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## Registered Nurses and Physical Therapists May Face Difficulties Next Year



BY: DAVID SWAIM  
MANAGING PARTNER

For many years registered nurses and physical therapists have enjoyed a tremendous advantage in the immigration process as opposed to other occupations. However, beginning in late 2006 or early 2007 this benefit may disappear.

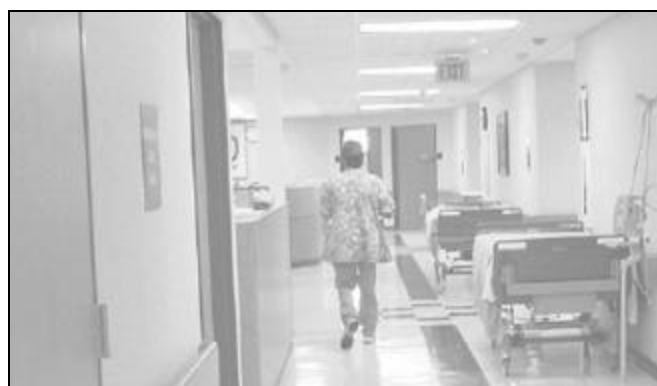
For most occupations, the process to obtain permanent residence requires three steps: a labor certification, an I-140 petition and adjustment of status. However, there are two occupations which are allowed to "skip" the labor certification process: registered nurses and physical therapists. This is referred to as the "Schedule A" exemption to labor certification requirement. Although a labor certification application must be prepared, it is not processed with the Department of Labor and is filed directly with the Immigration Service along with the I-140 petition and the adjustment of status application. In essence, these two occupations are allowed to file all three steps of the immigration process at the same time.

This is particularly important for registered nurses since they generally

do not qualify for H-1 status and therefore must file the entire permanent resident case during the one year of optional practical training after graduation. Once the three steps are filed, work and travel authorization is issued within ninety days which protects the registered nurse while the application for permanent residence is pending. Although physical therapists also get the benefit of the "Schedule A" filing procedures, it generally is not as difficult for them since they usually will qualify for H-1 status.

Another advantage to the "Schedule A" process is that there is a separate immigrant quota which currently has no backlog. In other words, we do not have to wait under the quota to file the third and final step of permanent residence like we do with most of the other employment based immigration classifications.

Unfortunately, the Department of State has recently stated that it anticipates the Schedule A quota will backlog



### INSIDE THIS ISSUE

APRIL 2006

**COVER** REGISTERED NURSES AND PHYSICAL THERAPISTS MAY FACE DIFFICULTIES NEXT YEAR  
BY DAVID SWAIM

**2** THE CHILD STATUS PROTECTION ACT: FOUR YEARS LATER  
BY MEGAN RAESNER

**4** THE FAST TRACK: THE DALLAS OFFICE OF RAPID ADJUSTMENT  
BY DILNAZ SALEEM

**5** ONE MORE THING BEFORE YOU GO  
BY SUJATA AJMERA

**6** CIS PROCESSING TIMES

**8** VISA AVAILABILITY BULLETIN

*Continued on page 3*

# THE CHILD STATUS PROTECTION ACT: FOUR YEARS LATER



BY: MEGAN RAESNER  
ATTORNEY AT LAW

Under the Immigration and Nationality Act, a "child" is defined as an unmarried person under 21 years of age. Prior to the passage of the Child Status Protection Act (CSPA), a child who was the beneficiary or derivative of a visa petition or an asylum/refugee application would have to be approved as a permanent resident before the child's 21st birthday. If the case was not complete before the child turned 21, then the child would "age out," thereby losing preferential status as a child and thus possible immigration benefits.

To mitigate the harsh reality of a severe delay in adjudication and a considerable visa backlog which caused children to "age out", on

August 6, 2002, Congress passed the CSPA, which allows certain individuals to retain the classification of "child," even if he or she has already turned 21. The CSPA applies to children of US citizens and Lawful Permanent Residents as well as derivative beneficiaries of asylum and refugee applications and derivative beneficiaries of family-based, employment-based, and diversity visas.

Depending on the type of case, the CSPA works to lock in a child's age at a date earlier in the adjudication process, rather than

relying on age at the time of adjudication. For children of US citizens, the child's age will be determined on the date on which the relative petition is filed, rather than when the adjustment of status application is actually adjudicated.

For the children of lawful permanent residents, including children who have been directly sponsored by their parents or children who are accompanying or following-to-join their parents as derivative beneficiaries,

their age will be determined by subtracting the number of days the visa petition (i.e. I-130 or I-140) was pending with the Immigration Service from the child's age at the time the visa becomes available. By way of a basic example, if an I-



Photo: courtesy of HUG Internationally, Inc.

