

# COUNSEL

April 2004

Paschal Nwokocha Law Offices, LLC.

## In this Issue...

- ◆ Immigration News
- ◆ Deportation/Removal Proceedings (*conclusion.*)
- ◆ Gun Ownership Guide
- ◆ USCIS Hikes Visa Processing Fees
- ◆ H-2B Cap Hit
- ◆ Did you know?

## 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

### *Coming Soon... Video Immigration Court*

The Executive Office of Immigration Review (EOIR), which is the office in charge of Immigration Courts is proposing to begin a "national video immigration court" which will be based at the EOIR headquarters in Falls Church, Virginia. Even though the details of this court is not clear, the plan is to have people with cases in Immigration Courts appear via video conference, with the Judge assigned to their case in Virginia, and the person with his lawyer appearing from a different location.

The EOIR does not intend to publish this proposal in the Federal Register for interested or affected people to comment before the new plan is implemented.

This raises major and alarming concerns for immigrants and their lawyers. It seems that in the bid to get rid of cases, rights of immigrants in Immigration courts are being compromised. This is especially so when people's lives and future are at stake.



## Deportation/Removal Proceedings (*conclusion.*)

In the last three editions 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. The reliefs we discussed were: Suspension of Deportation; Adjustment of Status; and Asylum and Withholding of Deportation; Waivers of Excludability and Deportability; Cancellation of Removal for Permanent Residents; and

Cancellation of Removal for Non Permanent Residents.

In this edition, we shall discuss the last two: Legalization and Registry; and Voluntary Departure.

### § *Legalization & Registry.*

Once an illegal alien has been found qualified for legalization or "amnesty" by the INS, the deportation hearing will typically be closed since the alien will have attained the legal right to remain in the United States.

Registry is another means of attaining lawful permanent residence in the United States. It is available to aliens who have resided continuously in the U.S. since prior to January 1, 1972, who are persons of good moral character, who are not deportable on certain aggravated grounds, and who are not ineligible to citizenship.

### § *Voluntary Departure*

Finally, if there is no other relief from deportation, most aliens are eligible for, and should apply for, voluntary departure from the United States. This avoids both the stigma and the legal impediments to return to the United States imposed by deportation.

Voluntary departure is available to aliens who are not deportable on aggravated grounds, who have the means to pay for their departure from the U.S., who agree to depart within a period of time granted by the Immigration Judge, and who can establish good moral character during the previous five-year period.

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*All forms of relief from deportation, except withholding of deportation, may be granted at the discretion of an Immigration Judge. Final orders of an Immigration Judge may be appealed to the Board of Immigration Appeals, and in certain cases to the appropriate U.S. Court*

*of Appeals.*

## **Gun Ownership Guide**

It is illegal for the following persons to own or possess a gun:

- ❑ Anyone who is an illegal alien in the United States;
- ❑ Anyone convicted of a felony even if he or she a United States citizen or (Lawful Permanent Resident);
- ❑ Anyone who is the United States on a nonimmigrant visa **UNLESS** he or she :
  - Has been admitted to the U.S. for lawful hunting or sporting purposes;
  - Is an official representative of a foreign government who is accredited to the U.S government or the government's mission to an international organization headquartered in the U.S., or is en route to or from another country to which he or she is accredited;
  - Is an official of a foreign government or a distinguished foreign visitor as a designated by Designated of States;
  - Is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.



**USCIS Hikes Visa Processing Fees** According to American Immigration Lawyers Association (AILA) The Bureau of Citizenship and Immigration Services (USCIS) issued final regulations on April 15

to increase the cost of immigration applications and petitions. The fee hike of roughly \$55 per petition represents the largest increase in six years and will go into effect on April 30. According to the Department of Homeland Security (DHS), "[a]pplications or petitions mailed, postmarked or otherwise filed on this date require the new fee." USCIS has stated that the new fees are needed to pay for added security measures and to reduce processing times. However, due to proposed cuts in the bureau's discretionary funding for fiscal year (FY) 2005, USCIS will have to turn to the revenue generated from the petition fee increases to support its current adjudication levels.

