

Immigration Newsletter

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H-1B Filing Due Date – April 1, March is the Time for Employers to Prepare, DON'T DELAY

The H-1B cap filing season is upon us. There are 85,000 H-1B visas available. Now is the time to file the Department of Labor requests in order to file by the deadline. Last April 2015 over 233,000 H-1B applications were filed for the available 85,000 H-1B worker visas. The dates USCIS will accept for the cap subject H-1B applications is April 1 plus five days. Employers wanting to hire recent December 2015 graduates or employees with OPT work permits should be contacting us immediately. Proposed employees should be working on collecting transcripts, diplomas, I-20s, passports past and current, educational evaluations, and past employer letters where applicable as well as dependent spouse and children documents. While it is possible to begin an application in March, the likelihood of success diminishes quickly and becomes dependent upon whether the Department of Labor responds quickly on FEIN collection and labor condition application certification which must be completed prior to filing the application.



Delays in Processing Times for H1-B Extensions Forces Payment of \$1225 Government Fees

USCIS is processing H-1B extension applications filed June 13, 2015. H-1B workers are allowed to continue working only 240 days when the extension is filed. It is taking more than 240 days for processing by USCIS. This is forcing all with applications on file to pay the \$1225 premium processing fee to receive expedited processing.



“At Barten Law, we understand that your immigration needs are important to you and your family. You deserve the highest quality representation and legal advice in all areas of immigration law.”





U.S. Military and Veteran Families Benefit from Parole-in-Place Program

Spouses, children, and parents of U.S. military members on past or current active duty or in the Selected Reserve of the Ready Reserve may be eligible for Parole into the U.S. or the Parole-in-Place program. Absent criminal convictions or other serious adverse factors the relative can be granted authorization to be in the U.S. as well as a work permit. In addition to a work permit, the approval of Parole-in-Place would provide a lawful admission. With a lawful admission, U.S. military members can immediately sponsor their spouses, minor children, and parents for permanent residency and it would be processed locally in the U.S. This program does not overcome all barriers to residency such as some criminal convictions or prior deportations. For this reason, a full legal analysis by an immigration attorney should be completed before filing. Our office continues to file these applications and the local sub-office currently has been processing these applications in a little as 30-60 days.



MANVI Program Grants Residency and U.S. Citizenship for DACA, TPS, F-1, J-1, H, P, R, TN, U or V Visa Recipients

Up to 5200 Medical personnel, such as nurses and physicians, and persons with language skills who hold non-immigrant status in the U.S. may be accepted to the U.S. military MANVI program. For medically skilled it requires six years in the active reserve or three years of active duty service. For special language and cultural backgrounds it requires at least four years of active military service. The languages sought after are: Albanian, Amharic, Arabic, Azerbaijani, Bengali, Bulgarian, Burmese, Cambodian-Khmer, Cebuano, Chinese, Czech, Dhivehi (language of Maldives), French (limited to individuals possessing citizenship from an African country), Georgian, Haitian-Creole, Hausa, Hindi, Hungarian, Igbo, Indonesian, Kashmiri, Korean, Kurdish, Lao, Malay, Malayalam, Moro, Nepalese, Pahari, Persian [Dari & Farsi], Polish, Portuguese, Punjabi, Pushtu (aka Pashto), Russian, Serbo-Croatian, Sindhi, Sinhalese, Somali, Swahili, Tagalog, Tajik, Tamil, Thai, Turkish, Turkmen, Ukrainian, Urdu, Uzbek, Yoruba. The MANVI military member receive permanent residency and expedited citizenship and may then apply for their parents, spouse, and children to immigrate.

“U.S. military members can immediately sponsor their spouses, minor children, and parents...”

CDC Issues Updated Rule Related to Alcohol and Mental Disorder Denials

The U.S. consulates have been using a single conviction for Driving under the Influence as a reason to find the visa applicant has a Mental Disorder. This finding of a mental disorder results in denial of the visa application, required completion of a rehabilitation treatment program in the home country, even where it was completed in the U.S. or not recommended at the time of the conviction. This can delay entry for at least six to twelve months forcing separation of the applicant from his or her family in the U.S. The new rule clarifies mental disorder to that defined by the most recent edition of the DSM published by the American Psychiatric Association. Medical clinics should no longer be able to use “old” definitions what is alcohol abuse to deny persons who have one DUI.



Problems Obtaining File Requests from Customs and Border Protection?

One way for us to help our clients is to request the records from their entries to the U.S. Lately CBP has been responding that “no records are found” even when we know CBP does have records. The only way to force CBP to release the information is to file a lawsuit against CBP which is an expensive and time consuming process.



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Visa and Immigration Services

- Family-sponsored Immigration
- Citizenship/Naturalization
- Special Immigrant Juveniles
- Permanent Employment EB-1 through EB-4
- Removal/Deportation Defense
- Asylum
- Waivers
- Fiancé Visa (Including LGBT)
- H-1B Specialty Occupations
- Consular Processing

National Visa Center Sent Notices of Termination of Immigrant Visas in Error

The National Visa Center sent out a large number of letters terminating petitions and visa applications for failure to contact the NVC in the past one year even where the applicant or the attorney had been in contact. The National Visa Center recently announced that it will send out an email or letter notifying of the error. Anyone who fails to receive the notification should contact the National Visa Center after February 25, 2016.

