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Immigration Attorneys

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APRIL 2006

IMMIGRATION NEWSLETTER

VOLUME 2, NUMBER 2



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This Month's Featured Article

How Tax Issues Can Affect Your Immigration Case

Now that tax season has come and gone, many people feel a sense of relief. The post-April 15 tax deadline is a good time to see how tax issues can affect your immigration case. There are so many ways that tax issues affect a case. In this article, I will focus on five main ways:

1. **I-485 Adjustment of Status Cases:** At the time of filing an I-485 adjustment of status case with the United States Citizenship and Immigration Services ("USCIS"), the Petitioner needs to complete an Affidavit of Support which includes a copy of the Petitioner's most recent federal income tax return. Note that USCIS now only requires the most recent tax return. In the past, USCIS required the prior 3 years of tax returns. The Petitioner's tax return must evidence a certain level of income in order to be able to sponsor the Beneficiary. The required level of income is determine in accordance with the Petitioner's household size and is set by the federal government's poverty guidelines. The 2006 federal poverty guidelines were recently introduced and can be view on our firm's website at www.longchangonline.com. At the time of the adjustment of

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Tax Issues (Continued from Page 1)

1. status interview, the Petitioner must take the most recent federal income tax return with W-2 and 1099 forms (along with a current letter of employment. This means that if you filed your adjustment of status case using 2004 tax returns, you must be sure to take 2005 tax returns with you. As a practical matter, be sure that your 2005 income (as reported on your federal income tax return meets the required income level or else a Joint Sponsor may be needed. Also, be sure to make a copy for your records since USCIS will keep your tax return in its file.
2. **Extension of Status Cases:** A foreign national in a non-immigrant work visa status (such as R-1, H-1B, E-2, L-1, etc.) may be requested to show the he or she has maintained his or her non-immigrant work visa status by providing copies of prior tax returns at the time an extension of status is requested. A foreign national will need to show the he is making the required wage based on the previously-approved immigration case.
3. **Labor Certification Cases:** In labor certification cases, the employer who filed the labor certification must be able to prove that it has the "ability to pay" the wage set forth in the labor certification application from the date that the labor certification application is filed with the Department of Labor up through the date that the labor certification beneficiary obtains permanent resident status. USCIS will often look at the employer's tax returns for each year that the case is pending. As a result, if the labor certification case has been pending for multiple years, then the employer must provide multiple years of tax returns with the I-140 petition. One of the best ways of showing that the employer has the ability to pay the beneficiary is to show that the employer's net income on the employer's tax returns for each year in question exceeds the wage being offered in the labor certification case. A foreign national being sponsored by an employer should consider checking with the employer each year to make sure that the employer can demonstrate the ability to pay the required wage or else there is the chance that the entire labor certification case could be lost.
4. **Religious Visa Cases:** Among the many criteria that have to be proven in an I-360 special immigrant religious worker case, the foreign national must document that he or she has worked in the religious denomination for the immediately preceding two-year period. The best type of evidence (if the work was done in the United States) is to provide tax returns and W-2 forms proving this 2-year work experience requirement.
5. **Proposed Guest Worker Legislation:** In all of the guest worker programs that are being discussed in Congress presently, the undocumented worker must show that he or she has paid their back taxes. As a result, undocumented workers should be advised to maintain copies of their tax returns to prove that they have paid their prior taxes. For our most recent article discussing the current guest worker proposals in Congress, please visit the "Newsflash" section of our website at www.longchangonline.com.

Once your taxes are filed, be sure to keep a copy for your records. If you need copies of prior years, you can request a tax transcript from the Internal Revenue Service (such a request typically takes 10-15 business days to process). When needed for any of the immigration cases or purposes described above, you typically will need to provide a full copy of the federal income tax return, along with copies of all W-2 Forms and 1099 Forms.

Be sure to review your taxes to make sure they were properly filed and to ensure that you are filing them properly so that there is no future surprise in your immigration case.

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The Current Status of Comprehensive Immigration Reform

The debate surrounding comprehensive immigration reform is still ongoing and far from over. No bill has yet been passed by the U.S. Senate despite its recent efforts. It had been hoped that the Senate would be able to produce a bill prior to its two-week recess earlier this month; however, the Senate leadership was unable to agree on a bill with a guest worker program. Both parties (Senate Republicans and Senate Democrats) are blaming the other for the failure to reach an agreement on a guest worker program.

The most recent version of the guest worker program being discussed by the Senate leadership provided for a three-tier approach which would provide guest worker status based on the number of years the undocumented worker has been in the United States. Although the details of the guest worker program have not yet been worked out, here is an overview of the most recent version:

Undocumented workers who have been in the United States for more than 5 years and have paid their taxes would be able to apply for a temporary or guest worker status. Undocumented worker who have been in the United States for 2-5 years would have to temporarily depart the United States and then return with the guest worker status. Those undocumented workers in the United States for less than 2 years would have to go through a longer process from outside the United States in order to obtain the status.

