

# WOW! Two weeks of monumental change in Immigration policy

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# Agenda

- Recap on September 24<sup>th</sup> Publication of Oct Visa Bulletin
- September 29<sup>th</sup> Federal Court Decision on Fees/Forms
- September 30<sup>th</sup> funding continuation
- October 1<sup>st</sup> Federal Court Decision on June 22<sup>nd</sup> Presidential Proclamation (shocker – illegal)
- October 8<sup>th</sup> – DOL IFR related to Prevailing Wages
- October 8<sup>th</sup> – DHS IFR related to H-1B Petitions
- Not to be outdone – DOS seeks to eliminate B-1 in lieu of H-1 and H-3



# Why is This Happening?

- New Visa Bulletin Issued 9/24
- Dates for Filing shows significant forward movement – especially in India/China EB-3
- 121k excess Immigrant Visas FY 21 (expect additional in FY22)

	Sept Bulletin	Oct Bulletin
Other	1/C ;2/C ;3/Apr/19	1/C ;2/C ;3/C
India	1/Mar/18; 2/Jul/09; 3/Oct/09	1/Jun/18; 2/Sep/09; 3/Jan/10
India	1/Jul/18; 2/Aug/09; 3/Feb/10	1/Sep/20; 2/May/11; 3/Jan/15
China	1/Mar/18; 2/Jan/16; 3/Feb/17	1/Jun/18; 2/Mar/16; 3/Jul/17
China	1/Jul/18; 2/Aug/16; 3/May/17	1/Sep/20; 2/Oct/16; 3/Jun/18



# Issues to be addressed

- I'm current in Dates for Filing – do I file?
- I'm current if I downgrade to EB-3 – do I file?
  - eligibility for Work/Travel permits (and for dependents)
  - AOS portability protections (against job loss/corporate reorg)
  - Possible new H-1 restrictions/in line already
- Prepare for a wait if much outside of Final Action dates
- Expect dates to backlog, but still have benefits
- Possibility of EB-3 “new” rejected/PP option & rejection/include medical/I-944 filing/status issues



# This represents our month!

**16” of paper (I-140/4 AOS) –  
1,200+pages**

Fun fact – AOS/I-944/EAD/AP =  
70+ pgs

We had 22 BOXES of paper  
delivered this month!!



# An Update on Fees/Forms

- Fee increases were announced for cases postmarked on or after Oct 2 under new fee list
- Both requests for injunction were successful
- Initial success on September 29<sup>th</sup> declared increase illegal – that plaintiffs will be successful in suit
- Still no appeal by USCIS – smart money suggests this fee increase is DOA
- Forms also on hold as they were part of regulation
- September 30<sup>th</sup> funding resolution – new PP fee is \$2,500 starting October 19<sup>th</sup>
- USCIS can use PP funds for operations/expand PP to other product lines (I-140 MM/E-3/EAD/H-4, etc.)



# October 1<sup>st</sup> Surprise

- June 22<sup>nd</sup> Presidential Proclamation (10052) on NIVs ruled illegal
- Judge enjoins PP against named Plaintiffs (US Chamber, Technet, Nat'l Manufacturing and Retail Assoc., Intrax)
- Members of plaintiff groups are covered – new members too
- DOS guidance goes overboard – must demonstrate membership (exemption from PP) and then Conoff must separately verify membership
- Visa apps = penalty of perjury/significant penalties for misrep – verifying membership is delay tactic



# New DOL Wage Calculation

- On October 8<sup>th</sup> DOL published new wage formulas in Federal Register
- As an Interim Final Rule it went into immediate effect for new LCAs, and a week later for PWRs
- Changes – Enormously significant
  - Level 1 17<sup>th</sup> percentile 45<sup>th</sup> e.g. \$76k to \$116k (+40k)
  - Level 2 34<sup>th</sup> 62<sup>nd</sup> \$93k to \$145k (+52k)
  - Level 3 50<sup>th</sup> 78<sup>th</sup> \$111k to \$174k (+63k)
  - Level 4 67<sup>th</sup> 95<sup>th</sup> \$128k to \$202k (+74k)
- Immediate response – use OES when can, use alternate survey otherwise; wrt PERMs – hold tight
- Three pending lawsuits seeking immediate injunction – reg will be enjoined (hopefully within 2 weeks)





# H-1B Poison Pill 2<sup>nd</sup> Act

- October 8<sup>th</sup> IFR which is effective December 7<sup>th</sup>
- Key changes for all – definition of specialty occupation (degree is direct relationship to position; always required rather than common/usual requirement), need for proof of work, ability to limit time to less than 3 years
- Key changes for consulting industry – 3<sup>rd</sup> party placement max approval of 1 yr, definition of employer, definition of worksite (3<sup>rd</sup> party worksite, not office or home), must provide proof of work, must prove employment relationship, must provide contracts/documents showing relationship
- Already US Chamber has filed, AILA is filing, expect others



# Questions?

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