130 was pending for four years, and the child is 22 when the visa is available, for purposes of the CSPA, that child will be considered to be 18-years old. That age will only lock in, however, if the child seeks an immigrant visa or files an adjustment of status application within one year of the visa becoming available.

The CSPA has now been around for nearly four years, and we have therefore been able to see these issues play out in practice. We remain very fortunate that this law is in

*Continued on page 3*

*TSA Welcomes  
Sujata Ajmera  
and  
Elvia Rodriguez*



Elvia Rodriguez recently joined Tidwell, Swaim & Associates as a paralegal. She graduated from the University of North Texas with a B.A. in Political Science. During

her time as an undergrad, Ms. Rodriguez was involved in local and national organizations. She re-charter and served as Council President for the League of United Latin American Citizens Young Adult Council, Student Government Association, Phi Alpha Delta Pre-law International Fraternity, Chapter President of Lambda Theta Alpha Latin Sorority, Inc., North Texas 40-Top forty leaders on campus, and many others. Ms. Rodriguez is fluent in Spanish and also has an educational background in International Studies.



Sujata Ajmera is an associate attorney with the firm. She attended the University of Texas at Austin where she graduated with honors and obtained a B.A. in both Economics and Government. Ms. Ajmera then attended the University of Texas at Austin School of Law where she received her J.D. in 2005. During her time in Austin, Ms. Ajmera was an associate editor of the Texas Intellectual Property Law Journal and a Texas Law Fellowship recipient. In addition, her legal experience includes clerkships at the Texas Civil Rights Project in Austin, Texas, and the Georgia Justice Project in Atlanta, Georgia.

*(Registered Nurses... Continued from page 1)*

either late in 2006 or early 2007. This means that there may be a significant waiting period between the filing of the labor certficatoin/I-140 petition and the ability to file the third and final step. Since the third step is the one that authorizes employment, this may have a significant impact on registered nurses.

Based on this information, it is imperative that registered nurses and physical therapists immediately take action to initiate the permanent resident process. This is particularly true for registered nurses since the ability to stay in the US after the optional practical training period expires may be eliminated if the Schedule A quota backlogs.

# The Fast Track: The Dallas Office of Rapid Adjustment

BY: DILNAZ SALEEM  
ATTORNEY AT LAW



## Introduction:

The Dallas Office of Rapid Adjustment, otherwise known as DORA, is a pilot program implemented by the Immigration Service which permits family-based green card applicants to file their applications and be evaluated for eligibility on the same day. This up front processing began in May 2004 with a goal of completing applications in less than 90 days of filing.

Prior to the implementation of DORA, visiting the local office for any immigration related matter was a long and tedious process. Long lines, increasing frustration and no guarantee that you would actually get to see an immigration offer eventually led to the installation of the DORA program. This relatively new program was designed to also improve Immigration Service's ability to concurrently process two forms within 90 days of filing: the I-130 Petition for Alien Relative, and the I-485, Application to Register Permanent Residence or Adjust Status.

## Eligibility for the Pilot Program:

Participation in the DORA pilot program is entirely voluntary and applicants have the option of using the regular process, whereby the I-130 and I-485 are submitted by mail to the appropriate Service Center. In order to participate in the DORA program, customers must meet one or more of the following criteria:

- The petition must be based on a family relationship (such as a United States citizen filing for their parents or a lawful permanent resident filing for a spouse);
- Diversity Visa Lottery winner; or
- Special Immigrant with an approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

## Participating in the Program:

Once it has been determined that the applicant falls within one of the above-mentioned categories, the next step is to schedule an appointment to file the application and be interviewed by an adjudications officer in the Dallas District Office.

All interviews are conducted at the District Office located at 3010 North Stemmons Freeway in Dallas. When you first arrive an Immigration Information Officer will review the application to make sure that the proper documents have been submitted.

## The Interview:

If your application for a green card is based on a family relationship, both the petitioner and the beneficiary must be present for the interview. The Adjudications Officer will review the application, conduct your interview, and determine if there is anything that may prevent the case from being adjudicated

within 90 days.

It is important for applicants to remember that the case will not be completed on the same date as your interview at the Dallas District Office. You must first meet all eligibility requirements and pass all security clearances before a decision will be mailed to you.

If your case cannot be completed within 90 days, Immigration Services will notify the applicant by either mail or email. The notice will state that the person has the option of filing for employment authorization and a travel document. Additionally, you may file an application for employment authorization or a travel document during the processing of your application if an emergency arises and you feel the need to apply for either.

## Which is Right for You? DORA vs. The Regular Process:

Although DORA cases seem to be adjudicated rather quickly and efficiently, there are some issues you want to consider before deciding if the pilot program is right for you.