This was the version of the program that the Senate had hoped to reach a compromise on before the Senate's 2-week vacation. The parties could not reach agreement and so no movement has taken place over the past two weeks. With the Senate resuming work on Monday, April 24, the question is whether this debate will resume. Reports out of Washington, D.C. indicate that the Senate leadership (Senate Republican leader Sen. Bill Frist and Senate Democratic leader Sen. Harry Reid) both want to continue the debate. President Bush has recently reiterated his support for a guest worker program. Senator Bill Frist indicated that he hopes a Senate bill would be passed by Memorial Day (May 29, 2006). If the Senate does pass a bill, then whatever version of its bill will have to be reconciled with a prior immigration bill with enforcement-only provisions (i.e. no guest worker program) already passed by the House of Representatives in December 2005. As a result, the immigration debate will likely continue throughout the summer.

As a side note, our office has contacted by telephone various Senators in order to encourage them to support a guest worker program. We have tried to give them an understanding of the problems with the current immigration system and the need to find a way to help legalize the 12 million undocumented immigrants living in the United States. What we have been hearing from the Senator's offices is that our voices (the voices in favor of a guest worker program) are being far outweighed by the voices of the anti-immigrant movement. It has been estimated that for every one call in favor of a guest worker program there are eight calls against a guest worker program. As a result, we need to keep the pressure on the Senate to pass a practical guest worker program.

Our firm will continue to monitor this important issue and will post updates on our website at www.longchangonline.com.

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Senate Judiciary Committee Passes Comprehensive Immigration Reform Bill

On Monday, March 27, 2006, the U.S. Senate Judiciary Committee passed a comprehensive immigration reform bill known as the Comprehensive Immigration Reform Act of 2006. Among its most significant provisions, the Judiciary Committee's bill provides a temporary worker program and a path to citizenship for illegal aliens. This immigration reform bill will now be debated by the entire U.S. Senate over the next two weeks before it can become law. If it becomes law, this proposal would revolutionize the immigration system and give a path toward legalization for the estimated 11 million illegal aliens already in the United States.

The immigration bill passed by the U.S. Senate Judiciary Committee is a comprehensive approach to immigration reform in that it addresses the three major aspects of the U.S. immigration system: border security, interior enforcement of laws against the hiring of unauthorized workers and a temporary worker program with a path toward citizenship.

The fact that the Senate Judiciary Committee was able to produce such a comprehensive immigration reform bill is amazing considering the pressure it was under to produce a bill. In December 2005, the U.S. House of Representatives passed an enforcement-only proposal. That proposal threatened to criminalize all illegal aliens and provided only for border security and interior enforcement measures. It did not include any temporary worker program or path to citizenship for illegal aliens.

The Judiciary Committee's program had eight major sections. At www.longchangonline.com we have summarized the major provisions under each of these provisions. This article will focus on the earned legalization provisions which would allow illegal aliens who meet certain criteria to obtain a green card in the United States without leaving the country.

What is "earned legalization"?

The basic idea behind an "earned legalization" or "earned adjustment" program is that illegal aliens should be able to "earn" the right to obtain a green card by meeting certain criteria – working for a certain period of time, paying taxes, paying a fine, learning English, having a clean criminal record, passing security and medical checks, etc. Those in favor of such a program characterize it as a green card program that an illegal alien can earn based on his or her hard work. Those against such a provision call it an amnesty whereby illegal aliens are given a green card for breaking the law (coming to the United States illegally and working illegally).

What does an illegal alien have to do in order to get the green card under the Judiciary Committee's proposal?

The "earned legalization" or earned adjustment provisions are part of the much larger immigration reform bill passed by the Senate Judiciary Committee provides that illegal aliens can apply for a green card while remaining in the United States if they meet the following criteria:

1. Must have been working in the United States as of May 2005;
2. Obtain a 6-year temporary work visa and continue working during that 6-year period (cannot be out of work for more than 45 days);
3. Pay back taxes;
4. Pay \$1,000 fine;
5. Pass criminal background checks;
6. Prove the ability to speak English
7. Must go to the "back of the line" (cannot obtain the green card until all those individuals already in line for the green card at the time of filing are processed.)

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The key provision is that these individuals can file for the green card and wait for the green card in the United States. As a result, even though they must go to the back of the line, that line is in the United States.

In addition, the spouse and unmarried children under age 21 can qualify as derivatives under this earned legalization program.

Will this "earned legalization" program become law?

Nobody knows for sure but the fact this program was passed by the Senate Judiciary Committee is a positive first step. It is the starting point for debate in the full Senate and is significant insofar as most Democrats and many key Republicans support it. It has bi-partisan support. As it is debated in the Senate, changes could be made to the program.

At www.longchangonline.com, we will track the progress of this important legislation and provide up-to-date analysis as the proposal moves forward in the U.S. Congress.

