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The Immigration Newsletter

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PROFESSIONALS: BE READY TO APPLY FOR THE H-1B VISA

The H-1B visa program was established by the U.S. government to allow foreign professionals to temporarily live and work in the U.S. in a "specialty occupation". A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent. Specialty occupations include architects, engineers, mathematics, accountants, lawyers, and any occupations that require at least a university degree in order to perform the job position duties.

The H-1B program only allows, with certain exceptions, a limited number of visas (65,000) per year into the United States. As a result, a yearly stampede occurs every spring in order to acquire one of the coveted H-1 visas. The U.S. government has evolved a lottery process to determine which application will actually be accepted for processing. In theory, the selection by CIS of the ultimate H-1B visa winners is supposed to be random from the petitions received.

Nonetheless, the process does not meet actual U.S. employer demand for foreign talent and is deficient in that regard. As a result, the program does not allow entry of a large number of highly skilled individuals who wish to enter the U.S. on a temporary basis. Last year, only half of those who wanted an H-1B visa were able to acquire one.

On top of that, the Department of Labor recently changed a rule that impacts the issuance of the Labor Condition Application (LCA), which is one of the requirements for the H-1B visa. Beginning this year, the process to obtain an LCA, which used to take 5 minutes, will now take approximately one (1) week. Consequently, we suggest for those interested in securing an H-1B visa not to wait until the last minute to prepare the application. Begin now so that the process can actually be manageable at the time of submission on April 01, 2009.

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**IMMIGRATING TO CANADA
 AN APPEALING OPTION FOR INVESTORS**

The Canadian Immigrant Investor Program seeks to attract experienced business people to invest C\$400,000 in Canada's economy. Investors must (1) show prior business experience; (2) legally have accumulated a minimum net worth of C\$800,000; and (3) make a C\$400,000 investment in Canada.

Your investment is managed by Citizenship and Immigration Canada (CIC) and is guaranteed by the Canadian provinces, which will utilize the capital to create jobs and expand the economy. CIC will return your C\$400,000 investment, without interest, after five (5) years and two (2) months.

GENERAL REQUIREMENTS

To be eligible under the Canadian Immigrant Investor Program, you must:

- Have at least two (2) years of business experience.

- Have a net worth of at least C\$800,000 that was legally obtained, and be willing and able to make an investment of C\$400,000.
- You must also show that you have enough money to support yourself and your dependants after you arrive in Canada.
- Obtain a minimum of 35 points in the Canadian immigrant selection grid.
- Meet medical and security requirements. All family members must pass a medical examination and security/criminal checks.

FINANCING YOUR INVESTMENT IN CANADA

There are several financial institutions willing to offer you financing options for your complete or partial investment in Canada. With financing you can meet the investment requirements for the Canadian Immigrant Investor Program. Our office will offer you various options through different financial institutions to meet your investment needs.

LATEST NEWS

• U.S. Citizenship and Immigration Services (USCIS) announced on December 2008 that more than 100,000 employers have signed up to participate in E-Verify, a free and easy to use online system that equips participating employers with the tools to quickly and effectively verify the **employment eligibility of newly-hired employees**. The figure of 100,000 users is low and indicates that the program has not been completely accepted by employers.

• USCIS announced in December 2008 an automatic extension of the validity of the Employment Authorization Documents (EAD) for eligible Salvadoran **Temporary Protected Status (TPS)** beneficiaries through Sept. 9, 2009. This change allows TPS holders to acquire a Texas Drivers License even with an EAD card with a validity of less than 6 months.

• On December 19, 2008, the Department of Labor published in the Federal Register a Final Rule on the **Temporary Non-agricultural Employment program, known as H-2B**. Specifically, this final rule re-engineers the application filing and review process by centralizing processing and by enabling employers to conduct pre-filing recruitment of United States (U.S.) workers. In addition, the rule enhances the integrity of the H-2B program through the introduction of postadjudication audits and procedures for penalizing employers who fail to comply with program requirements.

• **The Visa Waiver Program (VWP) has been expanded** to include the Czech Republic, Estonia, Latvia, Lithuania, Hungary, the Republic of Korea and the Slovak Republic. However, the United States must still complete certain internal steps required by statute before it can complete this new VWP expansion. Nationals of these seven (7) countries continue to require visas to travel to the United States during this period.

• The U.S. Department of Homeland Security (DHS) stated that travelers from all Visa Waiver Program (VWP) countries are now required to obtain approval through the **Electronic System for Travel Authorization (ESTA)** prior to traveling to the United States. This requirement, effective January 12, 2009, applies to all eligible citizens or nationals traveling under the VWP.

Attorney General Michael Mukasey ruled in January 2009 that undocumented immigrants do not have a constitutional right to effective legal representation in **deportation hearings**, arguing that the Sixth Amendment applies only to criminal—not civil—cases. The ruling will effectively prevent immigrants from appealing deportation orders even if they receive inadequate representation. We believe this sudden change by the departing Attorney General will also have a negative impact in local representation of undocumented immigrants. Local immigration judges may not allow these individuals time to secure legal counsel.

**FOR A CONSULTATION,
PLEASE CALL
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Adan G. Vega is an attorney certified by the Board of Legal Specialization of the State Bar of Texas and has practiced more than 29 years exclusively in the area of Immigration and Nationality Law.

DID YOU KNOW THAT...?

H-1B CAP EXEMPTION

Petitions for new H1B employment are exempt from the cap if the applicant will work at institutions of higher education or a related or affiliated nonprofit entities, or at nonprofit research organizations or governmental research organizations.

ADJUSTMENT FOR TPS HOLDERS

People with Temporary Protected Status (TPS) can request adjustment of status to that of a Permanent Resident (LPR) if the applicant has been always in the U.S. in legal status. TPS holders who are beneficiaries of a family petition (Form I-130) or employment application (Form ETA 750) filed before April 30, 2001 could also apply for their LPR adjustment of status.

RECENT CASES REPRESENTED BY OUR LAW OFFICES

A challenge from USCIS has successfully been rebutted by an employer that proved the ability to pay the worker's wage with bank statements. An immigrant petition (Form I-140) requires the employer to prove that s/he has the ability to pay the proffered wage as established in the Labor Certification. USCIS challenged the employer's ability to pay because the employer's tax return reported losses (negative income) during and after the period of the priority date. In addition, the beneficiary employee was not employed with the petitioning company.

A TN visa was approved by the US Consulate in Mexico City for a Mexican national to work as a Foreign Legal Consultant. The applicant does not work in a law firm but, interestingly, in a public relations company.

A thirty (30) year old was able to recently apply for adjustment of status to LPR based on the 2008 USCIS new guidelines in relation to the Child Status Protection Act (CSPA) of 2002. The legal fiction created by CSPA allowed the individual to be treated as a minor from the moment of submission of the subsequently approved relative petition (Form I-130) until the moment of his adjustment of status to that of legal permanent resident of the United States.