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**This Immigration Update<sup>©</sup> from FosterQuan, LLP contains important information regarding the following:**

1. OSC APPROVES ADDITIONAL EMPLOYER PRE-HIRE QUESTIONS REGARDING IMMIGRATION STATUS
2. COMPLETING FORM I-9 FOR AUTOMATIC EXTENSIONS OF TEMPORARY PROTECTED STATUS (TPS)
3. IMMIGRANT VISA AVAILABILITY ADVANCES FOR MOST EMPLOYMENT-BASED CATEGORIES
4. ONE-YEAR, MULTIPLE-ENTRY H-1B VISAS AVAILABLE FOR CHINESE APPLICANTS UNDER AMENDED VISA RECIPROCITY SCHEDULE
5. H-1B AND L-1 FILING FEES WILL INCREASE FOR CERTAIN EMPLOYERS

## **1. OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES (OSC) APPROVES ADDITIONAL EMPLOYER PRE-HIRE QUESTIONS REGARDING IMMIGRATION STATUS**

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) recently issued guidance concerning pre-hire questions that assist employers who wish to know whether an applicant requires sponsorship for work authorization. Because of much misunderstanding associated with those individuals who hold valid work visas or other documentation showing current employment authorization, but who would still require action of the new employer in obtaining new and/or longer term work authorization, the OSC has confirmed that the following two questions would be appropriate:

1. *Are you legally authorized to work in the United States? \_\_ Yes \_\_ No*
2. *Will you now or in the future require "sponsorship for an immigration-related employment benefit?" \_\_ Yes \_\_ No*

*For purposes of the following question "sponsorship for an immigration-related employment benefit" means "an H-1B visa petition, an O-1 visa petition, an E-3 visa petition, TN status and 'job flexibility benefits' (also known as I-140 portability or Adjustment of Status portability) for long-delayed adjustment of status applications that have been pending for 180 days or longer." (Please ask us if you are uncertain whether you may need immigration sponsorship or desire clarification.)*

For more information about the newly approved OSC language for questions or to discuss potential changes to your new hire application forms and pre-screening questions, please contact your FosterQuan immigration attorney.

## **2. COMPLETING FORM I-9 FOR AUTOMATIC EXTENSIONS OF TEMPORARY PROTECTED STATUS (TPS)**

The Department of Homeland Security (DHS) has recently issued guidance on the type of documentation employers may accept from those new hires holding Temporary Protected Status (TPS). When DHS extends the TPS designation for a specific country, it sometimes issues a Federal Register notice containing a temporary blanket automatic extension of expiring Employment Authorization Documents (EADs) for TPS beneficiaries in order to allow time for U.S. Citizenship and Immigration Services (CIS) to issue new EADs with updated validity dates.

Employers must accept a TPS-related EAD that is expired on its face if a notice is published in the Federal Register granting an automatic extension of the EAD by DHS. EAD is TPS related if the notation "A-12" or "C-19" appears on the face of the EAD under "Category". The expiration date of the most recent TPS extension period will be on the face of the card. The expiration date will also appear in the Federal Register notice announcing the automatic extension of EADs and may be found at [www.uscis.gov/tps](http://www.uscis.gov/tps).

When completing the form I-9, employers should enter the document name, number and expiration date, noting the end of the automatic extension period. An employer may not request that an employee provide proof that he or she is a national of a country that has been designated for TPS. When the automatic extension of the EAD expires, the employer must reverify the employee's employment authorization.

For more information regarding extensions of TPS, contact your FosterQuan immigration attorney.

## **3. IMMIGRANT VISA AVAILABILITY ADVANCES FOR MOST EMPLOYMENT-BASED CATEGORIES**

Each month the U.S. Department of State (DOS) publishes the [Monthly Visa Bulletin](#), reporting current immigrant visa availability under the annual quota system for U.S. immigration. The September 2010 Visa Bulletin is the last bulletin for the fiscal year 2010, and it shows some forward movement across all categories except Employment-Based, Third (EB-3) for applicants born in India.

The EB-1 preference category remains open for all countries of birth, and the EB-2 preference category remains open for all countries of birth except India and China, which have "cut-off dates" of May 8, 2006, a jump of just two months from the August 2010 bulletin. However, the EB-3 preference categories for all countries of birth, the Dominican Republic and the Philippines jumped six months to a new cut-off date of December 15, 2004. EB-3 China only saw forward movement of one month, while EB-3 India remains unchanged and EB-3 Mexico remains unavailable. There was a substantial, 10-month jump in cut-off dates in the "other workers" category for all countries of birth except India and Mexico. For all countries of birth other than India and Mexico, the new cut-off date is March 22, 2003. Visa numbers remain unavailable for applicants in the "other workers" category who were born in Mexico, and the priority date remains Jan 1, 2002 for those born in India.

For more information on any of these employment-based classifications, or to initiate the permanent residency process and establish a priority date for a foreign national employee,

contact your Foster Quan immigration attorney. Your Foster Quan immigration attorney will be able to assist you by developing a case-specific strategy for pursuit of permanent residency under an appropriate employment-based category for your company's employees. As always, we will continue to monitor changes in immigrant visa availability and will make further information available in future Immigration Updates© and on our website at [www.fosterquan.com](http://www.fosterquan.com).

#### **4. ONE-YEAR, MULTIPLE-ENTRY H-1B VISAS AVAILABLE FOR CHINESE APPLICANTS UNDER AMENDED VISA RECIPROCIDY SCHEDULE**

Previously, Chinese nationals applying for H-1B visa stamps at a U.S. Embassy or Consulate abroad were only issued H-1B visa stamps valid for a maximum of 3 months and 2 entries. This limitation was based on "reciprocity," or how long China issues a similar visa to a United States Citizen. Recently, the U.S. Department of State amended the visa reciprocity schedule to allow Chinese nationals to be issued H-1B visa stamps valid for up to 12 months and multiple entries. This represents a welcome change and should help ease many travel limitations for Chinese nationals. The amended visa reciprocity schedule also applies to Chinese nationals seeking visa issuance in any of the other H visa categories (H-2A, H-2B, H-3, H-4, etc.).

#### **5. H-1B AND L-1 FILING FEES WILL INCREASE FOR CERTAIN EMPLOYERS**

On August 13, 2010, President Obama signed into law the Emergency Supplemental Appropriation for Border Security Act which appropriates additional funding for U.S. Customs & Border Protection (CBP) and U.S. Immigration & Customs Enforcement (ICE) personnel and immigration enforcement initiatives.

The law also raises the H-1B and L-1 Fraud Prevention and Detection filing fee for H-1B and L-1 petitions filed by certain employers with high percentages of nonimmigrant workers. Under the Act, employers who have 50 or more employees in the United States, of which more than 50% were admitted in H-1B or L classification, will now pay a Fraud Prevention and Detection filing fee of \$2,750 for new L-1 petitions and \$2,500 for new H-1B petitions. The normal Fraud Prevention & Detection Fee paid by petitioning employers is \$500. The filing fee increase is scheduled to sunset on September 14, 2014.

If you are unsure whether the fee increase will apply to your company, or for more information regarding the new fees, contact your FosterQuan immigration attorney for a full evaluation of the new law as it applies to your existing workforce.