



*September 14, 2011*

## **Immigration Law Update**

### **Current Developments in Employment-Based Immigration**

**Dear Julie,**

*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.*

## **New Immigrant Petition Options for Foreign Investors and Entrepreneurs**

In furtherance of its efforts to increase America's competitiveness through attraction of foreign investors and innovators, USCIS has announced the availability of a new immigrant petition category for entrepreneurs. Investors who can establish that the business which they conduct is in the national interest can now apply in the second-preference employment category under the national interest waiver category. This allows individuals who otherwise meet the requirements of the second preference category to file an immigrant petition without first obtaining a Labor Certification from the Department of Labor. For further details on the requirements for this employment-based category, please contact Rosner Partners.

## **USCIS Announces Intent to Expand Premium Processing to I-140s for Multinational Executives and Managers**

USCIS has recently announced its intent to expand premium processing availability to include I-140 immigrant petitions filed on behalf of multinational executives and managers. Premium processing requires an additional government filing

### **IN THIS ISSUE:**

[New Immigrant Petition Options for Foreign Investors and Entrepreneurs](#)

[USCIS Announces Intent to Expand Premium Processing to I-140s for Multinational Executives and Managers](#)

[H-1B Unannounced Site Visits: What to Do if FDNS Shows Up at Your Door](#)

[Update on Prevailing Wage Determination Processing](#)

[Latest FY 2012 H-1B Cap Count Numbers](#)

[October Visa Bulletin](#)

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[Our Website](#)

[USCIS](#)  
[USDOS](#)

[Embassy World](#)  
[DOL-ETA](#)

fee of \$1225 and guarantees processing of the relevant petition in 15 calendar days. This means that USCIS will approve, deny or issue a request for further evidence within 15 days of receiving the petition. For multinational executives and managers who are currently waiting 8-12 months to receive a decision on petitions, this new feature will offer much more expedient processing. As of now, no date has been set for implementation of this plan; however, Rosner Partners will stay apprised of the situation and provide the start date of this process when further details are released by USCIS.

## H-1B Unannounced Site Visits: What to Do if FDNS Shows Up at Your Door

The USCIS Office of Fraud Detection and National Security (FDNS) is continuing its practice of conducting unannounced site visits at H-1B worksites. Site visits are being conducted by private contractors hired by the FDNS and are likely to take place after an H-1B petition has been approved for an employee. The investigators prefer to "surprise" petitioners, usually arriving without any warning.

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 and check their pay records. They have the power to ask to 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 investigators has been generally positive. 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.

## Update on Prevailing Wage Determination Processing

Last month the Department of Labor temporarily suspended issuance of prevailing wage determinations for PERM labor

certifications in order to comply with a court order to reissue 4,000 prevailing wage determinations for H-2B workers. The Department of Labor has now provided an update on when prevailing wage determinations will be current again. The Department of Labor has promised to have PERM prevailing wage requests current (processed within 60 days of filing) by November 1, 2011. Rosner Partners urges all employers wishing to sponsor individuals for labor certifications to contact us as soon as possible in order to plan around this delay.

## Latest FY 2012 H-1B Cap Count Numbers

H-1B Cap season is in full swing, and many employers are noting an increased pace in cap number use. Consequently, Rosner Partners urges employers with individuals subject to the H-1B cap to begin the H-1B petition process as soon as possible to ensure the H-1B allotment is not exhausted. Please see the most up-to-date figures below.

| Cap Type                | Cap Amount | Cap Eligible Petitions | Date of Last Count |
|-------------------------|------------|------------------------|--------------------|
| H-1B Regular Cap        | 65,000     | 29,000                 | 8/26/2011          |
| H-1B Master's Exemption | 20,000     | 15,800                 | 8/26/2011          |

## October Visa Bulletin

The October 2011 Visa Bulletin released by the Department of State again shows movement forward in the employment-based second preference and third-preference categories. Individuals with priority dates before the dates listed in their respective categories are eligible to file adjustment of status (green card) applications as of the first of August. Those that filed previously with current priority dates are now ripe to be adjudicated. Eligible foreign nationals should contact Rosner Partners at their earliest convenience to begin the adjustment of status process or to follow up on the status of their case.

|                       |   |                            |       |        |             |
|-----------------------|---|----------------------------|-------|--------|-------------|
| Employment -<br>Based | All<br>Charge-<br>ability<br>Areas<br>Except<br>Those<br>Listed | CHINA-<br>mainland<br>born | INDIA | MEXICO | PHILIPPINES |
|-----------------------|---|----------------------------|-------|--------|-------------|

|   |         |         |         |         |         |
|---|---------|---------|---------|---------|---------|
| 1st   | C       | C       | C       | C       | C       |
| 2nd   | C       | 15JUL07 | 15JUL07 | C       | C       |
| 3rd   | 08DEC05 | 08AUG04 | 15JUL02 | 08DEC05 | 08DEC05 |
| Other Workers*  | 15SEP05 | 22APR03 | 08JUN02 | 15SEP05 | 15SEP05 |
| 4th   | C       | C       | C       | C       | C       |
| Certain Religious Workers   | C       | C       | C       | C       | C       |
| 5th Targeted Employment Areas/Regional Centers and Pilot Programs | C       | C       | C       | C       | C       |

*For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.*

**Sincerely,**  
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