



**Marks Gray Immigration Update
October, 2014**

Immigration Update

[Military Accessions in the National Interest](#)

[USICS Provides Needed Guidance](#)

[Optimized Processing of L and TN Visas](#)

[Can the Beneficiary of an I-140 Petition Challenge its Revocation?](#)

[November Visa Bulletin](#)

[FAQ: PERMs](#)

[Success Story](#)

[Best Life Tips!](#)



Military Accessions in the National Interest - A Direct Path to Citizenship

The Military Accessions Vital to the National Interest (MAVNI) program has been renewed through 2015. The program allows certain branches of the U.S. military to hire legal non-immigrants, such as international students and those granted deferred action, whose skills are deemed vital to the national interest. Vital skills include fluency in certain high-priority languages - from Albanian to Yoruba - or holding certain medical degrees such as dentists, surgeons, psychiatrists and other health professionals. An Army's study of the first MAVNI class found that recruits were highly educated (a third had master's degrees or higher) and highly motivated (their attrition was one-fourth that of other recruits). Click [here](#) to view the MAVNI pilot program fact sheet.



**U.S. Citizenship
and Immigration
Services**

USCIS Provides Needed Guidance on H-3 Nonimmigrant Trainees

The H-3 nonimmigrant visa category allows employers to petition for foreign nationals to come to the U.S. on a temporary basis for up to two years to receive training in a specific field. Considering the current lack of new H-1B visas, the H-3 is a good alternative for certain employers to bring qualified workers to the U.S.

Over time, USICS has issued multiples guidances on the requirements to apply for H-3 status. The current guidance consolidates all previous guidances and provides information on the background, purpose and legal authority of the H-3 program. It discusses program requirements, descriptions and restrictions.

The guidance emphasizes that the H-3 may not be approved if the training program: has no fixed schedule, objectives or means of evaluation; is incompatible with the nature of the employer's business or enterprise; or will result in productive employment beyond that which is incidental and necessary to the training. For more information, please click [here](#).



Optimized Processing of L and TN Visas at the Border

U.S. Customs and Border Protection (CBP) has designated 14 ports of entry for optimized processing of Canadian TN and L visa applications, including preclearance locations as Lester B. Pearson International Airport in Toronto and Vancouver International Airport in Richmond, B.C.

Applicants are not required to use these designated ports. However, it is expected that officers at these locations will have additional training on these visas resulting in more efficient and accurate adjudications. For a list of the 14 designated ports, please click [here](#).



Can the Beneficiary of an I-140 Petition Challenge its Revocation?

According to a decision by the 11th District Court of Appeals (DCA), the answer is Yes. This is an important decision because USCIS' revocation of an I-140 may lead to the denial of the beneficiary's application for adjustment of status (AOS) and typically the beneficiary does not receive notice of the I-140 revocation.

In this case, the beneficiary had an approved I-140 filed by his employer. In August 2007, he applied for AOS. In April 2009, he ported to a new employer. In July 2012, while his application for AOS was still pending, USCIS issued a notice of intent to revoke (NOIR) the approved I-140. In September 2012, USCIS revoked the I-140 based on its perceived I-140 defects. Because the employer was no longer in business, the beneficiary responded to the NOIR and appealed the revocation with the AAO and the U.S. District Court for the Middle District of Florida. These courts dismissed the case on the basis of lack of standing. However, the 11th DCA held that a beneficiary of an I-140 visa petition falls within the "zone of interested plaintiffs" and has authority to challenge the revocation. Additionally, the Court held that regulations should be construed to require USCIS to serve beneficiaries of an I-140 with the NOIR and must be given the opportunity to be heard prior to USCIS making the decision to revoke.

To read the decision, please visit [here](#).

November Visa Bulletin

There was slight forward movement in most categories, except the employment-based, second preference India category, which retrogressed from May 1, 2009 to February 15, 2005. The Visa Bulletin also included notes on potential visa availability in the coming months. To read the entire bulletin, click [here](#).



The First Step to an Employment-Based "Green Card" The Labor Certification Process

Employers seeking to obtain permanent residence for a foreign worker generally have to obtain a "labor certification" (LC) from the Department of Labor (DOL) as the first step in the process. DOL uses a system known as "PERM" to allow employers to file applications for such LC.

What is PERM?

PERM (Program Electronic Review Management) is a system through which employers submit an electronic application to DOL to attest that they have taken the required steps to recruit U.S. workers and that they have been unable to find a qualified U.S. worker for the position. Employers are responsible for keeping documentation of the recruitment and the documentation is submitted to DOL as a result of an audit. To read more, click [here](#).



Success Story: Taking Advantage of AC21 sec. 104(c) - Efficient preparation led our client to obtain three years in H-1B status

Section 104(c) permits three year extensions of H-1B status to those who are beneficiaries of an approved I-140, Employment Based (EB) petition, but cannot apply for adjustment of status because their priority date is not current.

Our client was in F-1/OPT status and had an approved I-140, and had used six years of H-1B status. She was offered employment with a new employer and hired us to explore her return to H-1B status. In reviewing the case, we learned that the upcoming visa bulletin, which became effective in three weeks, made our client's priority date current which would have precluded her return to H-1B status. We efficiently and effectively worked with all involved and filed her H-1B extension prior to the first day of the upcoming month when the visa bulletin would become effective.

In accordance with the Neufeld memo of May 30, 2008, we requested adjudication based on the Visa Bulletin that was in effect at the time of the H-1B filing, not at the time of the adjudication. USCIS granted our three year H-1B status request and our client was very happy being able to return to work status for three years.

We are proud of this resourceful accomplishment and the strong partnership with our clients which made this successful filing possible.

Best Life Tips: October is Breast Cancer Awareness Month



As we celebrate Breast Cancer Awareness month, we would like to remind our readers that engaging in regular physical activity can help reduce the risk of breast cancer. Studies show that physical activity equivalent to four hours of walking or two hours of cycling each week

can help decrease risks of breast cancer by 10%. For more information, please click [here](#).

NEW and NOTEWORTHY

Jacksonville Women's Network

The Jacksonville Women's Network (JWN) was founded in 1979 to encourage and support networking among leading women in business and the community. Membership is by invitation only, and I am honored to have been invited to join. The Network fosters an active interest in public affairs through its quarterly programs, annual Speaker's Forum and International Women's Day luncheon.



26.2 mile through a New Berlin - Gritty and Reunited

On September 28, I had the privilege and honor to successfully complete the Berlin Marathon. This is one of the Six World Major Marathons (WMM) and my fifth. Running 26.2 miles through this amazing city is fascinating. Berlin has a dramatic history, cutting-edge architecture and thriving future.



Giselle Carson

On behalf of Marks Gray and our Immigration team, I hope you enjoyed reading this Immigration Update. Please use the link below to **'Forward this email'** to others that might benefit from the information. If you have suggestions, feedback or would like to learn more about me, please click [here](#).

Be Well!

Marks Gray, P.A.
1200 Riverplace Boulevard
Suite 800
Jacksonville, FL 32207
904.398.0900
| gcarson@marksgray.com |

www.marksgray.com

Copyright © 20XX. All Rights Reserved.