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Immigration eNews

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Home for the Holidays

Foreign national employees working in the U.S. on temporary nonimmigrant visas who intend to leave the U.S. and then return should make sure they bring with them certain very important documents, including their original Form I-797, Notice of Action, which is the U.S. Citizenship and Immigration Service's notice approving their nonimmigrant status (unless they have status under a Blanket L petition); a copy of the approved I-129 petition, including all of its supporting documents; a letter from their current employer confirming their employment, salary and job title (job title should match the I-129 petition); their most recent pay statements from their employer; and a passport, valid for at least six months beyond the anticipated time of entry to the U.S. Employees should also verify they have a valid visa in their passport (Canadian nationals are not required to have visas).

If an employee needs to apply for a visa at a U.S. Embassy/Consulate while outside of the U.S., he/she should check with the U.S. Embassy/Consulate as soon as possible for available appointments and the necessary forms, fees and photo requirements. Employees should expect possible delays due to a high volume of applications and required security checks. Employees in the green card process may be able to travel using their Advance Parole documents in lieu of a visa. Employees in H or L status who do not have Advance Parole and who are in the green card process with a pending Form I-485, Application to Adjust Status to Permanent Resident, may be able to travel using a valid H or L visa. Although new guidance no longer requires the affirmative presentation of the Form I-485 receipt to U.S. immigration authorities, we would suggest that employees still carry this receipt with them when traveling as this updated policy is still new.

Immigration and Consular officers have the discretion to ask for further documents so travel plans should be flexible.

Social Security No-Match Rule Suspended

The Bush administration has suspended its legal defense of the Social Security No-Match rule issued in August 2007. A lawsuit, blocking the rule's implementation, was filed by the American Federation of Labor and Congress of Industrial Organizations, the American Civil Liberties Union, the National Immigration Law Center and a number of other organizations. A federal judge had issued orders temporarily blocking the government from implementing the Social Security No-Match rule on several occasions prior to the Bush administration concession.

The Bush administration plans to revise the rule to try to meet concerns raised by the federal judge and issue it again by late March 2008.

The rule at issue was a regulation of the Immigration and Customs Enforcement agency of the Department of Homeland Security (DHS) which was to become effective on September 14, 2007. 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; 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 provided 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.

Employers Must Use New I-9 Form by December 26th

The U.S. Citizenship and Immigration Services (USCIS) has announced that employers must transition to the revised Employment Eligibility Verification Form (I-9) no later than December 26, 2007. Effective December 26, 2007, employers who fail to use the revised form will be subject to applicable penalties.

Both the revised form and the "Handbook for Employers, Instructions for Completing the Form I-9" are available online at <http://www.uscis.gov/files/nativedocuments/m-274.pdf> in addition, the related USCIS fact sheet which details the changes is available at <http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf> To order forms, call USCIS toll-free at (800) 870-3676.

Changes in FBI Name Check Clearance Process

According to the American Immigration Lawyer's Association, the USCIS and the FBI are changing certain parts of the name check process, with the expected result that a large portion of the backlog of pending checks should be cleared within six months. This change could result in many long delayed adjustment of status (I-485) cases being processed.

Airports/Border Crossings Will Collect Fingerprints, All 10

Foreign-born visitors coming to the U.S. will soon be required to have 10 fingerprints scanned as part of a new government anti-terrorist effort, according to the Department Homeland Security (DHS).

The plan for U.S. Customs officers to collect more biometric information from visitors is one phase of an upgrade to a border-security program put in place after 9/11. The security program, called U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT), aims to give government officials increased data regarding who is coming into the country and to catch people with fraudulent documents. Collecting 10 prints will also allow officials to more easily compare the fingerprints with those collected overseas by other government agencies, such as the U.S. Department of Defense and the U.S. Department of State.

Visitors were previously required to have just two of their fingers scanned when they arrived at a checkpoint. Upgrading the system to provide for all 10 fingerprints will allow for a more thorough background check for visitors. Mexican nationals who use government-issued border-crossing cards and most Canadian nationals are exempt from US-VISIT. In addition, people older than 79 and children younger than 14 do not have to be fingerprinted.

Ten-print scanning will begin this week at Washington Dulles International Airport in Virginia. By March, nine more major airports will join the program. DHS says it will be in place at every airport in the USA by the end of 2008. It also will be phased in at land borders and seaports. About 35 million travelers a year could be affected by the new U.S. visit policy.

Increased PERM Audits

Over the last few months, practitioners and their clients have noticed a dramatic increase in the audits of their PERM labor certification applications by the U.S. Department of Labor (DOL).

There appear to be two types of audits being issued by the DOL. The first type of audit appears to be a randomly generated audit and follows the same format each time it is issued. Employers are requested to respond to the audit by providing copies of the documentation evidencing recruitment was done in accordance with the regulations (the legal notice, the prevailing wage determination and other documentation of advertising done in support of the PERM application).

The second type of audit appears to be targeted more to those applications that may trigger an audit. Audit triggers might include 1) a foreign language requirement or 2) jobs with requirements that exceed the normal minimum requirements set forth by DOL and/or 3) applicants who have gained any of the required experience with their sponsoring employer. For these audits, in addition to requesting a copy of the recruitment and supporting documents, DOL is also requesting evidence/explanation of the business necessity for the requirement that triggered the audit.

Advisory on Processing Times

During the summer months, the USCIS received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, the USCIS received 1.4 million applications for naturalization; nearly double the volume it received the year before to address this workload. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees.

As a result, average processing times for certain application types may grow longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

The USCIS has several informational services to keep petitioners/beneficiaries apprised of the agency's progress. It encourages people to take advantage of the information posted on its website and to create and monitor case profiles in its Case Status Online system to properly track cases. The link to the Case Status Online is

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=67257de128ce5110VgnVCM1000004718190aRt>

Visa Bulletin for December 2007

The Immigration and Nationality Act 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 December 2007 is available at the Department of State's website at

http://travel.state.gov/visa/frvi/bulletin/bulletin_3841.htm Below is an excerpt from the December 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	01JAN03	01JAN02	C	C
3rd	01 SEP02	15OCT01	01MAY01	22APR01	01SEP02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C

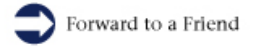
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas Regional Centers	C	C	C	C	C

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