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Immigration Law Update

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

October 2009

- Diversity Visa Lottery
- H-1B numbers still available for FY2010
- USCIS hires private investigators to visit H-1B employers

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.

The Diversity Visa Lottery Is Now Open

On October 2, 2009, the U.S. State Department opened a two month application period for the Fiscal Year 2011 green card lottery. This is an opportunity for foreign nationals to win green cards for themselves and dependent family members. The program is known as "DV-2011." This year marks the fifth year that electronic registration is required. Paper entries and mail-in requests for registration will not be accepted.

The program makes available 50,000 Diversity Visas (DV) each fiscal year via a random selection process intended to benefit natives of "low admission" countries, which are countries as defined by U.S. Citizenship and Immigration Services as having low rates of immigration to the United States.

To be eligible, the applicant **MUST NOT** be a native of any of the following "high admission" countries: Brazil, Canada, China (Mainland-Born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its Dependent Territories, and Vietnam. It should be noted that, in most cases, nativity is determined by country of birth, not necessarily country of current citizenship.

Natives of all other countries are eligible to enter the lottery, as are natives of Hong Kong SAR, Macau SAR, Taiwan, and Northern Ireland, provided they meet certain employment and education requirements. Specifically, the applicant must have **EITHER** a high school education (or its equivalent), **OR** two years of work experience within the past five years in an occupation that requires two years of experience or training. Persons born in an ineligible country may apply if their spouse was born in an eligible country.

For DV-2011, no countries have been added or removed from the previous year's list of eligible countries.

The application process is easy and something that anyone should be able to complete without assistance from an immigration lawyer or immigration consultant. Use of a lawyer or consultant will not improve the chances of being selected. No application fee is required. The applicant must complete the Electronic Diversity Visa Entry Form (E-DV), which is accessible only at: www.dvlottery.state.gov during the registration period.

Instructions for the 2011 Diversity Immigrant Visa Program (DV-2011) are available at <http://www.travel.state.gov/pdf/DV-2011instructions.pdf>.

The online registration period for the DV-2011 Diversity Visa lottery is between noon, Eastern Daylight Time (EDT) (GMT-4), Friday October 2, 2009 and noon, Eastern Standard Time (EST) (GMT-5), Monday, November 30, 2009. Entries will not be accepted after noon (EST) on November 30.

The Department of State will send entrants an electronic "notice of receipt" containing their name, date of birth, country or chargeability, and a time/date stamp confirming the information was properly registered. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in website delays.

Please feel free to contact us at immigration@rosnerlaw.com for assistance or for additional information regarding participation in this year's green card lottery program.

H-1B Numbers Still Available

Believe it or not, there are still H-1B quota numbers available for this fiscal year. According to the most recent update from the USCIS, there still remain slightly more than 17,000 H-1B numbers available. Beneficiaries of approved H-1B petitions can now start immediately, since the new fiscal year began on October 1.

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.

USCIS Conducting Site Visits at Worksites of H-1B Employers

The USCIS Office of Fraud Detection and National Security (FDNS) is currently in the process of conducting unannounced site visits at H-1B in a vast internal audit of the H-1B program. Apparently, 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. At least one of our clients has been visited.

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. We are sending this bulletin in an effort to prepare all of our clients for the possibility of such an inspection.

Our client's experience and those of others reveal that investigators are generally looking for two things: (1) the employer actually exists, and (2) the H-1B sponsored 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, or 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.

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.

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

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