

CLIENT CONNECTION



A newsletter on all things Immigration-related.
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ANNOUNCEMENTS

1.1 USCIS UPDATES

USCIS has issued revised instructions for Form I-131, Application for Travel Document. The instructions require applicants for re-entry permits and refugee travel documents to provide biometrics at USCIS Application Support Centers. The changes became effective March 5.

1.2 CONSULAR ISSUES

The U.S. State Department has issued a record number of visas to students to study in the United States, exceeding pre-9/11 levels. During Fiscal Year 2007, the Department issued more than 651,000 student and exchange visitor visas - 10 percent more than last year and 90,000 more than were issued in Fiscal Year 2001.

1.3 BUSINESS CORNER

Are you a business owner in the U.S.? Have you remembered to file your annual business tax returns on March 15? Or did you file for an extension on time?

1.4 Q & A ... DID YOU KNOW?

M-1 Vocational Trainees cannot apply for Changes-of-Status to H-1B classification in the U.S., **IF** the training received while on M-1 status forms the basis for the H-1B qualifications.

Dear Valued Reader, it's that time of year again where U.S. Immigration Law practitioners the world over are scrambling to get cap-subject H-1B petitions ready for submission to USCIS by April 1, less than two weeks from now...YIKES!



The month of March is arguably the busiest and most stressful time of year for U.S. immigration lawyers for this very reason. I can imagine that our "counter-parts" at the Service Centers of the USCIS are feeling this annual crush, too. There are estimates, albeit unofficial, that there will be some 300,000 petitions filed for approximately 60,000 available cap-subject H-1B's. In simple terms this means that applications received will outnumber available H-visas at a ratio of 5:1... So how will USCIS likely deal with this? Probably the same way they did last year: a 'random' computerized drawing. Those unlucky applications which won't be picked by the almighty USCIS-computer, will simply returned to Sender, unprocessed, with some apologetic cover letter on top. To those many hopefuls who will receive their applications back, this means either "better luck next year", or back to the drawing board.

Does your current Visa expire during the summer months?

If you are currently in the United States on a non-immigrant status, and your corresponding visa in your passport is expiring some time this summer, listen up...

The late spring and early summer months are traditionally very busy times for U.S. consular posts around the world. Many posts will be spending considerable resources during the next four months, receiving, processing and adjudicating Student Visas, Training Visas, Exchange and Internship Visas, many programs or courses of study set to begin during summer months.

If you need to get your application for visa renewal/extension in this Spring, -- particularly if it is a business- or employment-based visa, -- allow for extra time for the Consulate or Embassy to process and adjudicate your application. Delays and disruptions to your business, particularly when you need to travel overseas for your visa interview, can be harmful if not downright detrimental to your business.

Because of this pre-summer influx in applications many consular posts must handle, I would recommend adding at least one extra month on top of what would normally be required.

As is my usual mantra for almost any immigration-specific situation, the same holds true in this case: "if in doubt, ask me!"

**B-1 “Business” Visitor ...
what is one allowed to do in the
U.S.?**

Lately, I have had an increased number of inquiries on this very issue. So I figured, now is as good as time as ever to briefly re-visit this issue for the benefit of my readership.

Certain kinds of "business" related travel, is permitted using a B-1 visitor visa. The definition of "business" under immigration law is limited, and does not generally allow for gainful employment, labor for hire or productive activity such as operating a business or consultancy work.

Specifically, in the applicable U.S. law the term "business" is limited to (a) the negotiation of contracts, (b) consultation with business associates, (c) litigation, and (d) participation in scientific, educational, professional or business conventions, conferences or seminars and other legitimate activities of a commercial or professional nature.

Persons entering the U.S. on a visitor visa, for business or tourism (B-1/B-2), or without a visa on the Visa Waiver Program are not permitted to work, i.e. being "gainfully employed" in the United States.

If you are planning to work, or to attend certain training in the U.S., you cannot enter the U.S. with a visitor visa. Instead, you will need a visa in one of the employment categories for temporary workers. The following are some further examples of legitimate B-1 activities: (1) Attending a scientific, educational, professional or business convention, conference or seminar, (2) Giving a lecture, (3) Doing independent research at a scientific or educational institution, (4) Participating in a voluntary service program, (5) Participating in a sporting event.

People who have B-1 visas may not, in general, get salaries or money from U.S. sources. You may be able to come to the U.S. on B-1 status whereby you continue to receive your compensation back home, and may only receive expense reimbursements in the U.S., but no direct financial gain.

If a business traveler, or a company for that matter, is in any doubt as to their anticipated or proposed conduct in the United States, DO seek the advice and counsel of a qualified immigration lawyer, BEFORE the business traveler boards that mission-critical flight US-bound.

Increased Searches & Seizures by Customs and Border Protection (CBP)... increased safety or harassment?

Over the past 12 months, I have personally noticed a substantial increase of clients' accounts on unpleasant inspections and interrogations on entry to the United States, by members of CBP, the law enforcement agency operating under the umbrella agency Department of Homeland Security (DHS). CBP Officers are charged with maintaining the security and integrity of the U.S. borders, while allowing for and promoting legitimate travel and trade. They are essentially the official "greeter" at the border. I can just hear many of my readers cringing and shaking their heads in disbelief... I know what you're thinking! Many have had the one or another unpleasant encounter with a CBP officer whose demeanor at the time may have been less than welcoming or cordial. So-called hard secondary inspections at the port-of-entry are NOT pleasant, and can often result in lengthy, very adversarial interrogations, detentions and those dreaded luggage searches. While these meas-

ures to the traveller on the receiving end are intimidating, burdensome and overall unpleasant, the Government argues that they are essential and necessary in a post-9/11 world. Statistically, very few arriving travelers actually progress to "Secondary Inspection" on their attempted entry into the United States. According to some conservative estimates, some 95% of all arriving travelers are processed and admitted into the U.S. within 1 minute or less.

One noticeable trend on the rise is the increased search of travelers' laptops and paper-files during the secondary inspection process. Particularly for travelers on the Visa Waiver or on B1/B2 Visas, the perceived (by CBP) intentions of maybe engaging in activities in the U.S., not allowed under those classifications can often lead zealous officers to literally dissect travelers' belongings and look for "evidence" of wrongdoing... something as seemingly harmless as carrying along a stack of business cards, or commercial documents, or having lease documents with you can be used to intimidate and elicit self-incriminating information. Laptops are frequently searched, files opened, emails read, internet bookmarks examined, etc... all in an effort to find traces of inappropriate or illicit purposes. The lesson here being: watch what you bring with you, be mindful of the data on your laptop. Asking the United States for permission to enter is tantamount to consent given to be questioned and searched.

...To be continued in Part 2, in my next newsletter, in April.

I hope you have enjoyed this issue. Keep your comments coming. Sincerely and respectfully Yours,

