BLC
Baker Law Corporation

VOLUME II, ISSUE III

BAKER LAW CORPORATION

IMMIGRATION CONNECTION

JUNE 2006

SENATE PASSES COMPREHENSIVE IMMIGRATION REFORM BILL

INSIDE THIS ISSUE:

On Thursday afternoon, May 25, 2006, after nearly four weeks of Senate Floor debate, the Senate passed the Comprehensive Immigration Reform Bill, S. 2611. The next step, so that the bill can be signed into law, is for the Senate and the House to negotiate a bill that both agree to pass and send to the President.

The Senate bill contains, in addition to border security, the following important provisions:

- **Family Unity and Family and Employment Visa Backlog Relief**
  - Those in current family backlogs will get "green cards" before any of the currently undocumented
  - New family preference cap of 480,000, adding 260,000 new visas per year to eliminate backlogs
  - New employment-based cap of 450,000 for a 10-year period, adding 310,000 new visas per year; spouses and children of certain employment-based immigrants capped at 650,000, others may remain outside the cap
  - 30% of employment-based cap reserved for "essential" workers
  - Provisions for widows, orphans, and lower threshold for affidavits of support
- **High-Skilled Immigration Reforms**
  - Reform of student visa rules to authorize dual intent, expand the period of OPT, and create a direct path to permanent status for certain advanced degree students
  - Increase in H-1B cap from 65,000 to 115,000 with market-based escalator and exemption for STEM advanced degree holders
  - Exemptions for the annual employment-based cap for STEM advanced degree holders, aliens of extraordinary ability, and outstanding professors and researchers
- **New Temporary Worker Program with Labor Protections and Path to Permanent Status**
  - New program for 200,000 new temporary "essential" workers per year
  - 3 year visa, renewal for 3 years, with portability to work for employer of choice
  - Current undocumented who entered U.S. after January 2004 are eligible, must leave country to apply, 3/10 year bars are waived
  - Employer has to seek U.S. worker first; labor protections and market wage requirements
  - Can apply for permanent status ("green card"), within the new employment-based cap; can self-petition if worked for 4 years, otherwise employer can petition

While the Senate Bill has many favorable provisions, we anticipate extensive changes and modifications as the Senate and House work through their negotiations. We will provide additional updates as they become available.

California Seal

"While the Senate Bill has many favorable provisions, we anticipate extensive changes and modifications as the Senate and House work through their negotiations. "

San Jose Museum of Art

USCIS UPDATE TO FY 2007 H-1B CAP

On May 19, 2006, USCIS provided figures for H-1B usage for fiscal year 2007. Since it began accepting "new" H1B petitions on April 1, 2006, USCIS has issued 6,934 H-1B approvals with an additional 35,942 petitions pending, for a total of 42,876 petitions either granted approval or pending. During this same period, USCIS has approved 1,537 "exempt" H-1B Advanced Degree beneficiaries (issued to those holding US Master's degrees or higher) with 3,821 petitions pending, for a total of 5,358 petitions either granted approval or pending. The total current cap for H-1B visas is 85,000 allocated as follows: 65,000 for "regular" H-1B requests (non-US MS degree holders) and an additional 20,000 for "exempt" H-1B requests for those holding a US Master's degree or higher.

It is important to note that the H1B "cap" applies only to "new" H1B petitions. Petitions requesting extensions of H1B stay, transfers of H1B status from one employer to another, or amended H1B petitions to reflect changes in position with a petitioning employer are not "cap subject."

USCIS also has announced that it intends to try and provide updated cap usage figures twice a week until the cap is reached. We will provide additional updates as they become available.

San Jose Museum of Modern Art

USCIS ISSUES MEMO ON H-1B CAP EXEMPTIONFOR MASTER'S OR HIGHER DEGREE

The H-1B Visa Reform Act of 2004 added an additional exemption to the H-1B cap (up to a maximum of 20,000 per year) for aliens holding a U.S. master's or higher degree. Since that act, the USCIS has issued a memo providing guidance on what qualifies as a U.S. master's degree or higher and what qualifies as a U.S. institution of higher education. In order to obtain the H-1B cap exemption for a U.S. master's degree or higher, both a qualifying "master's" degree and a qualifying U.S. institution must be met.

Once the 20,000 cap is reached, any employer seeking an alien who possesses a master's or higher degree will be subject to the 65,000 annual limit for H-1B nonimmigrants. Thus, the memo reminds adjudicators that when reviewing a petition involving a potential 20,000 cap case, to first determine if other exemptions apply before applying the limited "masters or higher" exemption.

