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Immigration eNews

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ICE No-Match Regulation

The final "No-Match" regulation of the Immigration and Customs Enforcement (ICE) agency of the Department of Homeland Security (DHS) was to become effective on September 14, 2007 but an order by a federal judge placed the implementation of the rule on hold, temporarily blocking the government from implementing this rule at least until October 1, 2007. Yesterday, the judge extended the stay for an additional period of up to 10 days. The judge's order also specifically blocks no-match letters from being sent out during the stay. Although the future of this rule is uncertain due to the opposition it faces from labor organizations and the Small Business Association (SBA) and its advocates, the rule would expand the definition of employers' "constructive knowledge" of unauthorized employment.

According to the controversial DHS rule, "constructive knowledge" may be implied when employer fails to take reasonable steps to address three situations: (1) when employee requests immigration-related sponsorship from the employer; (2) when employer receives a "No-Match" letter from the Social Security Administration (SSA); and (3) when employer receives a notice from the DHS (usually after an I-9 audit) that an employee's employment

authorization documents do not match DHS records. While certain actions of employers may amount to “reasonable steps,” the rule provides the protocol to be followed which may provide employers with "safe harbor" from a finding of constructive knowledge in the event of a civil or criminal investigation.

As mentioned above, the rule provoked much resistance from the business community, including the SBA, a federal office that advocates on behalf of small businesses, raising the issues of high costs of compliance, particularly for small businesses. Labor and civil rights organizations have opposed the rule stating that it gives those employers who historically used SSA 'no-match' letters to exploit workers a better excuse for continuing such behavior.

A lawsuit, blocking the rule’s implementation, was filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the American Civil Liberties Union, the National Immigration Law Center (NILC) and a number of other organizations. In its letter to the Secretary of the DHS, Michael Chertoff, SBA stated that the organization is prepared to join the lawsuit to stop the rule. A federal judge issued an order temporarily blocking the government from implementing this rule at least until October 1, 2007, when a hearing regarding a permanent bar to implementation will take place.

Reminder-Temporary WHTI Travel Accommodation Ended September 30, 2007

The temporary Western Hemisphere Travel Initiative (WHTI) accommodation allowing U.S. citizens to travel by air within the Western Hemisphere using a Department of State (DOS) official proof of passport application receipt ended at midnight on September 30, 2007. U.S. citizens who left the United States under this travel accommodation prior to October 1, 2007 with a DOS official proof of passport application receipt and government issued identification, will be readmitted to the United States with these same documents if returning to the United States after September 30, 2007.

Effective October 1, 2007, U.S. citizens traveling by air to Canada, the Caribbean, Bermuda and Mexico must present a passport or other WHTI-compliant documentation to enter or depart from the United States. U.S. citizens should always verify the specific documentary requirements for this destination country. For more information about WHTI approval travel documentation, please visit the Department of Homeland Security’s website at www.dhs.gov.

Backlog Eliminated by DOL

The U.S. Department of Labor announced yesterday that the permanent foreign labor certification program's backlog has been eliminated, with nearly 99 percent of cases completed and the remainder awaiting responses from employers. For almost three years, more than 300 workers in two processing centers reviewed approximately 363,000 pending labor applications, a backlog created as a result of legislative changes in 1997 and 2000.

El Salvador TPS Extended

The designation of El Salvador for temporary protected status (TPS) has been extended for 18 months to March 9, 2009, from its prior expiration date of September 9, 2007. A recently issued United States Citizenship and Immigration Services' notice automatically extends the validity of Employment Authorization Documents (EADs) issued under the TPS designation for six months, through March 9, 2008. An EAD that has been automatically extended for six months by the USCIS' notice through March 9, 2008, will bear the notation "A-12" or "C-19" on the face of the card under "Category" and either: 1) have an expiration date of July 5, 2006, or September 9, 2006 on the face of the card, and a September 2007 Department of Homeland Security issued extension sticker on the back; or (2) have an expiration date of September 30, 2007 on the face of the card. New EADs with the March 9, 2008 expiration date of the six-month automatic extension will not be issued.

New EADs with the March 9, 2009 expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for an EAD. The 60 day re-registration period will remain in effect until October 22, 2007. To facilitate processing of applications, applicants are encouraged to file as soon as possible.

USCIS Proposes Replacement of Green Cards Without Expiration Dates

The United States Customs and Immigration Services (USCIS) recently made a proposal that would require virtually 750,000 lawful permanent residents possessing green cards without an expiration date to replace their current cards. The proposed rule would require lawful permanent residents to apply for a new Permanent Resident Card (Form I-551), referred to as a green card, during a 120 day filing period. In August 1989, the former Immigration and Naturalization Service began issuing new cards with a 10 year expiration date. Between 1979 and 1989, however, the cards were issued without expiration dates. These 1979-1989 issued cards are the cards that are the subject of the proposed rule. Under the proposed rule, affected lawful permanent residents would file an Application to Replace Lawful Permanent Residence Card (Form I-90) with the USCIS (the Form I-90 requires applicants to provide current biographic and biometric information, as well as to pay a filing fee of \$370.00). Further, under the proposed rule, the USCIS would be able to terminate permanent resident cards without an expiration date via notice in the Federal Register. The USCIS has indicated that the change would allow them to issue more secure permanent resident cards, update cardholder information, conduct background checks, and electronically store applicants' fingerprint and photographic information.

Visa Bulletin for October 2007

The Immigration and Nationality Act (INA) sets an annual minimum for both family-based and employment-based immigrant visas ("green cards"), prescribed by categories and per-country limits. A prospective immigrant can apply to become a permanent resident only when a visa number is available in his/her respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers, listing the cut-off priority. Only applicants who

have a priority date earlier than the cut-off date may be allotted a number.

