

## **USCIS Announces Important Change in Mailing of Approval Notices**

**October 6, 2011**

### **What Is New**

U.S. Citizenship and Immigration Services (USCIS) has changed the way in which foreign nationals, employers, and attorney representatives are notified of application and petition approvals. Prior to this change, attorneys of record received Form I-797A, the official Notice of Approval issued by USCIS, with a courtesy copy, Form I-797C, sent to the employer and/or foreign national. USCIS now sends the original approval notice to the employer or to the foreign national, with the attorney of record receiving the courtesy copy. Although it had been initially thought that this change would be temporary or would be suspended pending comment from USCIS stakeholders, USCIS confirmed on September 30, 2011 that this new mailing system will remain unchanged and will be included in the final rule for Immigration Benefits Business Transformation to be published on November 28, 2011.

Form I-797A Notice of Approval is issued with a perforated Form I-94 attached to the bottom. Most classes of nonimmigrants in the United States, including foreign nationals holding H-1B, H-4, L-1, or L-2 status, need the Form I-94 to prove their lawful immigration status and, where applicable, to demonstrate their employment authorization. Accordingly, a foreign national would detach Form I-94 from the Form I-797A Notice of Approval and staple the Form I-94 (I-94 card) into his or her passport. Prior to this change, the attorney of record would receive Form I-797A upon USCIS approval and then forward the original approval notice to the foreign national or to his or her employer with detailed instructions on affixing the I-94 card to the foreign national's passport, as well as other critical information to ensure that the employee maintains valid nonimmigrant status in the United States.

### **What This Means for Employers**

Unless USCIS revises this policy, employers will need to take extra precautions to ensure that the original Forms I-797A are safeguarded and delivered in a timely manner to their foreign national employees. Foreign national employees need their approval notices not only for immigration purposes, but also for driver's license renewal and other secondary reasons. Replacement of Form I-797A requires a filing fee of \$405 and currently takes up to three months to be processed by USCIS. The American Immigration Lawyers Association (AILA) has urged USCIS to return to the prior system of approval notification, as it had served the needs of employers and their foreign national employees with relatively few problems.

USCIS will continue to send Form I-797A to the attorney of record, provided that the attorney's address is listed as the mailing address of the petitioner or applicant. USCIS, however, discourages this practice because it will likely interfere with the Validation Instrument for Business Enterprises (VIBE) process that USCIS uses to confirm an employer's existence and other employer data that must be verified before USCIS will approve an application or petition.

An employer or foreign national requesting expedited processing under USCIS's premium processing service, whereby USCIS will adjudicate an application or petition within 15 calendar days for an additional fee of \$1,250, may have the approved Form I-797A sent to an alternate address, provided that a self-addressed mailer is enclosed in the initial filing.

For more information, or if you have any questions regarding the issues discussed in this Immigration Alert, please contact any of the following attorneys:

**Washington, D.C.**

Eleanor Pelta	202.739.5050	<a href="mailto:epelta@morganlewis.com">epelta@morganlewis.com</a>
Eric S. Bord	202.739.6040	<a href="mailto:ebord@morganlewis.com">ebord@morganlewis.com</a>

**San Francisco**

A. James Vázquez-Azpiri	415.442.1343	<a href="mailto:ajvazquez@morganlewis.com">ajvazquez@morganlewis.com</a>
Lance Nagel	415.442.1345	<a href="mailto:lnagel@morganlewis.com">lnagel@morganlewis.com</a>

**Boston**

Lisa Stephanian Burton	617.341.7725	<a href="mailto:lburton@morganlewis.com">lburton@morganlewis.com</a>
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