Immigration Law Update: Summer 2008

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AFTER BECOMING A PERMANENT RESIDENT

Receiving lawful permanent resident (LPR) status can be a difficult process. Once it is complete, LPRs should understand their rights and how to comply with various legal requirements.

Conditional permanent residency: If LPR status was obtained through marriage to a U.S. citizen or through an EB-5 investment, the residency may be conditional. LPR status will expire in two years unless the LPR applies for the condition to be removed within 90 days preceding the expiration date.

Rights and responsibilities: LPRs essentially have the same rights as American citizens, with a few exceptions. Except for a few local elections, LPRs are not permitted to vote. Also, LPRs can be deported if they commit a crime. LPRs are also expected to pay taxes. Additionally, LPR males between 18 and 25 years of age are required to register with the Selective Service. Failure to register is grounds for denying naturalization, in addition to other penalties.

Traveling: LPRs do not need a separate visa to enter the United States in most circumstances. They can enter the United States with an unexpired I-551 stamp in their passport and their green card. If an LPR is going to be outside the United States for between one and two years, he or she will probably need to apply for a reentry permit.

Abandoning LPR status: Many LPRs have a hard time maintaining their status when they are outside the United States for extended periods of time. LPRs need to be very careful about losing their status as a result of being outside the United States for too long.

Naturalization: To become U.S. citizens, LPRs must undergo the naturalization process. They must meet various residency requirements, such as maintaining their permanent residency for five years (three years if the LPR is married to a U.S. citizen). The LPR also needs to be in the United States for half of this time period. The LPR cannot spend substantial periods of time outside the United States that would show a failure to maintain continuous residency. If an LPR spends more than six months outside the United States on any trip, he or she risks not being able to naturalize.

Green card: Currently issued green cards are not actually green. The first cards in the 1950s were green, and the name stuck. The I-551 stamp in an LPR's passport has the same legal meaning as the LPR card, but the stamp must be renewed after a year, and the card must be renewed after two years if it is conditional or 10 years if it is not conditional. An LPR does not lose his or her status if the green card or stamp expires, but he or she will lack any legal proof of status, so it is best to file for an extension in a timely manner. Note also that either the stamp or the green card is acceptable proof of employment authorization and can be used, as well, to apply for a Social Security Card or driver's license.

Sponsoring family members for immigration: As permanent residents, LPRs are entitled to sponsor spouses and unmarried children for LPR status. However, unless the relationship existed prior to becoming an LPR, it could be a very long wait.

Change of address: LPRs are required to notify U.S. Citizenship and Immigration Services of address changes. This process can be completed at https://egov.uscis.gov/crisgwi/go?action=coa.

H-1C VISAS FOR NURSES

The Nursing Relief for Disadvantaged Areas Act of 1999 created the H-1C visa for nurses to work for up to three years in health professional shortage areas. The H-1C program is authorized until December 20, 2009.

Up to 500 nurses per year can get the visa, but each state, depending on its size, is limited to 25 or 50 nurses a year. To qualify, a nurse must have a full and unrestricted registered nurse (RN) license in the country where the nursing education was obtained or received a nursing education in the United States. He or she must (a) have passed the examination given by the Commission on Graduates of Foreign Nursing Schools; (b) have a full and unrestricted RN license in the state where he or she will work; or (c) have a full and unrestricted RN license in any state and have received temporary authorization to practice as an RN in the state where he or she will work.
Additionally, the nurse must be eligible under the laws governing the place where he or she is to work immediately upon admission to the United States and be authorized under such laws to be employed by the hospital.

Facilities interested in sponsoring nurses for H-1C visas must submit Form ETA-9081, which contains a number of attestations regarding the employment of H-1C nurses. Specifically, the facility attests:

1. that it is a qualifying facility;
2. that the employment of H-1C nurses will not adversely affect the wages or working conditions of similarly employed nurses;
3. that the facility will pay H-1C nurses the facility wage rate;
4. that the facility has taken and is taking steps to recruit and retain U.S. nurses in order to reduce dependence on foreign nurses. Documentation of two recruitment steps (unless the facility can show that

the second step is not reasonable) must be included in the facility's public access file for H-1C petitions;

5. that there is not a strike or lockout at the facility, that the employment of H-1C nurses is not intended or designed to influence an election for a union representative at the facility, and that the facility did not lay off and will not lay off an RN within the 90-day periods before and after the date of filing the H-1C petition;
6. that the employer will notify other workers and give a copy of the attestation to every nurse employed at the facility within 30 days of filing;
7. that no more than 33% of the nurses employed by the facility will be H-1C nonimmigrants; and
8. that the facility will not authorize H-1C nurses to work at a worksite not under its control and will not transfer an H-1C nurse from one worksite to another. The attestation is filed at the U.S. Department of Labor with a fee of $250. After the attestation is approved, the facility can then file a petition for nonimmigrant worker on Form I-129 with U.S. Citizenship and Immigration Services.

L-1 INTRACOMPANY TRANSFER VISAS

L-1 intracompany transfer visas are nonimmigrant visas for those coming to work in the United States for an employer related to a company the applicant worked for abroad. The number of L-1 visas issued is not limited, one may pursue permanent residency while in L-1 status, and for many there is a corresponding permanent residency category that makes getting a green card relatively easy.