Whether or not a degree qualifies as a master's or higher depends on whether a bachelor's degree was a prerequisite to obtaining the advanced degree. If a bachelor's degree is required then the advanced degree obtained will qualify. If a bachelor's degree is not required for entry into the advanced degree program, that degree will not qualify. The fact that a degree is or is not titled as a masters degree is not by itself dispositive. For example, in the field of Chiropractic, the entry-level degree is "Doctor of Chiropractic" and a bachelor's degree is not required prior to obtaining that degree. Alternatively, a "juris doctor" or "doctor of medicine" degree require that the holder first earn at least a bachelors degree. Thus, adjudicators must evaluate the degree to determine that it is at least one level above a bachelor's degree.

In addition to meeting the qualifying masters degree requirement, the degree must be issued from a U.S. institution in any state that: (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (2) is legally authorized within such State to provide a program of education beyond secondary education; (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 20 year program that is acceptable for full credit toward such a degree; (4) is a public or other nonprofit institution; and (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

"In order to obtain the H-1B cap exemption for a U.S. master's degree or higher, both a qualifying "master's" degree and a qualifying U.S. institution must be met."

PREMIUM PROCESSING CHANGES

On May 23, 2006, the U.S. Citizenship and Immigration Services (USCIS) published a notice designating certain employment-based petitions and applications as now being eligible for the premium processing service. Premium processing allows petitions sent to the USCIS to be processed with a decision within 15 business days rather than the normal often times longer processing time. Petitions requesting premium or "expedited" processing require an additional $1000.00 USCIS filing fee in addition to the standard USCIS filing fee associated with the petition time. In the past, premium processing has been limited to only certain types of employment-based petitions; however, with the May 23 announcement, USCIS has added various other types of petitions and applications to the list of eligible filings.

Premium processing is now available for the following employment-based (EB) I-140 petitions:

- EB-1 aliens of extraordinary ability
- EB-1 outstanding professors and researchers
- EB-1 multinational executives and managers
- EB-2 members of professions with advanced degrees or exceptional ability not seeking a national interest waiver (premium processing is not available for national interest waivers because of the complexity of processing those)
- EB-3 skilled workers
- EB-3 professionals
- EB-3 workers other than skilled workers and professionals

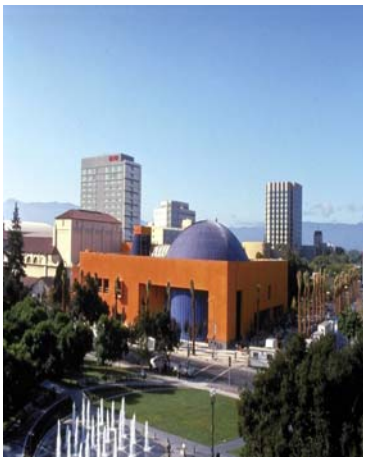
Premium processing is also available for the following I-539 classifications, including applications for extension of status (EOS) and change of status (COS):

- B-1 business visitors who are personal or domestic servants or foreign airline employees
- J-1 exchange visitors who are professors, scholars, trainees, teachers, specialists, alien physicians, international visitors, government visitors, camp counselors, au pairs and summer work travel – COS only because EOS are requested through Department of State
- J-2 dependents of J-1 exchange visitor principals – COS only because EOS are requested through Department of State
- E-1 dependents of E-1 treaty traders
- E-2 dependents of E-2 treaty investors
- H-4 dependents of H-1B specialty occupation workers, H-2B temporary workers or H-3 trainee or special education trainee program workers
- L-2 dependents of L-1A or L-1B nonimmigrants
- O-3 dependents of O-1 aliens of extraordinary ability in the arts, sciences, business, education or athletics or O-2 essential support nonimmigrants
- P-4 dependants of P-1 internationally recognized athletes or entertainment group members, P-2 artists or entertainers in a reciprocal exchange program, P-3 artists or entertainers in culturally unique programs, or any P-1, P-2 or P-3 essential support alien
- R-2 dependents of R-1 temporary workers in a religious occupation
- TD dependents of TN nonimmigrants

Premium processing is available for the following I-765 classification:

- For aliens whose Form I-485 Application to Register Permanent Residence or Adjust Status (supported by an employment-based immigrant visa petition) is pending with USCIS and who are requesting a renewal of employment authorization in the EB-1 through EB-5 classifications.

