

## U.S. Immigration Alert

### Delays in H-1B LCA Approvals and H-1B Filings

**June 30, 2009** - The U.S. Department of Labor (DOL) has implemented a new iCERT system that will allow users to set up one account and utilize that account to file Labor Condition Applications (LCAs) for H-1B petitions and to file PERM labor certification applications. Currently, the iCERT system is only available for purposes of establishing user accounts and filing the new LCA (Form 9035E).

The DOL previously postponed the date for mandatory iCERT system use for LCAs. The delay allowed for the continued use of the existing LCA system through June 30, 2009 while the DOL fixed problems identified by users during the initial implementation.

The old system will be shut down at the end of day on June 30, 2009, and the new iCert system will become mandatory beginning July 1, 2009. Under the iCERT system, LCAs filed will take up to seven business days for certification. From a practical standpoint, this means that the timeline for filing an H-1B, H-1B1, or E-3 petition will increase since these petitions must be filed with certified LCAs. Instead of being able to obtain a certified LCA instantly, as is generally possible with the current system, employers will need to wait up to seven days to obtain the certified LCA. This will most dramatically affect the process of H-1B portability, which enables a new hire in H-1B status to start working upon the filing of an H-1B petition by a new employer on his or her behalf.

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### Update on H-1B Cap Count for Fiscal Year 2010

**June 30, 2009** - United States Citizenship and Immigration Services (USCIS) announced today that it has received approximately 44,800 H-1B petitions counting toward the congressionally-mandated 65,000 limit. USCIS also confirmed that it has received approximately 20,000 petitions for employees with advanced degrees from U.S. colleges and universities, but stated that it will continue to accept petitions under the special exemption for persons holding advanced degrees from U.S. colleges and universities in anticipation that some of the petitions accepted will not meet the requirements for an H-1B petition.

Importantly, USCIS is still accepting H-1B petitions for FY 2010. We can assist with any rush H-1B filings for employers who want to take advantage of the visa number availability.

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### Premium Processing Service Reinstated for Certain Immigrant Petitions

**June 23, 2009** - U.S. Citizenship and Immigration Services (USCIS ) announced that effective June 29, 2009, it will resume premium processing service for employment-based immigrant visa petitions (Forms I-140) filed on behalf of the following:

- Aliens with Extraordinary Ability;
- Outstanding Professors and Researchers;
- Members of Professions with Advanced Degrees or Exceptional Ability; and

- All persons eligible for the EB-3 (employment-based third preference) category.

Notably, premium processing will NOT be available for multinational executives and managers and for applicants seeking national interest waivers.

Under the premium processing program, for a \$1,000 processing fee, USCIS will adjudicate (approve, remand or deny) a case within 15 calendar days of its receipt of the premium processing request.

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## Update on National Name Check Backlog

**June 23, 2009** - In April 2008, the U.S. Citizenship and Immigration Services (USCIS) partnered with the Federal Bureau of Investigation (FBI) and announced a business plan aimed at eliminating the FBI National Name Check Program (NNCP) backlog. The announcement of the effort constituted a significant step forward in the agencies' efforts to reduce the backlog which, in some cases, had left cases stymied for years.

On June 22, 2009, USCIS announced that the final goal of the joint business plan has resulted in the achievement of a sustainable performance level by the NNCP. In short, the NNCP is now able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining two percent within 90 days. Additionally, USCIS announced that this performance level is the new standard.

The collaborative efforts taken by USCIS and FBI to achieve this performance level have included:

- Increased NNCP staffing;
- Name check process improvements initiated by the FBI;
- Refinements in the name check file search criteria;
- Increased training of NNCP staff on USCIS adjudication requirements and applicability of the name check search results to USCIS adjudications; and
- Assignment of USCIS personnel to the NNCP.

It should be noted that there are additional factors, determined on a case-by-case basis, that may result in security check delays, including situations requiring further investigation or evaluation or additional interaction with other government agencies outside USCIS to obtain updated information.

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