

COUNSEL

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In this Issue...

- ? Immigration News
- ? Deportation/Removal Proceedings (*contd.*)
- ? Diversity Visa Lottery (DV - 2005) Rules Announced
- ? H- 1B Cap Drops to 65,000 in October 2003
- ? TPS Terminated for Sierra Leone, Extended for Burundi and Sudan.

About Counsel

A newsletter publication of Paschal Nwokocha Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.

Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.

Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.

Our Mission

At Paschal Nwokocha Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

Immigration News

Service Center Operations has confirmed that "Bureau" has been dropped from what were formerly BCIS, BCBP and BICE, which now are known as USCIS, CBP and ICE. Filing fee checks made out to USCIS or BCIS will be accepted, as will checks made out to DHS. For the time being, checks made to INS are still accepted.

USCIS officials plan to have adjudicators at the Service Centers start issuing Notices to Appear (NTA), possibly as early as October 1, 2003. NTA is the document that puts a persons in removal proceeding before an Immigration Judge. It is believed that the program will start with TPS applications, and with respect to aggravated felonies, and eventually branch out to all types of filings.

Training is said to already have occurred.

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Deportation/Removal Proceedings (*contd.*)

In the last edition of Counsel, we discussed the importance of having an experienced immigration attorney by one's side when faced with any immigration matter. We also identified some of the relief one may seek in a removal proceeding. In this edition, we shall discuss two: *Waivers of Excludability and Deportability*, and *Cancellation of Removal for Permanent Residents*.

§ *Waivers of Excludability and Deportability*

The immigration law enumerates various grounds on which an alien in the United States may be subject to removal from the US. The most common grounds of removability

provide that an alien may be subject to removal if [s]he was excludable at the time of entry into the United States. And there are many more grounds for removability found in the law.

Eligibility for Waivers of Removability depends on the alien's ability to establish hardship to self or close family members if [s]he is removed from the US. For example, a person who has committed fraud or a material misrepresentation may apply for a waiver under §212(i) if the failure to admit him to the US would result in "extreme hardship" to his lawful permanent resident (LPR) or US citizen (USC) spouse or parents. Similarly, a person who is excludable on certain criminal grounds may be eligible for a waiver under §212(h) if the failure to admit him to the US would result in "extreme hardship" to his LPR or USC spouse, parent(s), son(s) or daughter(s).

§ *Cancellation of Removal for Permanent Residents*

INA §240A(a) allows the Attorney General (usually an Immigration Judge or the Board of Immigration Appeals) to cancel the removal of a Lawful Permanent Resident (LPR) from the US, if:

1. He has been an LPR for a minimum of five years;
2. He has resided continuously in the US for a minimum of seven years after being admitted to the US in any status (prior to the institution of removal proceedings);
3. He has not been convicted of an aggravated felony;
4. He is not inadmissible from the US on security grounds.

The following classes of persons are ineligible for Cancellation of Removal:

- 1) Certain crewmen;
- 2) Exchange visitors (in "J" status) who received medical training in the US;
- 3) Persons who have persecuted

others;

- 4) Persons who have previously been granted cancellation of removal, suspension of deportation (See below.) or relief under §212(c); and
- 5) Persons who committed certain criminal offenses prior to the accrual of the required seven years.

Positive factors include: (1) family ties within the US; (2) long time residency in the US; (3) hardship to person and immediate family; (4) Service in US Armed Forces; (5) Employment history; (6) ownership of property and business ties; (7) service to the community; (8) rehabilitation (if criminal record exists); and (9) good moral character.

Negative factors include: (1) nature and circumstances of exclusion grounds; (2) other immigration law violations; (3) criminal record; and (4) other evidence of bad character.



Diversity Visa Lottery (DV-2005) Rules Announced

The State Department has changed the rules for visa lottery applications. The rules have now gone "wired".

In interim regulations published on August 18, 2003, the State Dept. would require that all applications, complete with digital photos, be submitted online on a special governmental web site.

The new rules seem to be aimed at eliminating the poor and the disadvantaged, particularly those from Third World countries who are unlikely to have access to the Internet. Most will be discouraged from applying.

While the State Department's press

release cites "security" and "efficiency" in an attempt to justify the interim regulations, it is difficult to see how accepting applications online would be more secure than accepting them by mail. What's to stop anyone from establishing 100 different Hotmail accounts and submitting multiple applications online?

