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USCIS Develops New Methodology for Calculating Processing Times

In order to lower the number of case inquiries, United States Citizenship and Immigration Services (USCIS) has developed a new methodology to provide a more accurate picture of government processing times. When checking the status of one of the following forms:

- Form N-400, Application for Naturalization;
- Form I-90, Application to Replace Permanent Resident Card;
- Form I-485, Application to Register Permanent Residence or Adjust Status; and
- Form I-751, Petition to Remove Conditions on Residence

people will now see the following:

and:

An applicant/ petitioner can submit an inquiry to USCIS regarding their application/ petition being outside normal processing times if their receipt date is before the case inquiry date listed for their type of application or petition.

Employment-based adjustment applicants should select the service center where their application was filed to check the processing times. Once the employment-based adjustment applicant receives a transfer notice, they should select the field office where they will be interviewed to check the processing times.

E-Verify Modernization Initiative Launched

After a false start with its launch, USCIS has rolled out its E-Verify modernization system. As part of the transition, E-Verify transferred

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all existing case data to the new interface. Streamlined case creation and processing are designed to increase accuracy and speed of case processing. The Department of Homeland Security (DHS) and the Social Security Administration (SSA) screenings now occur concurrently so that a combined Tentative NonConfirmation (TNC) can be issued. Additional information about the changes can be found at https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-enhancements/april-2018.

Employers are reminded to close out cases as appropriate. USCIS reminds employers to see pages 17-19 of the E-Verify User Manual 4.0 for instructions on how to properly close a case in E-Verify.

In response to error messages that employers have been receiving as a result of the modernized E-Verify system, USCIS has advised that employers who are having trouble with the modernized E-Verify system should contact enrmod-projectteam@uscis.dhs.gov and include in the subject line: "Employer Name – E-Verify Modernization Issues." USCIS has advised that an employer will have 10 extra business days to submit the case.

In addition, USCIS has also rolled out a new website: E-Verify.gov. Employers can enroll and directly access their E-Verify accounts from the website. The website also allows individuals with myEverify accounts to access their accounts.

USCIS L-1 Pilot Program for Canadian Citizens

Pursuant to the North American Free Trade Agreement (NAFTA), Canadian citizens applying for L-1 status may apply for admission directly with a Customs and Border Protection (CBP) officer at a U.S. port-of-entry (POE) located along the U.S.-Canada border (e.g., Peace Bridge) or preclearance operation at a Canadian airport (Vancouver International Airport). If the Canadian citizen is admitted as an L-1, the L petition is forwarded to USCIS, which later issues a receipt notice and approval.

USCIS recently initiated a pilot program that incorporates USCIS into the decision-making process, rather than leaving it entirely up to CBP. The stated goal is to "increase consistency in adjudication

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of L-1 petitions."

The pilot program runs from April 30 to October 31, 2018, and "is designed to evaluate how long USCIS needs to adjudicate these petitions and whether USCIS can support CBP through remote adjudications."

Participating in the pilot program is optional. If participating, employers file the L-1 petition with the USCIS California Service Center (CSC) and include a special cover sheet. Upon approval, the Canadian employee beneficiary must seek admission in L-1 status through the Blaine, Washington POE. If a Canadian citizen beneficiary does not want to wait for the L-1 approval, they can appear at the Blaine POE once the receipt notice is issued and USCIS will remotely adjudicate the petition. USCIS indicates that the Canadian citizen beneficiary will need to endure a delay, but there is no indication as to how long the Canadian citizen beneficiary may need to wait.

Presumably, the L-1 petition filed with USCIS will be processed quickly and certainly faster than other L-1 petitions filed with USCIS. However, it is probable that the processing time will be longer than if the L-1 was filed directly at a POE.

USCIS Declares *Matter of S-P-, Inc.* an Adopted Decision

On March 19, 2018, USCIS issued a policy memorandum (PM) designating the Administration Appeals Office (AAO) decision in *Matter of S-P-, Inc.* as an Adopted Decision, meaning it will guide determinations made by USCIS concerning immigrant petitions filed on behalf of multinational managers and executives.

Pursuant to the regulations, an employer seeking to classify an employee as a multinational manager or executive for purposes of obtaining permanent residence must demonstrate, among other things, that he or she "was employed overseas, in the three years preceding entry as a nonimmigrant" by a related entity abroad for at least one year in a managerial or executive capacity. In *Matter of S-P-, Inc.*, the AAO dealt with a situation in which the employee had

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entered the U.S. and worked for the petitioner, but then left and worked for four years with another employer in the U.S. before rejoining the petitioner and seeking permanent residence. The AAO determined, in this case, that the three-year window mentioned in the regulations is three years prior to the date the employee reentered the U.S. to resume working for the petitioner, which means he could not establish qualifying employment with a related entity abroad and, thus, not obtain permanent residence in this category. The PM does not address whether the new policy guidance applies to the L-1 nonimmigrant classification.

E-Verify Desk Reviews

USCIS announced that its Monitoring and Compliance (M & C) unit has begun to request Form I-9s as part of the desk review process. A desk review is a "voluntary" review of an employer's E-Verify usage to identify compliance issues. Employers should remember that as part of the memorandum of understanding to participate in E-Verify, they agreed to cooperate in the compliance monitoring and evaluation of E-Verify. The review can occur by email, phone, and possibly a site visit. USCIS states that a desk review is not an audit or inspection. However, employers should treat it as such because the information may be shared with Immigration and Customs Enforcement (ICE) or the Office of Special Counsel- U.S. Department of Justice. Employers should be cautious in disclosing information, such as I-9 forms. USCIS has advised that requests from news@uscis.gov are fraudulent, as well as any that would have you link to a non-government web address, such as uscis-online.org. USCIS advises that if you are unsure if an email is a scam, you should forward the suspicious email to USCIS webmaster at uscis.webmaster@uscis.dhs.gov. If you believe the email is a scam, please report it to the Federal Trade Commission.

Address Changes & Secure Mail

USCIS has announced it will destroy permanent resident cards, employment authorization cards and travel documents returned as undeliverable by the U.S. Postal Service after 60 business days if the documents' intended recipient does not provide the correct

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address.

If the intended recipient does contact USCIS within 60 days, USCIS will now use the U.S. Postal Service's (USPS) signature confirmation restricted delivery service to send these secure documents to the new address. Recipients will be required to present identification to sign for their documents upon delivery. Applicants can designate an agent to sign on their behalf by completing PS Form 3801, Standing Delivery Order (PDF) or PS Form 3801-A, Agreement by a Hotel, Apartment House, or the Like (PDF), or can arrange for pickup at a post office by visiting USPS' website and selecting "hold for pickup."

Applicants are reminded that they are required by U.S. law to report a change of address within 10 days of moving by submitting an AR-11 at uscis.gov/addresschange. A willful failure to give written notice to USCIS of a change of address within 10 days of moving to the new address is a misdemeanor crime. If convicted, a foreign national can be fined up to $200 or imprisoned up to 30 days, or both. The foreign national may also be subject to removal from the United States.

If you have questions relating to these topics, please contact David Janklow, Peggy Shukairy, or Matt Wagner in Frost Brown Todd's Labor and Employment Practice Group.

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