



Minsky, McCormick & Hallagan, P.C.

A Full-Service Law Firm Dedicated To All Aspects of U.S. Immigration & Nationality Law

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NEWSLETTER

1.) U.S. Department of State (DOS) Releases the December 2010 Visa Bulletin

On November 15, 2010, the U.S. Department of State (DOS) issued the Visa Bulletin for December 2010. The China, EB-3 category moved forward by about 2 weeks, compared to last month's bulletin. Priority dates for the India, EB-3 category advanced by one month. http://travel.state.gov/visa/bulletin/bulletin_5197.html

2.) U.S. Citizenship and Immigration Services (USCIS) Announces Latest FY2011 H-1B Filing Numbers

USCIS updated its count of available FY2011 cap H-1B numbers. As of November 19, 2010, approximately 16,023 H-1B cap-subject numbers are still available. In addition, approximately 2,164 H-1B petitions for aliens with Master's degrees still remain available.

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD>

3.) U.S. Department of Labor (DOL) Advises Rising PERM Labor Certification Audit and Denials

During the October 28, 2010, Stakeholders Meeting, DOL noted an increase in PERM denials. The agency cites better staffing and training for its officers as the reason for the increase in PERM denials. In addition to the rate of denials, DOL specifically addressed the failure of some employers to respond properly or at all, to audit notices. DOL also warned that as a result of failures to report to audit notices, the number of revocations (of already approved PERMs) and employer debarment proceedings will increase. In contrast to this recent notice from DOL, the MMH law office has yet to observe any notable increases of audits or denials of its filed PERM applications on behalf of its clients. Nonetheless, MMH recommends that employers review their PERM pre-recruitment and recruitment efforts in order to properly prepare for possible audits.

4.) U.S. Citizenship and Immigration Services (USCIS) Unveils Revised I-129 Form Effective December 23, 2010

USCIS revised the I-129 nonimmigrant petition form, effective on December 23, 2010. The revised I-129 form includes specific language requiring Petitioners to acknowledge they can be subject to FDNS fraud site visits and other means of verification. The revised I-129 form also includes new questions on: offsite work, the new border security fee, and export compliance requirements for H-1B, L-1 and O-1A nonimmigrants.

The Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) require U.S. persons to seek and receive authorization from the U.S. government before releasing to foreign nationals in the U.S. controlled technology or technical data. Under both EAR and ITAR, release of controlled technology or technical data to foreign nationals in the U.S. even by an employer, is deemed to be an export to that person's country or countries of nationality. One implication of this rule is that a U.S. company must seek and receive a license from the U.S. government before it releases controlled technology or technical data to its H-1B, L-1 or O-1A nonimmigrant workers.

The export compliance requirements questions relate to already existing Export Administration Regulations and the International Traffic in Arms Regulations and are not the result of any new legislation or regulations. USCIS has chosen to collect data related to Petitioner's compliance with these export regulations in an effort to increase data sharing between government agencies and related enforcement efforts. The revised I-129 form will require Petitioners to certify whether or not the H-1B, L-1 or O-1A foreign national Beneficiary named on the form requires an export license in compliance with the EAR and ITAR export regulations. In anticipation of the December 23, 2010 effective date of the revised I-129 form, MMH recommends that companies review their export regulations compliance as it relates to their H-1B, L-1 and O-1A nonimmigrant beneficiaries. For more information on the export regulations and requirements, please contact your designated MMH attorney. In addition, companies may access USCIS' revised I-129 form instructions pages 3 and 4: <http://www.uscis.gov/files/form/i-129instr.pdf>

5.) U.S. Department of Justice (DOJ) Issues Frequently Asked Questions about Social Security "No Match Letters"

The U.S. Department of Justice's Office of Special Counsel provides guidance answering employers' frequently asked questions about name/Social Security Number (SSN) "no-matches" including employer liability under the anti-discrimination provision of the Immigration and Nationality Act. <http://www.justice.gov/crt/osc/pdf/publications/SSA/FAQs.pdf>

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