

2001: The Year in Review for Immigration Law **by Sherry L. Neal, Esq.**

At the beginning of a new year, it is customary to look to the future with renewed goals and aspirations. At the same time, it is helpful to look back at the previous year to evaluate the changes that occurred. There was no doubt that the year 2001 was going to be eventful in immigration law given the actions of the President, Congress and the Department of Labor during the last quarter of the year 2000. Specifically, the President signed the American Competitiveness in the Twenty-First Century Act, the Life Act, the District of Columbia Appropriations Act and the Department of Labor finally published the H-1B Regulations implementing the 1998 Act known as the American Competitiveness and Workforce Improvement Act. Those actions in the last quarter of the year 2000 set the pace for the monthly events in the year 2001.

January 2001: The Department of Labor implemented the H-1B Regulations as established by the American Competitiveness and Workforce Improvement Act of 1998. The most notable provision of the regulations is the determination of H-1B dependency and the additional burden on employers who hire a significant percentage of H-1B workers. Specifically, H-1B dependent employers are now required to make two additional attestations, namely that they have recruited US workers and has not displaced US workers

February 2001: In the early stages of his presidency, US President George W. Bush appointed a high-level working group on US-Mexico Migration including US Secretary of State Colin Powell and US Attorney General John Ashcroft, and began negotiating with Mexico to legalize the estimated three million undocumented Mexicans in the US. The US-Mexico Migration Panel issued a summary of recommendations for increasing trade and improving border security along the US Mexico border.

March 2001: The Department of State released the new form for nonimmigrant visas at US Consulates, specifically the OF-156, Application for Nonimmigrant Visa.

April 2001: The LIFE Act's temporary extension of section 245(i) of the Immigration and Nationality Act expired on April 30, 2001. Reportedly, thousands were not able to file before the April 30, 2001, deadline for various reasons, including: 1) the brief timeframe for filing from December 17, 2000, until April 30, 2001; 2) the shortage of immigration practitioners able to assist the foreign nationals; and 3) a misunderstanding among the immigrant community as to the requirements of the law.

May 2001: President Bush announced, in a letter to Congress, his strong support for another extension of section 245(i). Later, during a naturalization ceremony on Ellis Island on July 10, 2001, President Bush reiterated his support for 245(i) by stating: "We should spare families the hardship of separation while one member is awaiting a green card. I support providing an extension of the temporary window that allows people to file for legal residency without having to return to their country of origin."

June 2001: The INS implemented its premium processing fee, as permitted by the District of Columbia Appropriations Act that former-President Bill Clinton signed in December 2000. The Act authorized the INS to collect a \$1,000 "premium processing fee" in addition to the regular filing fee. By paying the additional fee, a company could have the INS process a nonimmigrant case within 15 days. The INS prohibited the use of the premium-processing fee for H-1B, TN and R petitions until the premium processing system was operative and effective.

July 2001: The employment-based "other worker" category became current. In addition, the INS extended the premium-processing fee to H-1B, TN and R petitions.

August 2001: The Department of Labor issued its long-awaited final rule allowing an employer to convert a basic labor certification case to a reduction in recruitment case without the beneficiary losing the priority date of the first application. The rule was effective for basic labor certification cases that were filed before August 3, 2001.

September 2001: The tragic events of September 11th occurred. Within three days Congress passed legislation for the permanent extension of the S visa (commonly known as the "Snitch Visa"). As such, the US State Department and attorney general can grant up to 200 visas per year to foreigners who provide information about criminals and an additional 50 visas per year for those who specifically provide information about terrorist activity.

October 2001: The President signed the USA PATRIOT Act, also known as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001." The Act serves three primary purposes: 1) To protect the US-Canada border; 2) to enhance immigration provisions to detect and prevent terrorism; and 3) to preserve immigration benefits for victims of terrorism.

November 2001: The President ordered military trials for certain non-citizens suspected of terrorism. The INS announced its reorganization plan, which would split the INS into two separate divisions: one division for immigration services and another division for immigration enforcement functions.

December 2001: The Department of Labor issued its final rule implementing the electronic filing of Labor Condition Applications for H-1B petitions. The Department of Justice issued the final rule increasing the INS filing fees to take effect on February 19, 2002.

Immigration law is a form of administrative law where the opposing party is the government rather than another attorney. What makes immigration law interesting, and sometimes exasperating, is its ever-changing nature. Since immigration is a political issue, it is apt to change directions as events in society change. Thus, the year 2002 may bring new and exciting changes to the field of immigration law.

About The Author

Sherry L. Neal, Esq. has been an associate with Hammond & Associates since March 1995. She handles all types of immigration cases; however, she primarily focuses on employment-based immigration in regard to both temporary status and permanent status in the U.S. She advises corporations and individuals on immigration law issues and handles cases before the Immigration and Naturalization Service, the Department of State and the Department of Labor. She has conducted private I-9 audits for national companies and advised as to potential liability. Sherry Neal has written several articles for other publications, copies of which can be obtained from the firm website at <http://www.hammondlawfirm.com>.