Individuals seeking dependent status (i.e. H4, L2, etc.) on form I539 who wish to have a guarantee that status will be decided simultaneously with the primary beneficiary's I129 (i.e. H1, L1, etc.) are encouraged to submit a separate request for premium processing service and pay the additional $1000.00 processing fee separate from the I129 premium processing fee.



The Tech Museum of Innovation

"In light of this change and the new eligibility of the I539 form for premium processing, we anticipate the Service may no longer grant I539 approvals simultaneously with the I129 unless the $1000.00 fee is paid for both requests."

San Pedro Square

PREMIUM PROCESSING CHANGES CONTINUED...

While USCIS has been providing 15 calendar day processing for a dependent's Form I-539 as a courtesy when filed with the principal beneficiary's premium processed I129, they are not required to do so. In light of this change and the new eligibility of the I539 form for premium processing, we anticipate the Service may no longer grant I539 approvals simultaneously with the I129 unless the $1000.00 fee is paid for both requests.

USCIS also published an interim rule to change the way USCIS announces designations of forms for premium processing, as well as the method for announcing the dates of availability and termination or suspension of premium service. USCIS will continue to publish Federal Register notices to announce designations for premium processing. USCIS will announce the dates of availability of such premium service and any termination or suspension of premium service through its public website at http://www.uscis.gov.

San Jose Museum of Art

TRAVEL SEASON GUIDELINES FOR FOREIGN NATIONALS

As you begin to make plans for your summer travel, it is important that you be aware of issues surrounding US Visa Application processing should your plans include international travel. It is important that you review the information outlined below regarding potential delays in visa application processing at U.S. Embassies. US visa application delays continue to be a major concern for foreign nationals who are required to travel internationally. With the elimination of Visa Revalidation in 2004, and the implementation of "in-person" interviews for all visa applicants at the US Embassies around the world, it is not uncommon for individuals to experience backlogs in appointment scheduling from 5 to 6 months in many jurisdictions. As a result, US visa stamping requires careful advance and often strategic planning in determining the best possible time frame for submitting the application.

Outlined below, you will find information regarding the visa application process at a U.S. Embassy abroad, as well as information regarding documents needed to return to the U.S. We encourage you to plan ahead when making a visa stamping appointment. Understand that processing delays in scheduling the appointment as well as the actual visa issuance due to security checks may impact your ability to travel and return at your scheduled time. In addition, we encourage you to discuss any potential delays with your employer so that they are aware of the situation in the event you are delayed in your return to the US.

***NOTE:* You will not be admitted to the US without a valid passport, visa stamp, and USCIS approval notice. Failure to secure the appropriate documentation prior to attempting entry will result in your denial of entry into the US and will require your immediate departure to return abroad to obtain the necessary visa stamp.**

DELAYS IN VISA APPLICATIONS

Since the terrorist attacks of September 11, 2001, the State Department has been engaged with other U.S. government agencies in an extensive and ongoing review of visa issuing practices as they relate to the security of U.S. borders. This review has resulted in a significant change in practice of visa issuance. Many visa applicants will now find themselves subject to a myriad of security clearances that are resulting in substantial delays in processing.

In order to assist in application review, the State Department has introduced a number of supplemental application forms and other measures that provide them with the necessary information to apply a higher degree of scrutiny than in the past. This increased scrutiny and added security measures means that many visa applications may be delayed in processing. Although the State Department recognizes that this may cause inconvenience and hardship to visa applicants, they are doing everything possible to meet the legitimate needs of prospective travelers consistent with the priority they have attached to national security.

"US visa application delays continue to be a major concern for foreign nationals who are required to travel internationally. "

California Seal

TRAVEL SEASON GUIDELINES CONTINUED...

In addition, U.S. Embassies have implemented in-person interviews for visa applicants. Visa applicants should expect to make personal appearances in conjunction with their nonimmigrant visa applications and should be prepared for the potential of significant processing delays. Furthermore, visa applicants should expect longer delays in visa issuance as security concerns, more documentary requirements, and more stringent review of nonimmigrant visas result in longer and more frequent personal interviews at consulates and embassies. Delays in visa processing can result in a wait of several weeks or a few months.

In the past, consular officers had discretion to waive the interview requirement for a large group of nonimmigrant visa applicants. The consular officers may require a personal appearance of any nonimmigrant visa applicant. In addition, notwithstanding any exception, personal interviews are required where an applicant

1. Does not reside in the consular district where he or she is making the application;
2. Was previously refused a visa, unless the refusal was overcome;
3. Requires a security advisory opinion or other State Department clearance, or was the subject of a positive match in the Consular Lookout and Support System (CLASS); or
4. Is identified by the consular post as belonging to a group or sector of its visa clientele that has been deemed to be a high fraud risk, has a high visa refusal rate, or presents security risks.

