Effect of New Law on Computer Professionals

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IMMIGRANT VISA

The existing 3rd & 6th preference visa categories under the present law will be replaced by five visa classes, namely:

1. Priority Workers: (A) Aliens with extraordinary ability, (B) Outstanding professors, researchers; and (C) Certain executives and managers of multinational corporation.
2. Members of the profession with advanced degrees and aliens of exceptional ability.
3. Other workers, namely skilled workers, professionals with bachelor's degree and unskilled workers.
4. Special immigrants like religious ministers, and
5. Investors with at least one million dollars to invest.

The first three categories will get 40,000 visas annually worldwide, while the 4th and 5th categories will be given 10,000 each.

Status of Pending Petitions

This system of employment-based preferences will start October 1, 1991. All pending 3rd & 6th preference petitions will retain their priority dates provided new I-140 petitions are filed before October 1, 1993. With the new petitions, they will be classified according to the category they fit in.

It is anticipated that the first two categories will have more than enough visa numbers in the beginning so that if one qualifies, he will get his green card immediately. This is especially because the first category is exempted from labor certification.

The second category is expected not to be filled up easily either.

Most Filipino computer professionals will probably fit into the 3rd category. This category is expected to suffer a huge backlog because most of the pending 3rd and 6th preference will be carried over to this category.

The rule is not clear yet governing the validity of labor certifications when a 3rd or 6th preference petition have not been approved. There is no question that if the petition is already approved, the priority date will be retained. Approved petition means that a labor certification has been obtained and that it is already submitted to the Immigration Service, together with an I-140 petition and that the INS issues an approval notice. Suppose the I-140 petition (together with the labor certification) has not been submitted yet to the INS? If the labor certification application is already approved, this will probably be valid under the new law. However, if the labor certification application is still pending by October 1, 1990, the applicant will most probably have to start all over again.

NON-IMMIGRANT VISA

Computer professionals are classified as H-1s (now as H-1B), under the old law. They still will be under the new law but they will be limited to an annual quota worldwide of 65,000. Dependents are not counted. The new H-1B definition will include only aliens employed in "specialty occupation". This term refers to workers employed in occupations requiring highly specialized knowledge. This specialty knowledge must be acquired through education resulting in a bachelor's degree or its equivalent. State licensure to practice a profession is necessary.

A new requirement will be a labor attestation which requires the employer to document wages, working conditions and the absence of a strike or lockout.

Six-Year Maximum

The length of stay will be limited to a maximum of six years. H-1 visas which expire before October 1, 1991 (having reached the end of their 5th year) will probably not be extendible. Old H-1s that will reach the end of their 5th year after October 1, 1991 will probably be able to avail of the 6th year term (we'll wait for the final rules for confirmation).

An important change is the removal of the requirement that an H-1B alien continuously maintains a residence outside of the US to which he will return after his visa expiration. The effect of this is that if one files an immigrant visa petition, it will not in any way be considered as an evidence to determine his H-1B intention to remain in the US temporarily.

This codification of the so-called doctrine of dual intent will be specially advantageous to the Filipinos who oftentimes have been stranded during their vacations in the Philippines in the past because of the consul's suspicions that they have developed the intent to stay permanently in the US. Sponsorship of dependents will most probably be facilitated.