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## Immigration Legal Update

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### **USCIS announces the increase of the TN period of stay to 3 years**

On October 14, 2008, the USCIS announced a final rule increasing the period of stay for the TN nonimmigrant category (Trade-NAFTA professional workers from Canada and Mexico). The rule changes the initial period of admission for TN workers from one to three years, making it equal to the initial period of admission given to H-1B professional workers. Eligible TN nonimmigrants may now be allowed to receive extensions of stay in increments of up to three years instead of the prior maximum period of stay of one year.

The TN nonimmigrant classification is a visa category available to eligible Mexicans and Canadians with at least a bachelor's degree or appropriate professional credentials who work in certain qualified fields pursuant to the North American Free Trade Agreement (NAFTA). Qualified professions identified within NAFTA include, but are not limited to, accountants, engineers, attorneys, pharmacists, scientists, and teachers.

According to the USCIS, this final rule will ease administrative burdens and costs for TN workers. It will also benefit U.S. employers by increasing the amount of time TN nonimmigrants will be able to work for them before having to seek an extension of status. Spouses and unmarried minor children of TN nonimmigrants in their corresponding nonimmigrant classifications will also benefit from the new regulation.

The rule became effective upon its publication in the Federal Register on October 16, 2008.

### **Extension of the Federal Conrad 30 Program**

On October 8, 2008, President Bush signed into law an act that serves as an extension of the Federal Conrad 30 Program through 03/06/09. The signed act expands the flexibility of the Conrad 30 Program, extending it for an additional 5 years.

The general aim of the Conrad 30 Program is to promote the delivery of critically needed medical services to people in the United States lacking adequate access to physician care. This includes the vulnerable populations in low-income and impoverished communities, communities with high infant mortality rates, and communities exhibiting other signs of a lack of necessary physician services. The Federal Conrad 30 Program allows international medical graduates to obtain waivers of the two-year foreign country residence requirement under section 212(e) of the Immigration and Nationality Act if they commit to working in a designated medically underserved area for at least three years.

### **Department of State now requires certification of certain foreign health care workers**

Most foreign clinical health care workers (excluding physicians) now need to present certificates establishing competency in a specific health care field when obtaining their visas to enter the U.S. The certificate is issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or other credentialing organizations that have been approved by the Secretary of Department of Homeland Security (DHS) in consultation with the Secretary of Health and Human Services (HHS). This rule facilitates greater uniformity between the regulations of DHS and the Department of State.

A foreign national who seeks to enter the United States to work as a health care worker must present to the consular officer a certificate from the CGFNS or a DHS-approved independent credentialing organization confirming that the person's education, training, license, and experience meet all regulatory requirements, are comparable with those required for an American health care worker, are authentic and, in case of a license, that the license is unencumbered. The certificate must also attest that the foreign national has the appropriate level of competence in oral and written English. Finally, the certificate must confirm that the foreign national passed an appropriate test or a certification exam recognized by the majority of the states, if applicable.

This rule will become effective upon its publication in the Federal Register.

#### **USCIS conducts H-1B fraud and compliance assessment**

Recently, the Office of Fraud Detection and National Security (FDNS), in collaboration with the USCIS's other divisions, completed a report summarizing the results of the Benefit Fraud and Compliance Assessment (BFCA) Program, which involved a random review of H-1B cases for fraud and technical violations. The entire scope of the H-1B program was simultaneously analyzed for fraud vulnerabilities and customer compliance. The BFCA Program involved internal and external queries by the FDNS verifying information provided in the H-1B petitions to validate claimed relationships, employment, qualifications, existence of petitioning company, and other pertinent information. The queries included domestic site visits, interviews with petitioners and employees, and overseas verifications. The H-1B BFCA Program focused on petitions that sought extension or change of status for beneficiaries already in the U.S.

For the purposes of this Program, the petitions were reviewed for fraud (willful misrepresentation, falsification or omission of a material fact), as well as for technical violations (for example, deduction of H-1B filing fees from employees' wages thus lowering the wage to less than the required prevailing wage, employment in a geographical area not covered by the Labor Condition Application (LCA), benching of H-1B employees). The USCIS took a comprehensive look at all aspects of a particular filing, beginning with the filing of the LCA with the Department of Labor through the entire time the beneficiary was in H-1B nonimmigrant status.

Overall, during the sample review conducted by the BFCA Program, a 20.7 percent violation rate was found, consisting of 13.4 percent fraud and 7.3 percent technical violations. As to the discovery methods of the violations, 80 percent were uncovered during site visits, 12 percent were uncovered in cases being investigated by the Immigration and Customs Enforcement (ICE) agency, and 8 percent were uncovered by overseas verifications and file/database reviews.

The types of misrepresentations and violations uncovered through the BFCA were as follows:

- Businesses did not exist, or were storefront/shell businesses, or were unable to support the number of employees claimed.
- Fraudulent documents were submitted, including educational degrees and/or experience letters.
- Signatures had been forged on supporting documentation.
- Beneficiaries were performing duties that were significantly different from those described on the LCA and the I-129 Petition for Nonimmigrant Worker (in one case, the beneficiary who was described to hold a position of a business development analyst was working in a laundromat doing laundry and maintaining washing machines).
- Job locations were not listed on the H-1B petition.
- Beneficiaries were not receiving the prevailing wage (either by receiving lower wage, by being "benched" without pay, or by employer deducting H-1B filing fees from the beneficiary's salary dropping it below the prevailing wage).
- Misrepresentations of H-1B status (for example, beneficiaries reentered the U.S. as H-1B after they had quit or had been terminated from their jobs, or the beneficiary ported to a new H-1B employer and started working without that employer filing a new H-1B petition).
- Employees had paid certain portion of the H-1B filing fee, which is prohibited by the H-1B regulations.