For instance, the DORA system will not provide immigration benefits, such as employment authorization

*Continued on page 7*

# One More Thing Before You Go...



BY: SUJATA AJMERA  
ATTORNEY AT LAW

After years of filing forms, attending interviews, and waiting patiently for approval, the last thing a Lawful Permanent Resident (LPR) wants to hear from the Immigration Service is that she has not properly maintained her status and will lose her "Green Card." This is why it is so important for LPRs to understand exactly what is required of them by law in order to maintain their status, and eventually become eligible for naturalization.

So, what exactly are the legal requirements placed upon LPRs? There are many, but perhaps the most important thing to always keep in mind is that LPR status is only granted to those individuals who appear to want to remain in the United States indefinitely. This is why in order to become a citizen an LPR must usually maintain continuous residence in the United States for five consecutive years subsequent to the granting of her LPR status. This in no way implies that an

individual who has been granted LPR status is not allowed to leave the country for five years, or else risk losing her chances of becoming a United States Citizen. On the contrary, after being granted LPR status, an immigrant can travel freely without the burden of obtaining a Visa from the Citizenship and Immigration Service. That being said, there are some very important and specific limitations as to how long and how often an LPR can be absent from the United States and not be deemed to have abandoned her permanent residency.

First, an LPR should always keep her Green Card with her, especially when she travels. With her Green Card in tow, leaving the country is usually not a complicated matter. Upon her return, however,

an LPR must demonstrate that she is legally allowed to re-enter. A Green Card can be used to do this if the LPR is returning to an unrelinquished, physical place of residence and has not been absent from the country for over one year. Both of these requirements are placed upon an LPR and it is important to remember this when making travel plans.

The unbending fact is that both of the above requirements are necessary to successfully re-enter the country. So, even if an LPR travels to the United States a few times a year using her Green Card, she can still be deemed to have abandoned her residency if the Department of Homeland

Security (DHS) determines that she does not actually physically reside in the Country. In the reverse, if an LPR continuously maintains a physical residence within the United States, but is out of the country for over a year, DHS may then decide that her LPR status has been abandoned.

It is important to note that in any scenario DHS can make its own case specific determination as to whether or not LPR status has really been abandoned. In fact, DHS can always inquire as to whether or not a Green Card Holder has abandoned her residency. They can refuse to allow an LPR back into the country if they feel the conditions of her residency have not been properly maintained. In such a scenario, the LPR will be placed in removal proceedings in order to determine her admissibility. This is clearly not a situation that an LPR would like to find herself in, and as such she should always remember that having LPR status does not guarantee the permanency of her residence.

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*"...it is so important for LPRs to understand exactly what is required of them by law in order to maintain their status..."*

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*Continued on page 7*

*(Child Status Protection...Continued from page 2)*

place, as the CSPA has benefited many of our clients who would otherwise have lost all hopes of acquiring immigration benefits.

However, with the recent retrogression of employment-based visas, and considering the lightening speed at which the Immigration Service is now adjudicating I-140s, several years may pass between the I-140 adjudication and a visa becoming available. We anticipate that we will soon see problems with children not being protected under the CSPA because the I-140 was simply not pending long enough to subtract any meaningful time from their age once the visa does become available.

Over the last few years, we have also witnessed alternatives to the CSPA. If a child is unable to qualify under the CSPA, there are other possibilities that might protect the child's case. First, if the child of a US citizen or permanent resident files for adjustment of status and then turns 21 while that application is pending, the child's preference category will change, likely resulting in a backlogged priority date. However, as long as the visa was available at the time of filing, the Immigration Service will hold the adjustment of status application in abeyance until the visa number becomes current under the new preference category. The child, while not protected under the CSPA, will still be eligible for work and possibly travel authorization while the case is in abeyance, and the Immigration Service will adjudicate the case once the priority date becomes current for the new preference category.

In addition, while only moderately successful, it is possible to request that the Immigration Service expedite the adjudication of an application for adjustment of status or that the Department of State expedite the issuance of an immigrant visa for those individuals who are about to turn 21. Such a request is completely within the discretion of the agency and is not guaranteed.

Because of the highly detailed and complex nature of the CSPA, contacting an attorney is highly recommended if you have any questions or concerns about "aging out" or the applicability of the CSPA for your particular situation.

