

-
- 1. U.S. Department of Labor (DOL) Changes Procedure for Issuing Prevailing Wage Determinations; Expect Longer Lead-Times for Certain Cases**
 - 2. U.S. Department of State (DOS) Announces Worldwide Rollout of Form DS-160 Application for Nonimmigrant Visa at U.S. Consular Posts in Spring 2010**
 - 3. U.S. Citizenship & Immigration Services (CIS) Provides Update on H-1B Visa Availability**

1. U.S. DEPARTMENT OF LABOR (DOL) CHANGES PROCEDURE FOR ISSUING PREVAILING WAGE DETERMINATIONS; Expect Longer Lead-Times for Certain Cases

The U.S. Department of Labor (DOL) recently announced that, beginning January 1, 2010, requests for Prevailing Wage Determinations must be filed with the U.S. DOL rather than the various State Workforce Agencies. Prevailing Wage Determinations are required prior to beginning recruitment in connection with a PERM Application for Permanent Employment Certification. They are also required in connection with temporary labor certifications for certain nonimmigrant visa classifications.

Beginning January 1st, applications for Prevailing Wage Determinations must be made on hard-copy forms, filed via mail or courier. Turnaround time is expected to be significantly longer than at the State Workforce Agencies. Additionally, because centralized filing and prevailing wage issuance by the DOL is new, practitioners anticipate an adjustment period as DOL analysts unfamiliar with local labor markets begin to work through issues that the various SWA had already addressed. For applications that already require DOL-issuance of Prevailing Wage Determinations, the DOL has taken up to 30 days to issue the prevailing wage.

Because the lead-time for securing a Prevailing Wage Determination will impact the lead-time for filing PERM Applications in 2010, employers expecting to begin the permanent residency process for employees within the next six months should consider beginning the process immediately. At a minimum these changes may impact cases for H-1B employees who are already in their 5th year of H-1B status.

To learn more about the implications of the change in procedure for Prevailing Wage Determinations, and to initiate the permanent residency process on behalf of employees in their

4th, 5th or 6th year of H-1B eligibility, contact your Foster Quan immigration attorney. Your Foster Quan attorney will be able to assist you in developing an appropriate strategy and time frame for proceeding with the permanent residency process for qualified personnel in order to minimize the impact of recent procedural changes.

2. U.S. DEPARTMENT OF STATE (DOS) ANNOUNCES WORLDWIDE ROLLOUT OF FORM DS-160 APPLICATION FOR NONIMMIGRANT VISA AT U.S. CONSULAR POSTS IN SPRING 2010

This week the U.S. Department of State announced the long-anticipated worldwide rollout of the Form DS-160 Application for Nonimmigrant Visa at consular posts worldwide. The Form DS-160, longer and more detailed than previous versions of the visa application, has already been in use on a trial basis at several consular posts, including many posts in Mexico, Canada, and Australia.

The worldwide rollout of the Form DS-160 will be completed in phases, with many posts required to utilize the form by March 1, 2010, and all posts required to utilize the form by April 30, 2010. Applicants should check the web site for the appropriate consular post in advance of submitting a visa application in order to confirm whether the particular post currently requires the Form DS-160.

As always, Foster Quan will continue to monitor changes in procedures impacting the visa application process, and will make future updates available at www.fosterquan.com and in future Immigration Updates© as appropriate.

3. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) PROVIDES UPDATE ON H-1B VISA AVAILABILITY

On December 8, 2009, U.S. Citizenship & Immigration Services (CIS) announced that, as of December 4, 2009, 61,100 H-1B visas had been used. The annual H-1B cap is set at 65,000, with more than 6,000 normally reserved for nationals of Chile and Singapore. Based on prior annual visa usage by nationals of Chile and Singapore, the CIS has determined that fewer must be set aside and can be used under the Fiscal Year 2010 H-1B quota. Additionally, the CIS establishes a target number of petitions for receipt that is higher than the annual quota, in order to account for the expected rate of petition denials. Even taking into account the CIS allowances for petition receipts over 65,000, the recent increase in the rate of H-1B visa consumption since November 1st makes it clear that the FY-2010 H-1B cap will soon be reached, perhaps as early as mid-December, and likely before the end of the calendar year.

The lead-time for filing H-1B petitions has been increased, due to changes at the DOL that impact the adjudication time frame for certification of Labor Condition Applications. Therefore, in order to maximize the opportunity to secure one of the limited H-1B numbers that remain available, contact your Foster Quan immigration attorney today.