Visa Bulletin Predictions Employment Based

In a recent interview with Charlie Oppenheim, Chief of the Visa Control and Reporting Division, he announced the following plans for employment based residency:

India EB-2 Category: February 2016 visa bulletin moved forward aggressively to 1 August 2008. Expect increased processing to cause this category to slow or regress in the near future.

China EB-2 and EB-3 Category: Demand for the EB-2 Category was lower than expected in November and December. Expect both the EB-2 and EB-3 category to move forward for the March 2016 visa bulletin.

Worldwide EB-2 and EB-3 Category: Demand is lower than predicted, expect this category to advance forward.

New Visa Waiting List Published

The Department of State (DOS) has published a report with the number of persons on the waiting list in each category. Each country's applicants may have no more than 7% of the total available each year. Family Preference relatives from Mexico continue to have the longest wait time in all family categories. The largest category waiting are in the Family based 4th Category where there more than 39 times more applicants than available visas.

Family-sponsored Preferences

Category	Yearly Available	Total Waiting	Mexico Waiting	Dominican Republic Waiting	Philippines Waiting
Family 1 st	23,400	322,788	107,584	26,957	22,048
Family 2 nd					
2A-Spouses/Children:	87,900	276,022	92,404	37,742	13,454
2B-Adult/Children:	26,260	480,755	180,490	59,661	59,679
Family 3 rd	23,400	825,991	203,947	61,047	145,101
Family 4 th	65,000	2,549,718	758,415	241,900	195,881
TOTAL		4,455,274			

DAPA Program and Expanded DACA Program to Be Decided Before July 2016

The Deferred Action for Parental Authority Program (DAPA) and the expanded Deferred Action for Childhood Arrivals Program (DACA) was announced by President Obama on November 20, 2014. The DAPA program was designed to provide work permits for parents of U.S. citizen or permanent resident children. The parent would need to show their criminal history meets the requirements, such as no driving while intoxication convictions. In addition, the parent must show entry and presence in the U.S. since January 1, 2010 and their immigration status was not legal. The Expanded DACA Program was designed to allow work permits for those who were in the U.S. before the age of 16, in the U.S. prior to January 1, 2010, in no legal status, enrolled or graduated from high school or GED program, and be any age. Due to a federal court order, USCIS could not accept these new applications. The case has now been accepted by the U.S. Supreme Court where the decision will be made before July 1, 2016. Our office will continue to provide updates on these programs. Until the Supreme Court issues the ruling, the regular DACA program continues to be available. Eligibility is for those who were in the U.S. before the age of 16, lived in the U.S. since June 15, 2007, were born after June 15, 1981, enroll or graduate from high school or GED program, and meet the criminal history requirements.

DACA and TPS Recipients Allowed Travel Abroad with Permission Benefits Many

Some DACA and TPS Recipients may benefit from traveling abroad when the recipient initially entered without inspection illegally one time, have no crimes of moral turpitude. Returning with permission creates a lawful entry. With a lawful entry the DACA or TPS recipient may process for residency in the U.S. through a U.S. citizen spouse or adult U.S. citizen child for example. In order to travel abroad, the DACA or TPS applicant must receive permission from USCIS before leaving. It requires showing the purpose of the travel is work or education related or for humanitarian purposes. Humanitarian purposes include visiting an ill family member or attending a funeral. Typically it takes 3 months for processing by the government. Determining whether this would be beneficial requires careful consideration. If you are interested in whether you would benefit from this program, call to schedule a consultation.

USCIS Visa Bulletin

March 2016



The New Visa Bulletin Chart Allows More to Apply for Residency

Recently the Department of State created a second chart called "Dates for Filing Applications" which lists the earliest dates for filing residency applications. The main benefit is allowing more applicants to apply for permanent residency and much earlier eligibility for work permits. For employment based cases, it allows H-4 spouses to apply for the H-4 work permit sooner and also allows for portability to new employer once 180 days passes since filing for residency. Once the visa becomes available then final processing for residency will occur according to the later date found on the first chart which is now called "Application Final Action Dates" or the dates when visas may finally be issued. The most recent second chart for March 2016 is listed here:

Family-Sponsored	All Chargeability Areas Except Those Listed	China-Mainland Born	India	Mexico	Philippines
F1	01OCT09	01OCT09	01OCT09	01APR95	01SEP05
F2A	15JUN15	15JUN15	15JUN15	15JUN15	15JUN15
F2B	15DEC10	15DEC10	15DEC10	01APR96	01MAY05
F3	01AUG05	01AUG05	01AUG05	01MAY95	01AUG95
F4	01MAY04	01MAY04	01MAY04	01JUN98	01JAN93