Consular officers are authorized to waive an interview, absent any national security concerns, for visa applicants in the following six categories:

1. Children age 16 or younger;
2. Persons age 60 or older;
3. Most nonimmigrant applicants eligible for A, C, G, or NATO visas, with the exception of attendants, servants and personal employees;
4. Applicants for certain diplomatic or official visas, such as heads of state and other senior foreign officials;
5. Applicants who are seeking reissuance of nonimmigrant visas in the same classification if sought within 12 months of the expiration of the previously-issued visa, at the post of their usual residence, and provided that the consular officer has no evidence of visa ineligibility or noncompliance with US immigration laws;
6. Foreign nationals for whom waiver of personal appearance is warranted in the national interest or because of unusual circumstances. This type of exception is granted on a case-by-case basis and is used sparingly.

Current processing time for a visa application can take 10 days for a basic name check to 3 months or more for an extended background clearance. This, coupled with the lengthy timeframe to secure a visa application appointment, can mean processing times in excess of 6 months in some instances. The State Department is unable to determine ahead of time how long a particular application will take, and the reasons associated with a specific clearance are not made public. Those needing visa stamps should contact the US Embassy where they will apply to schedule visa appointments well ahead of any anticipated international travel. They should also review the Embassy website to determine any specific requirements at that Embassy location and to ensure they are carrying the appropriate documentation/information for visa issuance.

For links to U.S. embassies and consulates abroad, please visit http://www.travel.state.gov/links.html

SPECIAL NOTE FOR INDIVIDUALS USING ADVANCE PAROLE TO RETURN TO THE U.S.: USCIS continues to remind to individuals applying for adjustment of status to obtain approval of Advance Parole ***before*** traveling abroad if they wish to use this document in lieu of a valid nonimmigrant visa stamp. Advance Parole (Form I-131– Application for Travel Document)

"The State Department is unable to determine ahead of time how long a particular application will take, and the reasons associated with a specific clearance are not made public."

San Pedro Square

TRAVEL SEASON GUIDELINES CONTINUED...

is permission to re-enter the United States after traveling abroad, and allows for the continuation of processing for an adjustment of status to that of lawful permanent resident.

These requirements must be met ***before*** leaving and are imperative for return to the U.S. Travel outside of the United States without advance parole may have severe consequences for certain immigrants who are in the process of adjusting their status. Such immigrants may be unable to return to the United States and their applications may be denied.

It is important that you apply for ***and receive approval*** of your advance parole prior to your departure for international travel if you do not have an alternate means of returning to the U.S. (i.e. valid H or L visa stamp and a valid H or L approval along with your I485 filing receipt). Any questions on this process should be directed to Baker Law Corporation prior to making travel plans so we may advise you on any potential issues with your travel.

MAKING A VISA APPLICATION AT A US EMBASSY ABROAD

In order to apply for the nonimmigrant visa stamp through a U.S. Consulate or Embassy you will need the following (please note: processing times will vary depending upon the Consulate or Embassy you visit as well as potential security clearances noted above):

1. Form I-797 (original approval notice);
2. A certified copy of your nonimmigrant petition;
3. A passport valid for 6 months beyond the expiration of your nonimmigrant petition;
4. Passport size color photograph;
5. Completed visa application form DS-156 – needed for all applicants
6. Completed supplemental visa application form DS-157 - needed for male applicants between the ages of 16 and 45.
7. Copies of your diploma(s);
8. Letter of support from your employer (outlined below)
9. Copies of recent paycheck stubs
10. Copies of all U.S. tax returns filed in connection with any U.S. employment.

You should make contact with the U.S. Embassy to determine their hours of operation and procedures for obtaining the nonimmigrant visa stamp and to confirm their documentary requirements.

When completing the DS-156, you should be requesting issuance of a temporary nonimmigrant visa valid to the expiration of your nonimmigrant approval notice. You should indicate your intention to remain in the U.S. only until that date. By USCIS definition, one who is applying for a temporary visa is not abandoning his or her residence abroad and intends to resume residence abroad once the temporary assignment in the U.S. has been completed.

DOCUMENTS NEEDED TO RETURN TO THE U.S.

