



Business Immigration

Fall 2002

An Update

“Common Sense Legislation in Uncommon

Times.” - A summary of *The 21st Century Department of Justice Appropriations Authorization Act*

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The President finally signed a much awaited legislation on November 2, 2002 - **The 21st Century Department of Justice Appropriations Authorization Act**. What is so significant about this piece of legislation is that it comes at a time when the entire country seems to be obsessed with anti-immigrant paranoia.

1. Waiver of Foreign Country Residence Requirement with Respect to International Medical Graduates. (Sec. 11018):

Extends until 2004 the program authorizing visas for foreign medical graduates wishing to serve in the United States, and raises the number of visas available per State from 20 to 30.

2. Posthumous Citizenship for Non-Citizen Veterans. (Section 11030):

Extends the deadline for allowing family members to apply for honorary posthumous citizenship for non-citizen veterans who died while honorably serving the U.S. in past wars.

3. Extension of H-1B Status for Aliens with Lengthy Adjudications. (Section 11030A):

Recognizing that lengthy processing times by the Department of Labor has precluded some H-1B visa holders from being eligible to apply for a one-year extension of H status pursuant to the American Competitiveness in the 21st Century Act of 2000 (Pub.L.106-313), this provision is intended to permit aliens who have labor certification applications caught in lengthy agency backlogs to extend status *beyond the 6th year limitation. As long as 365 days have elapsed since the filing of a labor certification application (that is filed on behalf of or used by the alien)* or an immigrant visa petition, H-1B status can be extended in one-year increments. This will be true even if the alien has since changed their status or left the country. If an application for a labor certification or adjustment of status or a petition for an immigrant visa petition is denied, the extended H-1B status ends at that point.

4. Application for Naturalization by Alternative Applicant if Citizen Parent Has Died. (Section 11030B):

Amends the Immigration and Nationality Act to authorize a child's

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grandparents or legal guardian to submit an application for Naturalization on behalf of the child under section 322 of the INA where the child's parent, who otherwise would be authorized to submit the petition, died during the preceding five years.

5. Removal of Conditional Basis of Permanent Resident Status for Certain Alien Entrepreneurs, Spouses, and Children. (Section 11031):

This provision applies to investors who filed and had their Immigrant Petition by an Alien Entrepreneur (Form I-526) approved between January 1, 1995 and August 31, 1998, obtained conditional resident status and filed a Petition by Entrepreneur to Remove Conditions (Form I-829). The section sets forth numerous new procedures for determining whether an eligible investor can have the conditions removed from his permanent resident status. It also states that an investor whose conditional status is terminated by the INS may have that decision reviewed by an immigration judge. The provision also provides that any alien who was admitted on a conditional basis as a child of an investor shall remain a "child" for purposes of this title.

6. Conditional Permanent Residence for Certain Alien Entrepreneurs, Spouses, and Children. (Section 11032):

This provision applies to individuals who filed an Immigrant Petition by an Alien Entrepreneur (Form I-526) that was approved by the INS between January 1, 1995 and August 31, 1998, and who timely filed an adjustment of status application or applied for an immigrant visa overseas, but who never became conditional residents because they remained overseas or because the INS never acted on their adjustment application. The provision provides that if the INS revoked the Petition by an Alien Entrepreneur (Form I-526) on the ground that the investor failed to meet the capital investment requirement, that revocation is to be disregarded for purposes of this bill, and the adjustment or immigrant visa application overseas is to be treated as reopened. Once the investors become conditional residences, they must file a Petition by Entrepreneur to Remove Conditions (Form I-829) within two years.

7. Definition of Full Time Employment for Investors (Section 11035):

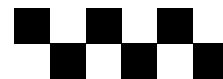
This section defines full time employment for purposes of section 203(b)(5) of the INA as a position that requires at least 35 hours of work a week.

8. Eliminating Enterprise Establishment Requirement for Alien Entrepreneurs. (Section 11036):

Eliminates the "establishment" requirement from section 203(b)(6) of the INA. Investors must only show that they have invested in a commercial enterprise and do not have to show that they established one. This section also eliminates the "establishment" requirement from section 216A of the INA for investors who have filed a Petition by Entrepreneur to Remove Conditions (Form I-829). Investors must also show that they have sustained their investment actions over the two-year period. The section also makes clear that the term "commercial enterprise" may include a limited partnership.

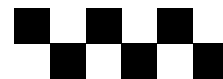
9. Amendments to Pilot Immigration Program for Regional Centers to Promote Economic Growth. (Section 11037):

Amends section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 to refine the description of an EB-5 regional center and clarify that the regional centers can promote increased export sales, improve regional productivity, job creation or increase domestic capital investment. The section also indicates that the INS should approve applications for EB-5 regional center status where the application is based on a general prediction concerning the kinds of commercial enterprises that will receive capital from investors, the jobs that will be increased directly or indirectly as a result of the investment, and the positive economic impacts that will result from the investment.



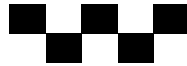
INS Case Status Online...

The INS has launched a system for checking the status of a case pending at a Service Center via the internet. It can be found at <https://egov.ins.usdoj.gov/graphics/cris/jsps/caseStat.jsp>. The information provided is the same as can be obtained by calling the "INS Direct" inquiry lines at the Service Centers, but this system provides an alternative means to make an inquiry without worrying about busy signals.



CT DOL Understaffed And Fighting backlogs...

The Connecticut DOL reports that as of October 2002, they are currently working on cases received as of April 2002 [RIR] and January 1999 [Non-RIR]. The Permanent Labor Certification Unit at the CT DOL is staffed by 7 staff members. They currently have approximately 7500 cases in the pipeline, of which, 2500 have been entered into the system. Progress remains slow, but the Department expects to catch up with the ever-increasing backlog soon. As one Officer put it "there is finally light at the end of the tunnel."



Hartford INS Woes continue...

The Hartford INS continues to frustrate everyone with their in-person filing requirements. Attorneys have been forced to use the Attorney-Drop Box system to file cases and our experience has been that the INS does not process these cases for at least a couple of weeks. Here is the latest processing times in the Adjustment of Status unit from the Service Center:

Examination

Form Processing Time

I-17	14 days
I-90	120 days
I-130	120 days (without I-485)
I-131	30 days
I-212	120 days
I-485	9 to 10 months
I-515	75 days
I-539	90 days
I-600	21 days
I-600A	75 days
I-75 1	9 to 10 months from receipt from the ESC
I-765	90 days
I-102	90 days
TPS	150 days
ROPS	150 days

Naturalization

Form Processing Time

N-400	8 months to a year
N-600	11 months
N-565	10 months
N-336	6-8 months

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