The complete Visa Bulletin for October 2007 is available at the Department of State's website at http://travel.state.gov/visa/frvi/bulletin/bulletin_3800.html. Below is an excerpt from the October 2007 Visa Bulletin pertaining to the employment-based categories.

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Employment -Based					
1st	C	C	C	C	C
2nd	C	01JAN06	01APR04	C	C
3rd	01AUG02	01SEP01	22APR01	22APR01	01AUG02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

USCIS Provides Update on Receipt Issuance

Due to a tremendous increase in the number of applications filed, processing of fee payments and entry of cases into the U.S. Citizenship and Immigration Services (USCIS) tracking system is behind schedule. As a result, the USCIS' issuance of receipt notices has been delayed. The USCIS continues to honor the actual date that an application was received in their mailrooms as the official "Receipt Date" and this date is being reflected on Forms I-797, Notice of Action (receipt notices). It should be noted that the USCIS continues to process Premium Processing Service requests within 15 days.

Until this situation is resolved, the USCIS provides weekly updates on the progress of receipt issuing. Below is the most recent update, as of September 28, 2007.

California Service Center

Form Number	Date Received
I-130	8/19/2007
N-400	7/30/2007
All Other Forms	9/13/2007

Vermont Service Center

Form Number	Date Received
I-130	7/29/2007
N-400	7/25/2007
All Other Forms	9/11/2007

Nebraska Service Center

Form Number	Date Received
I-131	8/13/2007
I-140	8/13/2007
I-485 (Employment based)	8/13/2007
I-765	8/13/2007
N-400	7/29/2007
All Other Forms	8/05/2007

Texas Service Center

Form Number	Date Received
I-131	8/01/2007
I-140	8/13/2007
I-140 (concurrently filed with I-485)	8/01/2007
I-485 (Employment based)	8/01/2007
I-765	8/01/2007
N-400	7/18/2007
All Other Forms	9/19/2007

USCIS Lockbox

Form Number	Date Received
TPS	9/02/2007

2009 Diversity Visa Lottery

The Diversity Immigrant Visa Lottery under the Immigration and Nationality Act of 1997 provides 50,000 immigrant visas each fiscal year to natives of countries from which immigration has been low over the preceding five years. Anyone who is selected under this lottery will be given the opportunity to apply for permanent residence. If permanent residence is granted, then the individual will be authorized to live and work permanently in the United States, as well as to bring his/her spouse and minor children to the United States. Foreign national employees should be made aware of this opportunity immediately, as registration for the 2009 Visa Lottery begins on October 3, 2007.

When to Apply

The registration period for the 2009 Visa Lottery opens at noon EDT on October 3, 2007, and ends at noon EST on December 2, 2007. The registration is done electronically at the U.S. Department of State's website at www.dvlottery.state.gov.

Who Can Apply

The 2009 Visa Lottery is open to natives of most countries, except the following "high admission" countries that are excluded this year: Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

In most cases, to be a native of the country means to have been born in that country. However, there are limited circumstances when an otherwise ineligible person may claim eligibility through the native country of a spouse or a parent. For detailed instructions and to view the complete list of eligible and ineligible countries, please refer to the Department of State's website at <http://travel.state.gov/pdf/2009DVInstructions.pdf>.

The 2009 Visa Lottery also requires that applicants must possess either a high school education or its equivalent, or two years of experience in a qualified occupation. Please refer to the instructions to the 2009 Diversity Visa Lottery for the guidance for determining the qualified occupations <http://travel.state.gov/pdf/2009DVInstructions.pdf> or the Department of State's

website at http://travel.state.gov/visa/immigrants/types/types_1319.html.

A successful applicant's spouse and unmarried children under the age of 21 are automatically entitled to the same status. Additionally, if otherwise eligible, a husband and wife may each submit a visa lottery application.

Selection

Applicants will be selected at random from all qualified entries. The selected applicants will be notified by mail between May and July 2008, and will be provided further instructions. In order to actually receive a visa, the selected applicants must still meet all eligibility requirements under U.S. law.

How to Apply

The registration is done electronically at the U.S. Department of State's website at <http://www.dvlottery.state.gov>. Paper entries will not be accepted.

Only one application may be submitted for each applicant. Submission of more than one application will disqualify the applicant from registration.

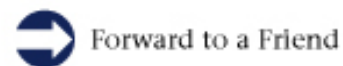
At the time of registration, the applicant must be prepared to submit an electronic file containing his or her digital photo image that conforms to specific parameters indicated in the instructions to the 2009 Visa Lottery at <http://travel.state.gov/pdf/2009DVInstructions.pdf>.

There is no fee to enter the 2009 Visa Lottery program. The Department of State does not endorse, recommend or sponsor any information or material from outside entities. The Department alerts that there have been many websites and emails masquerading as official diversity visa lottery facilitators, but the Department continues to emphasize that the registration is done through the official U.S. government website at www.dvlottery.state.gov, that there is no fee charged, and that the notification of winning entries are sent by mail only.

Complete instructions for the 2009 Visa Lottery can be found at the U.S. Department of State's website at:

- Diversity Visa Program - Overview http://travel.state.gov/visa/immigrants/types/types_1322.html
- 2009 Diversity Visa Lottery Instructions <http://travel.state.gov/pdf/2009DVInstructions.pdf>
- Occupations Requiring at Least Two Years of Training or Experience to Perform http://travel.state.gov/visa/immigrants/types/types_1319.html

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