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USCIS Proposes Changes to Religious Worker Visa Requirements

As previously reported in *Immigration Newswire*, USCIS has been conducting fraud investigations on all religious worker visa petitions, including for R-1 nonimmigrant religious workers and for special immigrant religious workers because a recent government audit found a high rate of fraud in these petitions. In a further effort to combat that fraud, USCIS has proposed several changes to the filing of religious worker visa petitions, including requiring USCIS approve an I-129 petition on behalf of any religious worker seeking admission in R-1 nonimmigrant status. Currently, R-1 applicants may apply for an R-1 visa directly at a U.S. Consulate abroad and USCIS need not approve an I-129 petition first; and Canadian citizens, who are visa exempt, may currently apply for R-1 admission directly at a port of entry without applying for an R-1 visa or filing an I-129 petition. Current law only requires that an I-129 petition be filed for a foreign national seeking an extension of R-1 nonimmigrant status or a change of status to R-1 within the U.S. By requiring the filing of an I-129 petition in all cases under the proposed rule, USCIS hopes to be able to pre-screen R-1 beneficiaries and petitioners for any fraud.

The proposed rule would also make on-site inspections a routine part of the R-1 nonimmigrant and I-360 immigrant petition adjudication process. USCIS has been conducting on-site inspections before adjudicating any I-360 or R-1 petitions as part of its fraud investigations over the past several months and the proposed rule would formalize the site inspection process.

In addition, the proposed rule would limit the initial R-1 admission period to one year. Current R-1 regulations permit an R-1 nonimmigrant to enter the U.S. for an initial three-year period and to extend his stay for an additional two-year period, for a total of five years in R-1 status. Under the proposed rule, initial admission would be for one year, with two two-year extensions permitted. This is intended to allow USCIS to review each R-1 petition for fraud after one year.

Additional information about the proposed changes, which have not yet been implemented, is available at:

<http://www.uscis.gov/files/pressrelease/RvisaFactSheet19Apr07.pdf> and

<http://www.uscis.gov/files/pressrelease/RvisaRelease19Apr07.pdf>.

Update on H-1B Masters Cap

USCIS announced that as of April 18, 2007, they had received approximately 18,000 H-1B petitions to be counted against the Masters Cap Exemption. The Immigration and Nationality Act provides that the first 20,000 H-1B petitions filed on behalf of beneficiaries who possess a Masters Degree or higher from a U.S. institution of higher education are exempt from the H-1B cap. Thus the Masters Cap has almost been reached. USCIS will provide updates on its website at www.uscis.gov.

Department of Homeland Security Amends Regulations Governing RFE and NOID Response Times

The Department of Homeland Security has published a Final Rule in the Federal Register that will amend USCIS regulations governing response times on Requests for Evidence (RFE) and Notices of Intent to Deny (NOID). The Rule will go into effect on June 18, 2007. Current USCIS regulations provide petitioners and applicants 12 weeks to respond to an RFE requesting additional information or evidence needed to favorably adjudicate a request for an immigration benefit; and 30 days to respond to a NOID.

Under the Final Rule, USCIS adjudicators will be able to set a shorter response period for evidence they deem easy to obtain, and no extensions of that time are permitted for any reason. Twelve weeks will be the maximum period allowed to respond to RFEs and 30 days will be the maximum period allowed to respond to NOIDs. However, the time permitted could be much shorter. Failure to timely respond to one of these notices will result in denial of the application or petition, either because the evidence originally submitted is not sufficient or because it is considered abandoned for failure to respond.

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