

PUBLICATION

Electronic Confirmation of Petitions Now Required for Visas

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Before issuing an H, L, O, P or Q visa consular officers now must confirm the visa in a new database. Employers must take steps to ensure petition approvals get to the database.

In late 2007 the Department of State (DOS), using funds generated by the \$500 per case H and L fraud fee, instituted a new database system known as Petition Information Management Service ("PIMS"). When employers file petitions for the necessary preliminary USCIS approval in the H, L, O, P and Q nonimmigrant classifications, they always have been required to include a duplicate that USCIS then can forward to the consulate via the State Department's Kentucky Consular Center (KCC). Now KCC scans the petition duplicate into PIMS, runs some background checks on the company and/or worker, and keys data into PIMS about the petition approval and the parties.

DOS now prohibits consular officers from issuing H, L, O, P or Q visas unless they confirm the petition approval in PIMS. This prevents a brazen foreign national from presenting a fraudulent paper petition approval notice as a basis for a visa, which has in fact happened. It also allows for some extra anti-fraud screening. The happy implication for visa applicants is that, in the occasional situation where an original approval notice has been misdelivered by USCIS or lost, or where a petition for multiple workers needs to be used in more than one country, the consulate can rely on PIMS and not insist on an original approval notice.

Unfortunately, DOS did not work out all the kinks in the process with USCIS before implementing PIMS. Most problematically, USCIS has not previously sent KCC any information about approvals of petitions when the procedural benefit requested is not consular notification but instead change of status or extension of stay within the U.S. Thus, petition beneficiaries have been stuck outside the country after visa interviews waiting for the consulates to notify KCC of the missing petition, for KCC officers to obtain the information from USCIS systems and load it into PIMS, for the consulate to realize that the PIMS information has been loaded, and for the consulate to issue and deliver the visa. DOS claims that KCC loads cases into PIMS within 48 hours of contact by consular posts, but at times that metric has slipped, and the other steps surrounding that step take additional time.

DOS and USCIS have not cooperated in devising a "work around" solution: employers requesting change of status or extension of stay may voluntarily include a duplicate of the petition (marked carefully as a duplicate to avoid confusion in the USCIS mail room) just as they do when requesting consular notification. When approving the petition, USCIS will forward the duplicate to KCC for loading into PIMS so that the information will be there when the alien appears for visa interview, avoiding further scrambling at that point.

Unfortunately, petitions for EOS/COS filed before or without using this solution will not be in PIMS, because USCIS and DOS are not going back to reprocess prior cases (except for blanket L-1 petitions, which seem to have been loaded). Thus, visa applicants will need to pursue makeshift, localized procedures to give notice and request to consulates in advance of H, L, O, P and Q visa interviews about the need for the consulate to check PIMS and request KCC to supply missing information. Otherwise, visa applicants can expect delays of days or weeks between visa interview and passport/visa return.

How We Can Help

We assist clients in evaluating and comparing the seemingly innumerable visa classifications for which they might be qualified, whether a visa will be required (and if not required whether it should be obtained anyway), where and how to apply, and how best to accomplish entry. We advise clients about inadmissibility grounds that may apply and assist in waiver applications and appeals from denials of them. We assist clients in seeking review of visa denials. We represent clients in removal proceedings, where available if they are found inadmissible. We help clients seek remedies even when they have been removed at the border without a hearing. We help clients maintain their status and extend and change it to meet new goals. We also plan and take appropriate steps toward permanent residence, coordinating such plans and steps with the temporary status.