FBT Immigration Update: July/August 2016

Aug 08, 2016

Categories:

Publications

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USCIS completes return of rejected FY2017 H-1B cap-subject petitions

After receiving over 236,000 petitions for just 20,000 master's cap slots and 65,000 regular cap slots during the FY2017 H-1B cap season, USCIS completed its return of the petitions that were not selected during the lottery.

Employers, who have just received returned petitions and have not yet considered the alternatives that may be available to them, should review our immigration update from April 2016.

Nebraska Service Center begins to process certain H-1B petitions

In previous immigration updates, we reported that the Vermont Service Center (VSC) and California Service Center (CSC) were experiencing significant delays in the adjudication of H-1B extensions. Currently, VSC is processing cases filed on January 11, 2016 and CSC is processing cases filed on December 15, 2015.

In a likely effort to bring down H-1B extension processing times at VSC and CSC, the Nebraska Service Center (NSC) started, on July 1, to accept H-1B and H-1B1 petitions that are (1) marked "continuation of previously approved employment without change with the same employer," (2) request extensions or consular processing, and (3) are not filed by cap-exempt petitioners. As stated by USCIS, CSC and VSC may continue to accept these petitions until August 31, 2016. In order to ensure proper filing with the appropriate Service Center, employers should closely review the USCIS website that provides the direct filing addresses for H-1B petitions.

EB-1 China, EB-1 India, and EB-2 All-Chargeability Category is backlogged as

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of August 1, 2016

On July 13, 2016, USCIS designated the Department of States' latest *Application Final Action Dates* chart as controlling for the month of August 2016. Under the August 2016 *Application Final Action Dates* chart, there are two significant developments that employers should be aware of as of August 1st: (1) the EB-1 China and EB-1 India categories changed from being current to backlogged to January 1, 2010 and (2) EB-2 All-Chargeability (a category that covers all countries except China, India, Mexico, and the Philippines) also changed from being current to backlogged to February 1, 2014. The duration of these backlogs is expected to be brief. The Department of State has indicated that these backlogs should be cleared by the start of the new fiscal year on October 1, 2016.

Form I-9 related penalties increased for inflation on August 1, 2016

On August 1, 2016, the interim final rule the Department of Justice (DOJ) published on June 30, 2016 went into effect and increased the penalties permitted under the Immigration Reform and Control Act of 1986. These increases were made to ensure that civil monetary penalties have a deterrent effect.

Under the DOJ interim final rule, the civil penalties that may be applied to employers that violate IRCA and/or commit Form I-9 violations increased. For example, the penalty for a first offense for hiring or employing an individual knowing they lack work authorization increased from a range of $375 – $3,200 to $539 – $4,313. In addition, the penalty for Form I-9 paperwork violations increased from a range of $110 – $1,100 to $216 – $2,156.

This adjustment should serve as a reminder to all employers to ensure they have appropriate Form I-9 policies in place so they can mitigate the risk of facing any such penalties.

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