## Citizenship and Immigration Services (CIS) Processing Times

### CALIFORNIA SERVICE CENTER AS OF MARCH 7, 2006

I-140 - 09/27/2005  
I-485 - 06/16/2005  
I-765 - 12/25/2005  
I-131 - 01/16/2006  
I-129 - 12/31/2005

### NEBRASKA SERVICE CENTER AS OF MARCH 7, 2006

I-140 - 08/16/2005  
I-485 - 06/30/2005  
I-765 - 01/09/2006  
I-131 - 01/09/2006  
I-129 - 12/22/2005

### NATIONAL BENEFITS CENTER AS OF MARCH 7, 2006

I-129F - 01/30/2006  
I-175 - 01/19/2006  
I-131 - 01/25/2006

### TEXAS SERVICE CENTER AS OF MARCH 7, 2006

I-140 - 12/27/2005  
I-485 - 09/05/2005  
I-765 - 01/27/2006  
I-131 - 01/23/2006  
I-129 - 12/27/2005

### VERMONT SERVICE CENTER AS OF MARCH 7, 2006

I-140 - 11/12/2005  
I-485 - 02/05/2006  
I-765 - 12/31/2005  
I-131 - 12/24/2005  
I-129 - 12/10/2005

*One More Thing...Continued from page 5*

The best advice for frequent travelers who hold LPR status is to make sure their visits abroad are for relatively short periods of time. These short visits will be considered as being temporary visits abroad if the LPR shows she always intended to come back. An LPR can prove her intent to return by making reference to all of the everyday things that tie her to the United States. For example, family ties, assets, residential property, and occupational commitments are all things that can be used to show that she always objectively intended to permanently reside in the United States. Other situations will also be considered, for example, if an LPR leaves the country to care for an ill relative, such an extended absence may be deemed as temporary if the LPR returned immediately after such an illness was cured or ended. Other types of "events" that have a point of termination will be similarly analyzed by DHS. They will always be interested to know how soon after the termination of the event did the LPR return to the United States. The traveling LPR should always keep these issues in mind when making travel plans.

There are, of course, other requirements that must be met in order for an LPR to maintain her status. For example, an LPR can be deported if she commits certain crimes of a drug related nature, or that are deemed to be crimes of moral turpitude. An LPR also has to pay annual federal and state taxes, as does any other citizen in the United States, or be subject to criminal penalties. The benefits of maintaining LPR status are well worth the conscious effort such maintenance requires. LPRs are afforded almost every Constitutional right that U.S. Citizens enjoy. They have the same First Amendment rights and are guaranteed full due process of the law. Eventually, an LPR who has not abandoned her status can obtain her citizenship and become one of many Naturalized Americans who will enjoy all of the rights and freedoms guaranteed to U.S. Citizens for the remainder of their lives.

*The Fast Track...Continued from page 4*

(Form I-765) or a travel document (I-131) unless your application for adjustment of status has been pending for over ninety days. Applications for employment authorization and travel documents may be filed concurrently through the regular process.

Additionally, the DORA program was implemented to adjudicate cases that are, for the most part, relatively straight forward. The point of the program is to not only decrease the backlog of pending adjustment applications, but to also help those who have simple cases to receive their green card more rapidly than the regular process. If a case has more complicated issues such as criminal convictions, false use of documentation for immigration purposes, or illegal entry into the United States, then it is advisable to file via the regular process.

According to the Ombudsman's Annual Report to Congress for 2004-05, approximately 58% of all cases are actually being adjudicated within a 90 day period. It is important to remember that there is no guarantee that your case will actually be decided within 90 days.

**Conclusion:**

A reduction in long lines and waiting times is one positive result of the new DORA program. Speedier adjudication of adjustment applications is another. Instead of having people line up many hours before the opening of the agency's local office, this system allows applicants to select a time for an appointment. This system, however, is not for everyone, and its important to make sure that DORA is right for you before using this as a means to obtain immigration benefits or a green card.

## Visa Availability Bulletin

### APRIL 2006

	<i>All Chargeability Areas Except those Listed</i>	<i>China Mainland Born</i>	<i>India</i>	<i>Mexico</i>	<i>Philippines</i>
<b><i>Family Preferences</i></b>					
1st	04.22.01	04.22.01	04.22.01	08.08.94	08.22.91
2A (Exempt from per country limit)	03.01.02	03.01.02	03.01.02	06.15.99	03.01.02
2B	07.15.96	07.15.96	07.15.96	02.15.92	07.08.96
3rd	07.22.98	07.22.98	07.22.98	01.01.95	02.08.91
4th	11.08.94	11.08.94	04.01.94	08.15.93	10.08.83
<b><i>Employment Preferences</i></b>					
1st	C	01.01.04	01.01.05	C	C
2nd	C	01.01.03	07.01.02	C	C
3rd	05.01.01	05.01.01	02.01.01	04.08.01	05.01.01
4th	C	C	C	C	C
Schedule A Workers	C	C	C	C	C
Other Workers	10.01.01	10.01.01	10.01.01	10.01.01	10.01.01
Certain Religious Worker	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas	C	C	C	C	C

**Call 972-385-7900 for appointment**

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