To return to the U.S. in valid nonimmigrant status after a trip abroad, you must show USCIS the following:

1. Valid passport with valid nonimmigrant visa (exception: Canadian citizens and landed permanent residents of Canada born in British Commonwealth countries)
2. Valid ***original*** I-797 (approval notice) issued to your current employer on your behalf;
3. Most recent paystub.

USCIS should grant you entry through the validity date of your nonimmigrant approval notice (I797). Please check your I94 card carefully before leaving the inspection point. If the I94 card is issued for a duration that is less than the validity period on your approval notice, please bring this to the attention of the USCIS officer and request a correction. If the officer refused to correct the card, please be sure to notify your employer as well as our office so that an extension petition may be prepared on your behalf if necessary.

PLEASE NOTE: It is important to check the validity and nonimmigrant classification noted on your I94 card each and every time you travel. I94 cards issued to accompanying family members should also be checked to verify validity periods and classification granted. In addition, a copy of all I94 cards should be sent to your employer and Baker Law Corporation each time you enter the U.S. This will enable us to track your status and ensure that your

San Jose Museum of Art

California Seal

SSA ISSUES GUIDANCE ON "NO-MATCH" LETTER INQUIRIES

After each annual wage reporting season the Social Security Administration (SSA) sends "no-match" letters to employers, employees and self-employed individuals whose Form W-2/self employment report contains a name/SSN combination that does not match the administrations records.

An employer who receives a "no-match" letter should not assume that it means the employer or employee intentionally gave the government wrong information. Nor does it make any statement about an employee's immigration status.

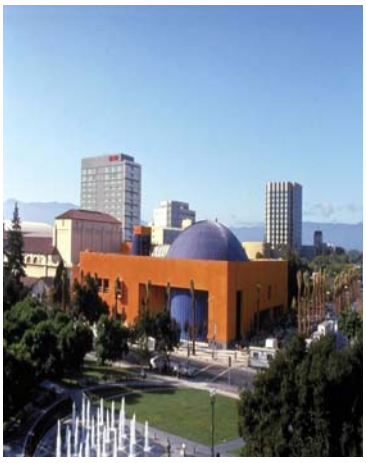
There are a number of reasons why the name/SSN doesn't match the SSA records. Among these is transcription or typographical errors, incomplete or blank name/SSN, or name changes.

In addition, the SSA recently introduced a new process for social security number cards as part of the immigration process. Now, people 18 and older applying for immigrant visas with the U.S. Department of State can also apply for SSN cards at the same time.

It is important to note that the SSA has indicated that the many of those who have received immigrant visas (IV) through U.S. consulates are incorrectly submitting duplicate SSN requests after entering the U.S. The discrepancy occurs when individuals process an IV through his/her consulate and then reapply for a SSN after entry into the U.S. This results in duplicate requests and if more than one is assigned it can cause confusion in one's tax mattes and result in "no-match" records with the SSA.

An employer who receives a "no-match" letter should check his/her records to determine if the information provided by the SSA matches the record on file. In addition, the employer can try to locate the employee's SSN card to make sure that both were reported accurately. If all information was recorded correctly, and an employer is unable to resolve the issue, the employer should ask the employee to contact the local social security office.

If for some reason an employer cannot resolve the problem, then he/she should document all efforts made to obtain the corrected information and retain that documentation for a period of 4 years.



The Tech Museum of Innovation

"Many of those who have received immigrant visas (IV) through U.S. consulates are incorrectly submitting duplicate SSN requests after entering the U.S. "

California Seal

Baker Law Corporation
95 South Market Street
Suite 480
San Jose, CA 95113

Phone: 408-971-0282
Fax: 408-971-8108
E-mail: strategic.alliances@bakerlawcorp.com

San Jose Convention Center

We hope this monthly newsletter will compliment our web site and keep you informed of the latest immigration news. BLC Immigration Connection will be published and distributed monthly via e-mail. Your comments and suggestions regarding topics you would like to see covered are welcomed.
Please e-mail us at: strategic.alliances@bakerlawcorp.com
with any suggestions you may have.

"Premier customer service and high quality legal work are our foundation."

Debra H. Baker
CEO
Baker Law Corporation

Subscription Information:

To Subscribe to this newsletter, please send an e-mail to:

strategic.alliances@bakerlawcorp.com

and request "subscribe" in the subject line.

To Unsubscribe to this newsletter, please send an e-mail to:

strategic.alliances@bakerlawcorp.com

and request "unsubscribe" in the subject line.

Winchester Mystery House