COUNSEL

July 2004

Published by Paschal Nwokocha Law Offices, LLC.

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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

Changes to Family-Based Immigration.

On July 15, the USCIS issued a "Notice to All Customers with a Pending I-130 Petition." The notice announced that the agency would only approve (or deny) a family-based petition when a visa number becomes available. For example, if you are a U.S. citizen and have submitted a petition for your brother, under existing quotas, his visa number will not become available until around the year 2016 (2026 if your brother was born in the Philippines. The USCIS will, however, accept your petition, cash your check and issue a receipt.

The practical consequence of this change is that petitioners will not get the usual "Approval Notice" until it gets close to the time when the beneficiary will be able to get visa to enter the United States. We hope this does not create problems or delays for immigrants and their families.

Administrative and Judicial Relief in Immigration Court

What happens when someone in Immigration Proceeding has no relief available or the Immigration Court has issued decision on the case? Is there any relief.

There are about four forms of relief could seek before a Court. They are: Motion to Reopen/Reconsider; Stay of Removal; Administrative Appeal; and Judicial Review. In this edition of counsel, we will discuss all four:

These are often quite complicated and we highly encourage anyone faced with any of them to engage the services of an experienced

immigration attorney.

Motions to Reopen or Reconsider –

An alien may move to reopen or to reconsider a previous decision by filing a timely motion with an Immigration Judge or the BIA. The central purpose of a motion to reopen is to introduce new and additional evidence that is material and that was unavailable at the original hearing. A motion to reconsider seeks a reexamination of the decision based on alleged errors of law and facts. Unless an exception applies, a party may file only one motion to reopen and one motion to reconsider. With a few exceptions, a motion to reopen proceedings must be filed within 90 days of the final removal order, while a motion to reconsider must be filed within 30 days of the date of the final order. The filing of such motions does not suspend the execution of the removal decision unless a stay is ordered by the Immigration Judge, the BIA, DHS, or the alien seeks to reopen an *in absentia* order (a decision made when the alien was absent at the proceeding).

Stay of Removal – A stay of removal prevents DHS from executing an order of removal, deportation, or exclusion. Depending on the situation, a stay of removal may be automatic or discretionary. An alien is entitled to an automatic stay of removal during the time allowed to file an appeal (unless a waiver of the right to appeal is filed), while an appeal is pending before the BIA, or while a case is before the BIA by way of certification. Except in cases involving *in absentia* orders, filing a motion to reopen or reconsider will not stay the execution of any decision made in a case. Similarly, filing a petition for review in Federal court also does not result in an automatic stay of a removal order. Thus, a removal order can proceed unless the alien applies for and is granted a stay of execution as a discretionary form of relief by the BIA, Immigration Judge, DHS, or a Federal court. Such a stay is temporary and is often coupled with a written motion to reopen or reconsider filed with the Immigration Court, the BIA, or an appeal to a Federal Circuit Court.

Administrative Appeal – The BIA is the highest administrative body with the authority to interpret Federal immigration laws. The BIA has jurisdiction to hear appeals from decisions of Immigration Judges and certain decisions of DHS. Either an alien or DHS may appeal a decision from the Immigration Judge. In deciding cases, the BIA can dismiss or sustain the appeal, remand the case to the deciding Immigration Judge, or, in rare cases, refer the case to the Attorney General for a decision. A precedent decision by the BIA is binding on DHS and Immigration Judges throughout the country unless the Attorney General modifies or overrules the decision. With respect to the filing deadline, the appeal of an Immigration Judge's decision must be received by 30 calendar days from the date it was issued by the court.

Judicial Review The Immigration and Nationality Act confers Federal courts jurisdiction over certain decisions appealed from the BIA. However, subsequent laws have substantially restricted judicial review of removal orders. An alien has 30 days from the date of a final removal decision to file a judicial appeal, which is generally filed with the Court of Appeals. The procedures and applicability of judicial review in immigration cases are complex and governed by court decisions and interpretations that, in many circumstances, are not clearly resolved.

USCIS Announces H-1B Visa Usage for Fiscal Year 2005

The Bureau of Citizenship and Immigration Services (USCIS) announced that, as of the end of May, a total of 16,100 H-1Bs countable against the fiscal year (FY) 2005 cap of 65,000 either were approved or remain pending. Despite the numbers thus far, experts are still anticipating that the FY 2005 cap numbers will be reached by this Fall.