L-1 Requirements

The applicant must have been continuously employed abroad for one year out of the last three years by a parent, affiliate or subsidiary of a U.S. employer. Any time spent working in the United States does not count toward the one year of required employment, though time spent in the United States is not considered to have disrupted the continuity of employment abroad.

The foreign firm and U.S. firm must have a "qualifying relationship." The U.S. and foreign firms must have common majority ownership or, where there is less than majority ownership, common control by the same entity. Ownership by a common group of owners where no owner has control or a majority interest can cause a problem if each individual owner does not own approximately the same amount of the U.S. and the foreign company. This problem may be remedied if the owners have set up a voting agreement to ensure that different groups do not control the foreign firm and the U.S. firm.

The applicant must be coming as a manager, executive or specialized knowledge employee. "Specialized knowledge" refers to employees with

- special knowledge of the company's products and their applications in world markets; or
- advanced or proprietary knowledge of the company's procedures

The applicant must intend to depart the United States when his or her stay is over. However, the applicant may also pursue permanent residency without a negative impact on the L status.

L-1A vs L-1B

Executives and managers are granted L-1A status. An executive is one who directs the management of the company or a major function of the organization. An executive is expected to play a supervisory role and does not include people who primarily perform the specific tasks of production or provide service to customers. A "manager" directs the organization, a department or a function of the organization. Like executives, managers cannot perform specific production tasks or customer service. Exceptions apply when a manager or executive is coming to open a new office. Executives and managers may stay in L-1 status for up to seven years. Specialized knowledge employees are issued L-1B visas with an expiration of up to three years. These employees may stay in the United States for a total of five years. An applicant granted L-1B status can switch to L-1A status, but the application must be approved prior to four and one-half years of staying in the United States.

Blanket L Petitions

Qualifying companies that have a large number of L-1 visa applicants can receive a "blanket approval" for all of their workers, rather than having to apply individually for each employee. To qualify, the company must meet the following:

- The U.S. and foreign offices must be engaged in commercial trade or services;
- The employer's U.S. office must have been in business for at least one year;
- The employer must have at least three domestic or foreign branches, subsidiaries, or affiliates;
- The employer must show one of the following: (a) at least 10 L-1 visas were approved in the last year; (b) the company had U.S. sales of at least $25 million; or (c) the U.S. workforce exceeds 1,000 workers. The procedures for filing are similar to a normal L-1 application, except the employer must also submit evidence showing that the above requirements have been met.

HUMANITARIAN PAROLE STATUS

An individual who is ineligible to enter the United States as a refugee, immigrant or nonimmigrant may be "paroled" into the United States by the U.S. Secretary of Homeland Security. This provision is only used for emergency, humanitarian and public interest reasons. The individual who is paroled into the United States is known as a parolee.

Humanitarian parole can only be requested for persons outside the United States. Anyone can file an application for humanitarian parole, including the prospective parolee, a sponsoring relative, an attorney or another interested individual.

Requests for humanitarian parole must be submitted to the following address: Department of Homeland Security, U.S. Citizenship and Immigration Services, Attn: Chief, International Operations Division, 20 Massachusetts Avenue, Suite 3300, Washington, D.C., 20529.

A request for humanitarian parole is submitted on Form I-131, Application for Travel Document, along with the correct filing fee in the form of a cashier's check. Additionally, Form I-134, affidavit of support, is needed to ensure that the applicant will not become a public charge. A parole request should include information that is specific, verifiable and complete. Evidence of the claimed circumstances should also be submitted. Aliens currently in Canada should submit Form I-131 to the director of the office that has jurisdiction over the area where the alien intends to enter the United States.

To check the status of a humanitarian parole application, applicants should contact the Parole and Humanitarian Assistance Branch in Washington, D.C., in writing. Humanitarian paroles are granted for a period of time to coincide with the duration of the emergency or humanitarian situation that forms the basis for the request. There is a maximum time limit of one year.

The denial of a request for humanitarian parole is a discretionary determination based upon a review of all of the evidence submitted. There is no statutory provision for appeal. If there are new facts that should be considered, a new submission may be sent to the Parole and Humanitarian Assistance Branch for consideration, along with the filing fee.

Public Law 101-67, also known as the Lautenberg Amendment (formerly known as the Specter Amendment), allows for the status adjustment of individuals who are nationals of the former Soviet Union, Vietnam, Laos and Cambodia. These individuals may apply for green cards after one year of physical residence in the United States on Form I-485, Application to Register Permanent Residence or Adjust Status with the appropriate fees (applicants ages 14 to 79 years must also pay a fingerprinting fee). They must also submit medical exam results. All other individuals paroled for humanitarian or other emergency reasons are not eligible to apply for green cards as parolees, unless they qualify under another immigration provision, such as employment.

Once granted parole status, parolees may not travel abroad. Only those who have adjusted their status to permanent residents may travel outside the United States, using a travel document. Parolees admitted for humanitarian or emergency reasons are not eligible to apply for employment authorization.

*If you have questions about these or other immigration-related matters, please call Mark Mathison, Casey Nolan, or another member of the Gray Plant Mooty Employment Law Practice Group.
