

Recent Developments Regarding Visas

Tokyo and Osaka Will No Longer Accept Visa Applications Submitted From the United States

The United States Embassy in Tokyo and the United States Consulate General in Osaka-Kobe have announced that as of September 1, 2002, they will no longer accept applications for visas submitted from the United States. In addition, they will not accept visa applications submitted from Japan (i.e., through travel agents) if the applicant is then present in the United States. Applications may only be submitted when the applicant is physically present in Japan.

Individuals who wish to revalidate expiring or expired E, H, I, L, O, or P visas while remaining in the United States still have the option of submitting their applications to the Department of State Visa Office in St. Louis. Visas can only be revalidated if the passport contains a previous visa of the same classification as the visa being sought and if the original visa was issued abroad. Visas will not be revalidated if they are not due to expire for more than 60 days, or if they have been expired for more than 1 year. Processing through St. Louis can take up to 2 months.

Concurrent Filing of I-140 and I-485 Applications Permitted

On July 31, 2002, the Immigration and Naturalization Service (INS) published an interim rule allowing concurrent filings of I-140 Employment Based Immigrant Petitions and I-485 Adjustment of Status applications. Prior to the publication of this interim rule, individuals who were beneficiaries of employment based immigrant petitions were prohibited from filing adjustment of status applications until the immigrant petition had been approved by the Immigration and Naturalization Service. The Service's interim rule was enacted "to improve both efficiency and customer service." Individuals who are the beneficiaries of pending I-140 petitions may file their adjustment of status applications by submitting a receipt evidencing the submission and acceptance of the I-140 petition by the INS. As always, the regulations require that an immigrant visa be available at the time the I-485 is submitted to the INS as established monthly through the State Department Visa Bulletin.

The ability to concurrently file I-140 and I-485 petitions will benefit individuals in H or L status who are reaching their maximum period of nonimmigrant stay, as adjustment applicants are permitted to remain in the United States while their applications are pending, and may file for employment authorization as well as advance parole documents permitting continued work and travel. Family members will also be eligible to file adjustment applications and to receive employment and travel documents as well.

State Department Requires New Form DS-158 For F, M, and J Visa Applicants

The State Department has issued Form DS-158, "Contact Information and Work History for Nonimmigrant Applicant" which must be completed by all applicants for F, M, and J visas. This two page form requests information concerning family members (spouses, children, siblings, and parents), the names of two contact persons who may verify information regarding the applicant, and current and previous work history. This application must be completed in addition to the Standard non-immigrant visa application (DS-156) and supplemental application for males between 16 and 45 (DS-157).

Child Status Protection Act

On August 6, President Bush signed the Child Status Protection Act, which was designed to address the problem of minor children losing their eligibility for certain immigration benefits as a result of INS processing delays. Prior to the passage of this law, a child's eligibility to receive an immigrant visa or to be part of a parent's application as a derivative beneficiary was based on the child's age at the time that the alien relative petition was approved, not at the time the petition was filed. If the child turned 21 prior to adjudication of the petition, the child "aged-out" and was ineligible to receive an immediate relative visa if a direct beneficiary, or was no longer considered to be part of the parent's application if a derivative beneficiary. Under this legislation, the determination of whether an unmarried alien son or daughter of a U.S. citizen is considered an "immediate relative child" (under 21 years of age) is now based on the age of the alien at the time the Petition for Alien Relative (Form I-130) is filed on his or her behalf, rather than on the date the petition is adjudicated.

For permanent resident parents who subsequently naturalize after having filed petitions for their sons or daughters, the age determination will be made at the time of the parents' naturalization. For U.S. Citizen parents who file petitions for married sons or daughters where such sons or daughters later divorce, the alien beneficiary's age will be determined as of the date of his or her divorce.

For the children of legal permanent residents, or those who are accompanying or following to join on a petition for an immigrant visa, their eligibility will be determined based on the date that a visa becomes available to them, but only if they seek to acquire permanent resident status within one year of such availability. The new law also provides that the family-sponsored petition of an unmarried alien son or daughter whose permanent resident parent subsequently becomes a naturalized U.S. citizen will be converted to a petition for an unmarried son or daughter of a U.S. citizen, unless the son or daughter elects otherwise.

Note that this legislation which protects children from aging out covers family-based petitions only. It does not provide protection to a child whose parent is the beneficiary of an employment-based (I-140) immigrant petition.

Spousal Employment Authorization For E and L Nonimmigrants

Spouses of E-1, E-2, and L-1 visa holders are eligible to apply for employment authorization. An application for employment authorization must be filed and an Employment Authorization Document (EAD) issued by the INS before spousal employment may commence. Under current INS regulations, the Service has 90 days from the date of filing within which to adjudicate the application for an EAD. The EAD will allow the spouse to work for any employer without restriction as to the type of position held, as well as full or part-time employment.

Change of Address Reporting Requirements

The Immigration and Nationality Act requires all aliens who remain in the United States for 30 days or more (other than A or G nonimmigrants) to file a notice with the Attorney General within 10 days of any change of address on INS Form AR-11. While this requirement has been law for many years, it has largely gone unenforced by the INS. In light of new security measures being implemented and increased INS enforcement, it is recommended that all nonimmigrants submit Form AR-11 within 10 days of a change of address. The Form is available on the INS website at <http://www.ins.usdoj.gov/graphics/formsfee/forms/index>, and should be mailed to the US Department of Justice, Immigration and Naturalization Service, HQ ORM, 425 I Street NW ULLICO 4th Floor, Washington, DC 20536. It is advisable to mail the form via certified mail, return receipt requested.

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