The administration's proposed budget for FY 2005 only requests \$140 million for USCIS discretionary funding—a 41% reduction from the inadequate \$236 million included in the Administration's proposed FY 2004 budget. If the administration is serious about eliminating the backlog and reducing processing times, it will have to appropriate sufficient funds for USCIS. At a time when the quality of service is at an historic low, fee increases of this magnitude are difficult to justify. Many businesses already are paying an additional \$1,000 premium processing fee to ensure that visa petitions will be processed in a timely manner. Those businesses unable to afford the hefty additional fee face processing times of several months. Meanwhile, the agency has increased markedly frivolous requests for information that delay adjudications and waste precious resources. As USCIS loses files, errs on more and more applications, and provides no viable avenue to resolve problems, lawsuits to force action have increased. Adding insult to injury, the fee increase would force applicants to pay for these failures.

The proposed budget for USCIS factors the costs of these suits into the fees by proposing a surcharge to

pay for them. The Equal Access to Justice Act mandates that government agencies pay certain costs when they take a substantially unjustified position in litigation. USCIS proposes to evade this law by forcing the very people who are harmed by its actions or inaction to pay the costs of the agency's unjustified positions. Making matters worse, the USCIS has cut off direct phone access to the Immigration Information Officers (IIOs), who had the ability to address problems and questions, including emergency case problems, and has instead established a contractor-run 800 number that has proven to be unable to address these issues. The Department also has announced that it intends to outsource the IIO function and factors into the proposed fee increase the cost of conducting an expensive study of this problematic initiative. Despite numerous problems associated with contracting out the deeply flawed 800 number system, the USCIS budget would mandate that applicants pay the costs of this study to expand this failed concept to cover all user assistance functions.

Starting with FY 2006, USCIS will adjust the immigration fees at the start of each fiscal year based upon the inflation level. USCIS plans to announce each year's new fee schedule through a notice published in the Federal Register.

Administration sources have stated their goal of covering processing costs wholly with fee revenue. Such an initiative recognizes neither current challenges nor realities, and goes in the wrong direction. Direct congressional appropriations are needed to supplement user fees: USCIS adjudications and security checks are in the national interest and such appropriations are necessary to ensure a rational and predictable funding stream.



## H-2b Cap Hit, Legislation to "Save Summer" pending

The U.S. Bureau of Citizenship and Immigration Services announced on March 10 that it had received enough petitions to meet the annual H-2B cap and would no longer accept any new petitions for the visa program. The announcement came just six months into FY 2004 and threatens to devastate local economies that are dependant upon the extra manpower provided by H-2B workers.

H-2B workers perform non-agricultural seasonal tasks essential to the American economy and the economies of communities across this nation. H-2B workers include restaurant, landscape, food production, and hotel service workers. H-2B workers also fill seasonal niche occupations including flying and repairing helicopters designed to fight summer forest fires, filleting fish for foreign markets, and completing the rosters of minor league baseball and hockey teams. H-2B workers receive visas only after employers show they are unable to secure enough U.S. workers to fill jobs.

Employers of H-2Bs are vocally lobbying Congress for an emergency fix to the H-2B cap in order to "Save Summer" and several bills have been introduced in both the Senate and the House.

Without an immediate increase in the H-2B cap for the current fiscal year, businesses across the nation that depend upon the availability of a summer workforce will suffer dramatically. A quick fix is needed and must be followed in the next



## *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 or our website at [www.Paschal-law.com](http://www.Paschal-law.com), click on "Check the Status of Your Case."
- Criminal conviction of, or a plea of "guilty" to a criminal charge by, a Legal Permanent Resident could render him/her permanently ineligible for U.S. citizenship, and possibly result in his/her deportation from the United States?

## *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.

To subscribe to or unsubscribe from Counsel, or to receive copies of Counsel for your business, please send your request to:

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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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***We solve Immigration  
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