It is our opinion that the new rule would only bolster the ranks of unscrupulous *NetProwlers* determined to take advantage of unsuspecting poor and disadvantaged applicants who lack the means to submit their own applications and must rely on the whims of third parties. It is not at all hard to imagine that there will be online con artists claiming to increase applicants' chances of winning... for a fee. We can just see it now — *Buyer beware!*

The application period for DV-2005, this year's green-card lottery, is November 1 through December 31, 2003, and not a day sooner or later. Generally, persons born in Canada, mainland China, Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam are not eligible to apply.



H-1B Cap Drops to 65,000 in October 2003

The current law, the "American Competitiveness in the 21st Century Act of 2000" (AC-21) is due to expire at the end of this month. What this means is that the present numerical cap of 195,000 H-1B petitions per year will suddenly fall to 65,000 as of October 1, 2003. This will effectively leave many employers in a bind, since an August 26 CIS announcement

disclosed that 57,000 of the eligible H-1B petitions subject to the cap were already filed in the first nine months of the current fiscal year. Allowing the cap to fall to 65,000 would mean that employers will be unable to submit new H-1B petitions **until** next summer.

Are there other likely implications of this change?

Among others, we believe the brunt of the new cap will fall on recent University graduates who are currently on optional practical training, and students who hope to obtain H-1 visas upon graduation. Both groups may find themselves *out in the cold*, unable to submit their applications.

We urge everyone who is adversely affected by the new cap to seek changes to his/her immigrant status to H-1B as soon as possible.

TPS Terminated for Sierra Leone

Designation of Sierra Leone for TPS was terminated, effective May 3, 2003 (six months after the expiration of the current TPS designation of November 2, 2003). Individuals granted temporary protected status under the Sierra Leone TPS designation will automatically retain that status and have their current EADs extended until May 3, 2004.

We encourage all affected by this to start making arrangement on how to change or regularize their status.

On The Other Hand...

DHS Extends TPS Designation for Burundi and Sudan

Designation of Burundi and Sudan for TPS is extended for a 12 month

period, until November 2, 2004. The 60-day re-registration period runs from September 3, 2003 to November 3, 2003.

Legislation to Extend Religious Worker Program Moves Through Congress

The immigrant religious worker program is set to sunset on October 1, 2003. Two bills have been introduced to extend the program until 2008. H.R. 2152, introduced on May 19 by Rep. Barney Frank (D-MA), was unanimously approved by the House on September 17. S. 1580, introduced on September 3 by Senator Orrin Hatch (R-UT), was scheduled to be marked-up by the Senate Judiciary Committee on September 18. We are not sure whether the new law will be passed, and when it will take effect.

We will provide update in the next edition of Counsel on the status of the Religious Worker program.

F.Y.I.

U.S immigration laws continue to undergo several changes, and most of them are not good for non-citizens. Now more than ever, we encourage individuals to seek the assistance of lawyers they trust who practice in the area of immigration law, when they have immigration questions or need immigration assistance.

Here are some of the issues a competent immigration attorney can assist individuals and businesses with:

- Marriage & Family Based Petition
- Adjustment of Status/Green Card



Did you know?..

- You can check the status of any application you have pending before any of the Service Centers on-line by visiting the USCIS website.
- Criminal conviction of, or a plea of “guilty” to a criminal charge by, a permanent resident (green card holder) could render him/her permanently ineligible for U.S. citizenship, and possibly result ultimately in his/her deportation?

Reader's Corner

Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices. Questions and comments will be addressed in this column in future editions of Counsel.

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Free 24-hour information on immigration law

Topic	Description
1313	Eligibility for Citizenship
1314	Applying for citizenship
1315	Dual Citizenship
1316	About student visas
1317	Maintaining your student visa
1318	About Political Asylum
1319	Applying for political asylum
1322	Employer responsibilities
1323	Labor certification
1324	Labor Certification Process
1325	Work permits
1326	Applying for a green card
1327	Employment-based green cards
1328	Family-based green cards
1329	Marriage-based green cards
1336	Immigration Status Categories
1337	About deportation & exclusion
1338	Deportation Proceedings
1334	Questions to ask about legal issues

Step 1: Dial 763.586.5700

Step 2: Enter the 4-digit code from the table above corresponding to the topic of interest.

If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...

Call us for an appointment

651.917.0020

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