

IMMIGRATION

U.S. IMMIGRATION LAW UPDATE

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USCIS to Issue Combined Employment Authorization and Advance Parole Card for Adjustment of Status Applicants

On February 11, 2011, the U.S. Citizenship and Immigration Services ("USCIS") announced that it is now issuing employment and travel authorization on a single card for certain applicants filing a Form I-485, Application to Register Permanent Residence or Adjust Status. The USCIS hopes the new card will be a significant improvement from the current practice of issuing paper Advance Parole Travel Documents.

The card will look similar to the current Employment Authorization Document ("EAD") but will include text that reads, "Serves as I-512 Advance Parole." A card with this text will serve as both an employment authorization and Advance Parole Travel Document ("APD"). The new card is also more secure and more durable than the current paper APD.

An applicant may receive this card when he or she files an Application for EAD, Form I-765, and an APD, Form I-131, concurrently with or after filing Form I-485, Application to Adjust Status to Permanent Residence. The USCIS will continue to issue separate EAD's and APD's as warranted. According to the USCIS, employers may accept the new card as a List A document when completing the Employment Eligibility Verification, Form I-9.

As with the current APD's, obtaining a combined APD and EAD allows an applicant for Adjustment of Status to travel abroad and return to the U.S. without abandoning the pending adjustment application. Upon returning to the U.S., the individual who travels with the card must present the card to request parole through a port-of-entry. The decision to "parole" the individual into the U.S. is made at the port-of-entry. Individuals who have been unlawfully present in the U.S. and who subsequently depart and seek re-entry through a grant of parole may be inadmissible and ineligible to adjust their status. Individuals who have been out-of-status should seek the advice of qualified U.S. Immigration Counsel prior to their traveling outside of the U.S. to determine whether obtaining and using an APD is recommended.

USCIS Reaches FY 2011 H-1B Cap

On January 27, 2011, the USCIS announced that it has received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2011. The USCIS notified the public that January 26, 2011 is the final receipt date for new H-1B specialty occupation petitions requesting an employment start date in FY 2011.

The final receipt date is the date on which USCIS determined that it had received enough cap-subject petitions to reach the limit of 65,000. According to the USCIS, properly filed cases will be considered

received on the date that the USCIS physically receives the petition, not the date that the petition was postmarked. The USCIS will reject cap-subject petitions for new H-1B specialty occupation workers seeking an employment start date in FY 2011 that arrive after January 26, 2011.

USCIS has also announced that it will apply a computer-generated random selection process to all petitions that are subject to the cap and which were received on January 26, 2011. The USCIS will use this process to select petitions needed to meet the cap, and will reject all remaining cap-subject petitions not randomly selected, returning with the rejected filing, the accompanying filing fees. As of December 22, 2010, USCIS had also received more than 20,000 H-1B petitions filed on behalf of persons exempt from the cap under the 'advanced degree' exemption.

The USCIS will continue to accept and process petitions that are otherwise exempt from the cap, including applications :

1. For transfer of employment authorization for those foreign nationals who already hold H-1B status;
2. For extension of H-1B petitions to extend the amount of time a current H-1B worker may remain in the U.S.;
3. To change the terms of employment for current H-1B workers; and,
4. To allow current H-1B workers to work concurrently in a second H-1B position.

FOR MORE INFORMATION, PLEASE CONTACT:



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