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VSC Updates ? 09/08/09

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H-1B cases subject to the FY2010 cap - About 4,000 cases are awaiting RFE responses. In addition about 5,000 cases are pending. VSC has completed about 34,800 FY10 cap cases. The center (VSC) is right now receiving between 1,200 and 1,600 cap cases a month.

Procedure for requesting a refund of the \$1,000 Premium Processing fee - VSC follows these procedures:

1. As soon as the refund requests are received it is processed.
2. VSC will accept a request in writing.
3. A refund letter will be generated and signed off by a supervisor when an officer reviews the history of the case and finds it right.
4. The Burlington Finance Center, will then issue the refund once the refund approval is forwarded to another VSC department for processing.

Note: Usually the entire process takes about two to three months. For example: issuing a notice of intent to deny or a request for evidence or opening of an investigation for fraud or misrepresentation constitutes an action for premium processing purposes pursuant to 8 CFR § 103.2(f)(1) and will push a case beyond 15 days without a refund.

\$500 fraud fee for a beneficiary -An employer is required to pay the \$500 fraud prevention and detection fee only once for a beneficiary. If the Form I-129 is completed correctly and it is clearly indicated that you are requesting a: 1) continuation of previously approved employment; or 2) a change in previously approved employment, the mailroom will not reject the case for the fraud fee.

VSC handling of J waiver applications with CSC - DOS forwards all 212(e) waiver recommendation letters to VSC when those waiver recommendations are based on a "no objection" letter from the exchange visitor's home government since October 6, 2006. Hence VSC has jurisdiction over all "no objection" waivers and does not issue any receipt notices for these waiver applications.

Therefore, it is advisable to include a copy of the waiver recommendation letter from DOS with the filing of the H petition, which will make the searching of the system and coordinating between VSC and CSC easier.

Designated Country List for H-2Bs - According to the Federal Register notice (73 FR 77729) identifying foreign countries whose nationals are eligible to participate in the H-2B visa program states that:

This notice does not affect the status of aliens who currently hold H-2B nonimmigrant status. This means that those aliens who were already in H-2B status at the time the announcement was published would not be affected by the notice; however, should those aliens later apply for an extension of their H-2B stay, the designated list would then apply to them.

Information regarding the qualifying corporate relationship in L-1A and L-1B petitions - Each petition is looked at by officers separately and they evaluate the submitted evidence and consider if the petitioner has established the qualifying corporate relationship. If a corporation is well known then a statement from the petitioner will be enough. But on the other hand the officers can request for additional evidence if the evidence is not satisfactory to meet the requirements of the regulations in regard to establishing the corporate relationship. Officers may legitimately ask the filing entity for information regarding any or all of the entities listed on the request when a request for blanker certification has been made. This is required to properly adjudicate the request.

I-129 L-1 filing and approval notice - Depending on the workload the I-129 L-1 filing received at the port of entry (POE) will generally have the approval notice generated within a two-week period. A follow-up through the Customer Service Helpdesk at 1-800-375-5283 can be made if the approval notice is not received three weeks after the receipt notice.

Types of evidence to be presented for specialized knowledge worker - Types of evidence which may establish the position requires specialized knowledge may include but are not limited to evidence such as:

- Training records
- Detailed job descriptions
- Evidence of previous experience, education requirements for the position
- Detailed descriptions of the position duties and nature of the position

L-1B adjudications - Each petition is reviewed on the merits of the specific case to determine whether the alien has "specialized knowledge." That is the center (VSC) reviews all submitted evidence and takes guidance from statute, regulations, policy, and decisions in determining whether the alien possesses "specialized knowledge." Irrespective of the depth or breadth of their knowledge or experience the L-1B classification was not intended to be a catch-all category for intracompany transferees. In order to establish eligibility for the L1B classification, the petitioner should be able to demonstrate that the knowledge which the beneficiary possesses is unique, uncommon, distinct, different, noteworthy or advanced, and that such knowledge is necessary to fill the duties of the position offered.

On I-129 L-1A petition - Due to the fact that L-1's for start-up companies are initially issued for a period of 1 year only, VSC will accept an I-129 L-1 petition for a start up company with the following requested employment validity dates:

From: ?Date of Approval.?

To: ?One year from date of approval?

The petition will be granted for a one-year period from the date of the approval if the petition is otherwise approvable.

Change of status from J-1 to F-1 - An application for a change of status from J-1 to F-1 is approvable if the 30-day J grace period falls within the 30-day window prior to the F-1 program start date.

Getting an approval notice corrected if VSC made an error - Contact the USCIS National Customer Service Center at 1-800-375-5283 and request a referral be sent to the VSC as a ?Service Error?. If the referral does not result in a correction, an email to the NCSC Follow-up account (vsc.ncscfollowup@dhs.gov [2]) is appropriate.

Customer service options for persons specifically inquiring about applications/petitions pending at Service Centers that may have gotten off track or are pending well past expected processing times - Inquiries like the one above should be directed to the National Customer Service Center at 1-800-375- 5283. If this does not result in a satisfactory resolution to the issue, the inquiry should be directed to the following email account: VSC.ncscfollowup@dhs.gov [3]

Taxonomy upgrade extras:

[VSC](#) [4]

[H Visa](#) [5]

[J Visa](#) [6]

[L Visa](#) [7]

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[2] <mailto:vsc.ncscfollowup@dhs.gov>

[3] <mailto:VSC.ncscfollowup@dhs.gov>

[4] <https://immigration.com/agencies/agency/dhs/uscis/vsc>

[5] <https://immigration.com/visa/nonimmigrant-visas/h-visa>

[6] <https://immigration.com/visa/nonimmigrant-visas/j-visa>

[7] <https://immigration.com/visa/nonimmigrant-visas/l-visa>