA

Sign up for our 
Email Newsletter

Privacy by  SafeSubscribeSM
For Email Newsletters you can trust



Newsletter

Immigration Law Update

Current Developments in Employment-Based Immigration
By Rosner Partners, L.L.C.

December 2009

Holiday Wishes from Rosner Partners
From our Family to yours, we wish you
all a wonderful holiday season and new
year filled with peace, joy, and
hopefully even a little prosperity.

- Final weeks to file H-1B numbers petitions for FY2010
- Delays in LCA processing
- USCIS/ICE expands I-9 audit initiative
- USCIS continues H-1B worksite visits
- Changes to Indian Business Visa Category

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

LAST CALL! H-1B Numbers Still Available, but Going Fast

H-1B quota numbers remain available for this fiscal year, but are dwindling quickly. As of December 8, 2009, U.S. Citizenship and Immigration Services (USCIS) reports that there are approximately 3,500 H-1B numbers still available. Beneficiaries of approved H-1B petitions can now start immediately, since the new fiscal year began on October 1, 2009.

If your company has a prospective hire who qualifies for H-1B status, we urge you to contact our office **as soon as possible** to initiate an H-1B petition while numbers are still available. Please contact our office at (216) 771-5588 or immigration@rosnerlaw.com if you wish to speak with someone regarding an H-1B petition for a new employee.

Delays in LCA Processing Result in Temporary Changes to H-1B Filings

Since the U.S. Department of Labor (DOL) has initiated a more review of Labor Condition Applications (LCA) through the iCERT system, it now takes much longer to get an LCA certified. This process, which used to be a same day service, now routinely takes more than a week. Accordingly, it now takes longer to prepare an H-1B petition.

As a result of these delays, USCIS has announced that it will temporarily accept H-1B petitions filed without certified LCAs for a 120-day period, which will extend through March 4, 2010. USCIS will accept H-1B petitions filed without a certified LCA only if the LCA has already been pending at least 7 calendar days when the H-1B petition is filed.

ICE Expands I-9 Audit Initiative

On November 19, 2009, Immigration and Customs Enforcement (ICE) announced that it would be expanding its

I-9 audit initiative. An additional 1,000 companies have been notified that they will be audited under the expanded initiative.

ICE first introduced the I-9 audit initiative on July 1, 2009, announcing that it would be issuing Notices of Inspection to 652 businesses nationwide. The notices alert business owners that ICE will be inspecting their hiring records to determine whether they are complying with current laws and regulations regarding employment eligibility verification.

An audit consists of ICE officials inspecting each employee's Form I-9, also known as an Employee Eligibility Verification Form. Employers are required to complete Form I-9 for all newly hired employees to verify their identity and authorization to work in the United States. The Handbook for Employers, Instructions for Completing the Form I-9 (M-274) is available on the USCIS website, at

http://www.uscis.gov/files/nativedocuments/m-274_3apr09.pdf.

In anticipation of ongoing government scrutiny of business immigration records, employers should be diligent in ensuring that all employee I-9 records are properly completed and up to date. Please feel free to contact our office for additional information regarding I-9 requirements.

USCIS Continues Visits at H-1B Worksites

The USCIS Office of Fraud Detection and National Security (FDNS) is currently in the process of conducting unannounced site visits at H-1B worksites in a vast internal audit of the H-1B program. As many as 40,000 petitions are being reviewed as part of this audit, which is being funded through use of the "fraud fee" from H-1B and L-1 filings.

The site visits are being conducted by private contractors hired by the FDNS and are likely to take place after an H-1B has been approved for an employee. The investigators prefer to "surprise" petitioners and will often arrive without any warning. **To date, three of our clients have been subjected to unannounced visits by USCIS pertaining to H-1B records. We are sending this notice in an effort to prepare all of our clients for the possibility of such an inspection.**

Our clients' experiences, and those of others, reveal that investigators are generally looking to confirm two things: (1) the employer actually exists, and (2) the H-1B beneficiary is a "legitimate" employee. They will usually take a picture of the building as evidence the employer exists. They may ask how many employees the company has, if they can speak to the H-1B employees, check their pay records, and inquire if they can inspect the "public file" set-up for each H-1B worker. Investigators are reported to be professional and polite and do not inquire as to the nature of the business beyond the simple H-1B inspection.

In the event that your business is subjected to an FDNS onsite visit, we strongly suggest that you contact our office before speaking with investigators. Investigators are instructed to cooperate with outside counsel if requested by the employer. Our experience speaking to an investigator who visited one of our clients was positive. The investigator we spoke to worked for US Investigations Services ("USIS"), a privatized entity formed from the Office of Personnel Management, a former federal agency. Be sure to ask for the investigator's name and employer in the event of a visit.

If you would like further advice on how to handle an H-1B site visit or on proactively reviewing H-1B files in anticipation of such a visit, we encourage you to contact us.

Changes to Indian Business Visa Category

India's Ministry of Commerce and Industry (MCI), recently announced that business visas can no longer be granted to foreign nationals to engage in work on projects or specific contracts in India. The new rule required all current B visa holders performing work-related functions to depart India no later than October 31, 2009 and return to their home countries to apply for an Indian employment visa (E visa). Those affected by this recent change in Indian law include business visa holders who are in India performing the following duties:

- Performing work-related activities;
- Executing projects;
- Establishing contracts for the Indian or U.S. company;
- Conducting negotiations for the Indian or U.S. company;
- Making investments or acquisitions on behalf of the Indian or U.S. company;
- Making sales for the Indian or U.S. company;
- Bringing in clients for the Indian or U.S. company; or
- Performing physical labor.

Those workers in India holding business visas to perform strictly business-related functions, such as attending meetings, have NOT been affected by the new change in Indian law.

The new stipulations will have a significant impact on foreign nationals planning to visit India on short term business assignments, as these individuals will now require an employment (E) visa as opposed to a short term business visa. Companies seeking to assign foreign nationals to India on a short term basis should carefully assess their assignments to ensure that they are in compliance with the new visa requirements.

The announcement from the MCI has understandably resulted in a great deal of concern and confusion among businesses that employ foreign nationals (both short and long-term) in India. Please contact our office if you have specific questions or would like additional information concerning the new Indian visa requirements.

For additional information about any of the topics presented here, please [contact us](#).

[Return to Newsletter Index](#)

Rosner Partners, Counsel for Corporate Immigration

The Caxton Building • Suite 601 • 812 Huron Road • Cleveland, Ohio 44115 • [Map to our Offices](#)
Telephone: (216) 771-5588 • Facsimile: (216) 771-5894 • E-Mail: immigration@rosnerlaw.com

Last update 111907
© Copyright 2000-2007
Rosner Partners, LLC
all rights reserved.

The information contained in the Rosner Partners, LLC web site is provided "as is" with no warranty, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose. Rosner Partners, LLC assumes no liability for any loss or damage for errors or omissions on the web site, whether arising in contract, negligence, or otherwise.

Send any comments regarding this website to [webmaster](#).