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Immigration Update

VISA BULLETIN UPDATE

The March 2006 Visa Bulletin was published on February 14, 2006. Unfortunately, there was not very much forward movement in the cutoff date for Employment-Based Third Preference Category (EB-3) for all countries except China, Mexico, India and the Philippines. The cutoff date for this EB-3 category moved forward 10 days. In the February 2006 Visa Bulletin, the EB-3 cutoff date was April 22, 2001. The March 2006 Visa Bulletin lists the EB-3 cutoff date as May 1, 2001. Visa numbers are available for individuals with priority dates before the cutoff date. The complete Visa Bulletin can be viewed online at the "Processing Times" page of our website at www.longchangonline.com.

**FINGERPRINT APPOINTMENTS TO CONTINUE FOR PENDING
EMPLOYMENT-BASED GREEN CARD CASES**

The Texas Service Center recently confirmed that fingerprints are valid only for 15 months. As a result, beneficiaries of already-filed I-485 cases which are subject to visa unavailability or visa retrogression and thus remain pending for a significant period time should expect to be fingerprinted every 15 months or so. It is extremely important for such beneficiaries to be sure to attend these fingerprinting appointments. Failure to show up for a required fingerprinting appointment could result in the denial of an I-485 green card application. One thing is for sure: While USCIS may not be able to approve a green card case while visa numbers are unavailable in a particular employment-based category, they certainly can deny a case as they try to reduce the backlogs of cases that are pending. Therefore, I-485 applicants are reminded to report any address change promptly to immigration on Form AR-11 so that future appointment notices will be delivered to the correct address. Any address change should be mailed to the USCIS address on the Form AR-11 and to the particular USCIS office where the I-485 application is pending. It is recommended that these address changes be mailed via U.S. certified mail, return receipt requested and the individual keep a copy for his or her records (so that there is proof that the address change was done properly). Prior articles explaining visa unavailability and visa retrogression can be read on our website ("Employment-Based Immigration Update: I've Heard About the October 2005 Visa Bulletin. Now What? A two-part series viewable at www.longchangonline.com/Articles/E20050927.pdf and www.longchangonline.com/Articles/E20051021.pdf).

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**PROPOSED RULE WOULD ELIMINATE LABOR CERTIFICATION
SUBSTITUTION CASES**

The U.S. Department of Labor ("DOL") has proposed (for the 2nd time in the past year) a rule which would: (1) eliminate substitution of beneficiaries in labor certification cases, and (2) require that an I-140 Petition be filed within 45 days of labor certification approval. The DOL has proposed this rule in order to reduce fraud in the labor certification process. In addition, the proposal prohibits the sale or purchase of approved labor certification cases. It is believed that this proposal will become law in the near future. Our office will post any new information this proposal on our website at www.longchangonline.com.

**USCIS SERVICE CENTER DIRECTORS GIVEN THE POWER TO
DENY I-751 CASES WITHOUT INTERVIEW**

The need for filing a strong I-751 cases from the outset just got even stronger. In a memorandum dated January 30, 2006, the USCIS announced that Service Center Directors now have the power to deny I-751 cases without requiring an interview in cases where marriage fraud is suspected. As explained in our article titled "What It Means to be a Conditional Permanent Resident following Marriage to a U.S. Citizen" (posted online at www.longchangonline.com/Articles/E20050915-3.pdf), the I-751 is required to be filed by a conditional permanent resident before the expiration of the 2-year conditional green card.

The I-751 "Petition to Remove Conditions on Residence" is filed at one of the four USCIS Service Centers (Texas, California, Vermont or Nebraska) depending on where the I-751 Applicant lives. In the past, the Service Center Director could either approve the case without interview or refer the case to a local District Office (such as Charlotte, NC for applicants living in North Carolina). If marriage fraud is found, then the local office (after interviewing the I-751 applicant) could deny the I-751 Petition and terminate the Applicant's conditional resident status.

Under this new USCIS policy (effective as of January 30, 2006), if the Service Center Director suspects marriage fraud after reviewing the I-751 Petition, the Service Center Director can refer the case to the "Office of Fraud Detection and National Security" (a USCIS department which investigates immigration fraud). After investigating the case, if the "Office of Fraud Detection and National Security". If fraud is verified, then the Service Center will send a "Notice of Intent to Deny" listing its concerns about the case. If the Applicant does not satisfactorily address these concerns, then the Service Center can then deny the I-751 case without ever having an interview.

This new USCIS policy highlights two points of emphasis at the USCIS – (1) the concern over immigration fraud (which prompted the creation of an Office of Fraud Detection and National Security to examine suspected fraud), and (2) an attempt to decide cases more quickly and efficiently so that USCIS can meet its state goal of adjudicating all cases within 6 months by the end of this year. As a result, valid I-751 cases should be prepared accurately and documented thoroughly with evidence of the bona fide marriage since its inception.

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.



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Kristen Aekyung Chang is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.

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David J. Long founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.

Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy.



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Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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