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Department of Homeland Security Publishes Notice on Status for F/J Students Affected by H-1B Cap

The Department of Homeland Security published a notice in the Federal Register extending the status of certain F-1 and J-1 nonimmigrant students and their dependents if DHS receives a timely-filed request for a change of status to H-1B no later than July 30, 2004 and the employment start date on the petition is no later than October 1, 2004. The notice defines filing to mean receipt by Citizenship and Immigration Services as indicated by the receipt date on Form I-797. (J-1 exchange visitors other than students, and J-1 students subject to the two-year home residence requirement, are not covered.)

This rule allows F-1 and J-1 students to stay legally in the U.S. until October 1, 2004 while their H-1B change of status petitions are pending. It is an extension of the ordinary 60-day or 30-day grace period to which F-1 and J-1 nonimmigrants are already entitled. The extension does not provide for employment authorization on behalf of the F-1 and J-1 students.

DHS has indicated that F-1 and J-1 nonimmigrants (and their dependents) with pending H-1B petitions may not travel during this grace period. The extension allows these individuals to remain in the U.S. in lawful status while their H-1B petitions are pending. If an F-1 or J-1 nonimmigrant does travel during this period, he or she will need to apply for an H-1B visa stamp at a U.S. Consulate or Embassy abroad once the H-1B petition is approved.

For H-1B change of status petitions that were denied prior to the July 23, 2004 publication of the notice in the Federal Register, the petitioner may either (1) file a motion to reopen the case, or (2) file a new petition to change status.

CIS to Change to Passport-Style Photographs

The California and Nebraska Service Centers report that Citizenship and Immigration Services will transition from ADIT-style (3/4 frontal) photos to passport-style photos for all CIS documentation. Notice of this decision is expected to be published in the Federal Register in the near future (reportedly before August 1, 2004). This change is being made to comply with an agreement that requires the adoption of International Civil Aviation Organization standards for all travel documents by October 26, 2004.

Visa Appointment Delays

There are significant delays in obtaining nonimmigrant visa appointments at many U.S. Embassies and Consulates abroad. Therefore, advance planning is critically important for foreign national employees traveling abroad who will need new visa stamps in order to return to the U.S.

The information in this Newsflash is not intended to be legal advice. However, if you require legal assistance or would like additional information about immigration matters, please contact your local Paul Hastings representative or Daryl Buffenstein at 404-815-2232 or via email at darylbuffenstein@paulhastings.com.

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