The restrictive numerical cap on H-1B visas has caused difficulties for many employers seeking to hire foreign professionals. FY 2004's cap of 65,000 ran out just five months into the fiscal year, leaving many employers unable to supplement their U.S. workforce with highly educated foreign professionals. Considering that many of these foreign national professionals with cutting edge skills recently graduated from America's top colleges, the inability to hire such top talent can undermine a U.S. company's competitive edge. Without access to these professionals, companies may be unable to develop new products and services, thereby slowing down the creation of new jobs for U.S. workers. To make matters worse, if these highly educated professionals cannot be hired in the U.S. they will have no choice but to find work abroad with our competitors.

New Immigration Benefits

The Immigration Service (USCIS) has announced the implementation of three new benefits for would-be immigrants: (1) The elimination of the one-year maximum validity

period of work permits (EADs); (2) A regulation permitting certain F-1 students and J-1 exchange visitors to remain in status while they request that their status be changed to H-1B on October 1; and (3) The expansion of the InfoPass online appointment system nationwide.

EAD Rule: On July 30, the DHS issued an interim final regulation, which removes the maximum one-year validity period for most Employment Authorization Documents (EADs). Instead, the rule gives the USCIS a list of criteria from which to determine the duration of an EAD. Suffice to say that these criteria would allow the agency to issue a 3-year EAD for an applicant for adjustment of status pending at a Service Center. Assuming that the applicant's spouse and three teen-aged children were also applying for adjustment of status, the old system would have required each person to apply for an EAD on three separate occasions, for a total of 15 applications. Each application would require submission of filing fees, issuance of receipts, possible RFEs, security checks, and ultimately the issuance of an EAD. The new rule would allow the Service Center to rid themselves of the necessity of adjudicating these extra 10 applications, and instead devote their energies to reducing the three-year backlog of pending adjustment applications.

The rule specifies that EADs based on pending asylum applications be issued for a maximum of five years "unless otherwise appropriate." The USCIS web site indicates that 160,000 adjustment applications based on asylum were pending as of March 1, 2004. Since only 10,000 asylees may be granted adjustment of status annually, the 5-year limitation is clearly inadequate.

"Cap Gap" Regulation for F's and J's Changing Status to H-1B: On July 23, the DHS posted a notice in the Federal Register permitting certain F students and J exchange visitors whose status was due to expire prior to October 1, 2004 and who filed timely applications for a change of status to H-1B by July 30, 2004 to be deemed to remain in status until their applications were approved, assuming *that* they did not otherwise violate their nonimmigrant status.

The notice applies equally to F-2 and J-2 dependents. However, it is not applicable to J exchange visitors who are not students or who are subject to the two-year home residency requirement.

InfoPass To Go National - In 2003, in order to eliminate the lines of persons *seeking information that have* traditionally snaked around Immigration Service offices, the USCIS introduced the InfoPass online appointment system in Miami. In 2004, the system was expanded to Los Angeles, Dallas, New York City, on August 5 to Pittsburgh and Philadelphia and on August 9 to New Jersey and Buffalo, New York. Now the agency has announced plans to expand InfoPass to all its District Offices by September.

DHS Re-designates Liberia and Somalia for TPS For One Year

On August 27, 2004, DHS issued a notice terminating TPS designation and re-designating it for one year. Liberian nationals who have been present since 10/1/02 must re-register during the 180-day period from the date of publication of the notice. The TPS will expire on October 1, 2005.

On August 6, the DHS announced that it would extend TPS for nationals of Somalia to September 17, 2005. The re-registration period began on August 6 and ends on October 5, 2004.

At the law office, we believe that this is but a temporary solution. Liberian nationals should be given the opportunity to regularize their status on a more permanent basis. That is the only way people who have called this country home for several years on

Did you know?..

- Failure to notify the Immigration Service promptly of a change of address may land one in Removal Proceeding. Using a 50 –year old law, the Immigration Service is insistent that all aliens notify it of the change of address within 10 days of moving. **Use Form AR-11** from the Immigration Service to effect the address change.

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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Paschal Nwokocha
Law Offices, LLC
2469 University Avenue West, Suite E150
St. Paul, MN 55114

Or call us: **651.917.0020**

Visit us on the Web:
www.Paschal-Law.com

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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

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Paschal Nwokocha
Law Offices, LLC
2469 University Avenue West
St. Paul, MN 55114

Visit us on the Web:
www.Paschal-Law.com

We solve Immigration Problems!

Paschal Nwokocha Law Offices, LLC
2469 University Avenue West
St. Paul, MN 55114