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March 3, 2022

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Welcome to the T&R News Alert

This T&R New Alert covers: (1) The USCIS has started to decouple EAD and AP "Combo" cards; (2) The 2022 fiscal year H-1B cap limit has been reached; (3) the registration for the 2023 H-1B cap fiscal year runs from March 1 through March 18th; and (4) Elizabeth Quinn will join the T&R March webinar to speak about the new STEM policies for O-1 visas and National Interest Waiver green cards.

USCIS HAS STARTED TO DECOUPLE EAD AND AP "COMBO" CARDS

Without forewarning, the United States Citizenship and Immigration Services (USCIS) has confirmed what we have seen happening recently, that the employment authorization documents (EAD) are being issued without the advance parole (AP) travel authorization indicated on the card. Typically, the USCIS has issued a "combo" card that has both the EAD and the AP authorizations allowing the foreign national to both work and travel with the receipt of the card while an application to adjust status to permanent resident (Form I-485) remains pending with the USCIS.

Why is the USCIS decoupling the EAD and AP? The USCIS indicates that it is decoupling the EAD and AP to help clear the backlog of EAD applications which have been taking up to 10 months or more to issue. Recently we have seen EAD cards issued in 2-3 months, but without the notation "Serves as I-512 Advance Parole" issued on them. Cards without this notation are only valid for employment, and not travel.

Caution: Every foreign national should check the EAD card upon receipt to see if it also indicates "Serves as I-512 Advance Parole". If this notation is not on the card, then the AP has not been approved and the USCIS will issue it on a separate document. We do not know how long it will take to issue the separate AP document.

How to apply now for the combo card? The combo card is issued with the code (c)(9)P instead of simply (C)(9) which is the coding for employment authorization when filing an I-485 based upon an employment preference (Form I-140). Now the foreign national, with their attorney, will need to decide to file the Form I-765 (Application for Employment Authorization) with (C)(9) for the coding to get the EAD more quickly or to put (c)(9)P to get the combo card, which will delay the issuance of the EAD.

For the I-485 applications pending with EAD and AP applications, the EAD card will likely be issued without the AP.

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The H-1B cap for the fiscal year 2022 (October 1, 2021- September 30, 2022) was reached on March 2, 2022. This means that the USCIS reached the 65,000 bachelor's degree limit and the additional 20,000 U.S. Master's degree limit for a total of 85,000 H-1B cap petitions for fiscal year 2022. The H-1B registration was held in March 2021, and then there were 3 H-1B cap selections: April, August and then again in October. While there can be no more H-1B cap petitions filed until the 2023 H-1B cap selection process opens, the USCIS continues to accept H-1B petitions from organizations that are not subject to the H-1B cap: universities, nonprofit organizations affiliated with universities, and nonprofit and government research organizations.

FISCAL YEAR 2023 H-1B CAP REGISTRATION PERIOD OPEN March 1 – 18

The H-1B Cap registration period for the 2023 H-1B cap opened on March 1st at noon and goes until March 18th at noon. The USCIS plans to notify employers and immigration counsel of the lottery results by March 31, 2022. If selected in the H-1B cap, the employer will have 90 days to file the H-1B petition. For last year's H-1B cap, there were 3 selections - - March, August, and October. It is possible that there will be more than one H-1B cap selection for the H-1B fiscal year 2023 cap.

If you are an employer that still has employees who need to be placed into the H-1B cap, please contact T&R as soon as possible.

TROW & RAHAL WEBINARS – THIRD FRIDAY OF EVERY MONTH

Please join Trow & Rahal in its monthly webinar on the third Friday of every month from 2:00 - 3:00 pm EST.



Please join T&R for its March 2022 Webinar on the 18th @ 2-3pm: ***Are You Eligible to Upgrade to EB-1 or EB-2?*** It will feature Shareholder, Elizabeth Quinn and her review of the new STEM policies that make it easier for advanced degree STEM graduates to qualify for O-1, EB-1 (Persons of Extraordinary Ability) and EB-2 National Interest Waivers.

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