#### **New Privacy Law in Connecticut**

Effective October 1, 2008, a new law went into effect in Connecticut that requires anyone in possession of personal information regarding another person to safeguard the data, including computer files and documents containing such information, from misuse by third parties. The law also requires the keeper of the information to destroy, erase, or make unreadable such data prior to disposal.

In addition, anyone who collects Social Security numbers in the course of business must create a privacy protection policy that must be published or publically displayed, including posting on the Internet. Such policy must protect the confidentiality, prohibit unlawful disclosure of, and limit access to Social Security numbers.

For the purposes of this rule, "personal information" includes, but is not limited to, Social Security numbers, driver's license numbers, state identification card numbers, account numbers, credit/debit card numbers, passport numbers, alien registration numbers, or health insurance identification numbers. It does not include publicly available information from federal, state, or local governmental records or widely distributed media.

Many employers, especially their human resources departments, are usually in possession of such information and must take the necessary steps to protect the personal data in compliance with the new law. Violations of this rule may result in civil penalties.

#### **USCIS Announces 18-Month Extension of Temporary Protected Status for Nationals of Honduras, El Salvador, and Nicaragua; No Automatic Extensions of Employment Authorization Documents**

*Honduras and Nicaragua* Temporary Protected Status (TPS) has been extended for nationals of Honduras and Nicaragua from its current expiration date of January 5, 2009, through July 5, 2010. Importantly, unlike the prior extension of TPS for Honduras and Nicaragua, this notice does not automatically extend previously issued Employment Authorization Documents (EADs). Eligible TPS beneficiaries must apply to the USCIS for extensions of their EADs and pay the required application fee for such extensions during the 60-day registration period from October 1, 2008, through December 1, 2008. Reregistration is limited to persons who have previously registered with USCIS for TPS under the designation of Honduras or Nicaragua and whose

applications have been granted by or remain pending with the USCIS. Certain nationals of Honduras or Nicaragua (or aliens having no nationality who last habitually resided in Honduras or Nicaragua) who have not previously applied to the USCIS for TPS may be eligible to apply under the late initial registration provisions. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on October 1, 2008.

*El Salvador:* TPS has been extended for nationals of El Salvador from its current expiration date of March 9, 2009 through September 9, 2010. Importantly, unlike the prior extension of TPS for El Salvador, this Notice does not automatically extend previously issued employment authorization documents (EADs). Eligible TPS beneficiaries must apply to the USCIS for extensions of their EADs, and pay the required application fee for such extensions, during the 90-day registration period from October 1, 2008 through December 30, 2008. Re-registration is limited to persons who have previously registered with the USCIS for TPS under the designation of El Salvador and whose applications have been granted by or remain pending with the USCIS. Certain nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have not previously applied to the USCIS for TPS may be eligible to apply under the late initial registration provisions. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 90-day re-registration period beginning on October 1, 2008.

**Visa Waiver Program to be expanded to seven more countries**

On October 17, 2008, President Bush announced that seven countries - the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea - have met the requirements to be admitted to the United States Visa Waiver Program. The President announced that the citizens of these nations will soon be able to travel to the United States for business or tourism without a visa. All of these nations allow American citizens to travel to their countries visa-free, and the discussions have been held to allow reciprocity between the U.S. and these countries. In the last couple of years, the U.S. Visa Waiver Program was modernized with increased security measures, with the goal to expand visa-free travel opportunities. As part of the Visa Waiver Program, countries wishing to participate in the Visa Waiver Program must agree that they will share security information and ensure that their citizens will use a new system that requires travelers to register online ahead of their visits to the United States. Also, these citizens will travel to the United States without a visa only if they have tamper-proof biometric passports. Earlier this year, the U.S. signed Visa Waiver Agreements with the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea, which required the countries to undertake a number of steps of compliance. As announced by President Bush, the requirements have now been met and the citizens of these countries will soon be able to benefit from traveling to the U.S. visa-free as tourists or on certain business trips.

**New Editions of Change of Address Forms (AR-11 and AR-11SR)**

USCIS posted new editions of Form AR-11, Change of Address, and Form AR-11SR, Alien's Change of Address Card, to its web site. Previous editions are also being accepted. Form AR-11 is used to report the change of address of an alien in the United States. Form AR-11SR is used to report the change of address of an alien subject to special registration requirements.

The law requires nearly all non-U.S. Citizens, including U.S. permanent residents, to report a change of address within 10 days of such change. Abiding by these legal requirements and completing the necessary forms does not update an address on any applications or petitions pending with USCIS. Noncitizens with pending cases must do both. Filing of AR-11 can be done online at <http://www.uscis.gov/ar-11>

**Visa Bulletin for November 2008**

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 cutoff priority. Only applicants who have a priority date earlier than the cutoff date may be allotted a number.

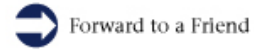
The complete Visa Bulletin is available at the Department of State's web site at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4371.htm](http://travel.state.gov/visa/frvi/bulletin/bulletin_4371.htm) Below is an excerpt from the November 2008 Visa Bulletin pertaining to the employment-based categories.

	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01JUN04	01JUN03	C	C
3rd	01MAY05	01FEB02	01OCT01	01SEP02	01MAY05
Other Workers	15JAN03	15JAN03	15JAN03	15JAN03	15JAN03
4th	C	C	C	C	C
Certain Religious Workers	U	U	U	U	U
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

"C" - current "U" - unavailable

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