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LEGAL NOTES

Reuben Seguritan

INS slates Oct. 1 deadline to refile upgraded petitions

The Immigration and Naturalization Service has released a memo clarifying the status of old 3rd and 6th preference petitions filed before Oct. 1, 1991.

The ruling, which benefits many Filipinos, states that persons whose old 3rd and 6th preference petitions were automatically converted to the new 2nd and 3rd preferences will not have to refile their petitions to maintain their priority dates if their visa numbers were not continually available since Oct. 1, 1991.

However, those whose visa numbers have been continually available since Oct. 1, 1991 must file a new I-140 petition or lose their original priority dates.

The 1990 Immigration Act required the filing of new employment-based petitions by Oct. 1, 1993 to retain priority dates obtained or established before Oct. 1, 1991 for their old 3rd or 6th preference petitions. The 1990 Act also incorporated the 3rd and 6th preferences into a five-preference system.

Subsequently, the Armed Forces Immigration Adjustment Act of 1991 provided

3rd and 6th preferences converted to 2d and 3rd

automatic conversion of petitions filed before Oct. 1, 1991. Old 3rd preference petitions were converted to the new 2nd preference and the old 6th preference petitions were converted to new 3rd preferences.

The downside, however, was that the 1991 Act provided that automatic conversion would not apply more than two years after the alien's

priority date, or two years following notification that visa numbers were available.

Reminders have also come out with regard to the filing of immigrant visa petitions by Oct. 1, 1993 to maintain the priority date of approved labor certifications filed before Oct. 1, 1991. If the application of labor certification is still pending, applicants must file for the immigrant visa petition within 60 days after obtaining said labor certification.

If applicants fail to file I-140 petitions before Oct. 1, 1993, they lose their priority dates on their approved labor certifications and instead assume the priority date of their I-140 petition.