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# ROSNER, ORTMAN & MOSS

COUNSEL FOR IMMIGRATION PARTNERS

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## Immigration Law Update

### Current Developments in Immigration

#### Greetings!

*This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.*

### **It's H-1B Cap Season! (The Most Wonderful Time of the Year)**

Once again, it's that time of year. You're in the thick of first-quarter goals, the peak of flu season, and battling weather delays. If you're an employer who relies at all on the talent of foreign workers, you're also planning ahead for FY2017 employment.

United States Citizenship & Immigration Services ("USCIS") will start accepting new H-1B petitions for the next fiscal year on Friday, April 1, 2016. Employers seeking to secure H-1B status for foreign workers should plan to start the process as soon as possible to increase the likelihood of obtaining an H-1B visa number.

The statute allows for issuance of 65,000 H-1B visas each fiscal year, with an additional 20,000 available to beneficiaries who hold a U.S. Master's degree. As demonstrated by the lottery system that USCIS has utilized over the last two years, this number is far short of what U.S. employers need. Indeed, last year's H-1B cap season saw nearly 233,000 petitions submitted during the first week of the filing period.

The gap between the statutorily permitted numbers and the market need puts the onus on employers to be proactive in planning. Employers should identify prospective foreign talent now, and plan to start the H-1B preparation process no later than the beginning of March. Advanced planning will give employers and their legal representatives sufficient time to discuss the case, and, where appropriate, develop long-term immigration goals.

We expect another H-1B lottery this year. Cases that are not selected will be returned to the petitioning employer and will not be eligible to re-apply for an H-1B number until next year. For many professional workers, particularly nationals of countries other than Mexico and Canada, the H-1B visa category represents the best way to secure a work-authorized visa status. Please contact us now if you are interesting in starting this process.

### **CBP Implements New Restrictions on the Visa Waiver Program.**

The Visa Waiver Program ("VWP") allows citizens of [38 countries](#) to travel to the United States for business or tourism without first obtaining a visa in their passport. Travelers who enter under the VWP are allowed to stay up to ninety days at a time. Preliminary registration through ESTA is required to use this program. This sort of visa-free travel provides a major boost to tourism and business in the United States. However, recent events in Paris and San Bernardino convinced Congress and the President that the program needs to be modified to address certain national security risks that may come from nationals of Visa Waiver countries.

In response to these concerns, Congress passed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. As a result of this new law, the following citizens of VWP countries must obtain a nonimmigrant visa at a U.S. Consulate abroad before travelling to the United States:

1. Nationals of VWP countries who travelled to Iran, Iraq, Sudan or Syria on or after March 1, 2011, unless the travel to these countries was for military service, or to perform official duties as a government employee; and
2. Nationals of VWP countries that are also citizens of Iran, Iraq, Sudan or Syria.

In addition, all VWP travelers must use an electronic passport for travel to the United States by April 1, 2016.

CBP plans to notify individuals who were previously approved under ESTA, but are now ineligible under the new restrictions via email that their ESTA approval is no longer valid. CBP will notify individuals using the email address provided in the ESTA application.

**Department of State Warns U.S. Passport Holders Not to Wait;  
Renew Now!**

The Department of State ("DOS") has urged individuals whose U.S. passport is expiring at any time during 2016 to renew it as soon as possible. The department expects a surge in passport renewals and first-time applicants this year, estimating approximately 17 million new passports and renewal applications—an increase of 1.5 million from last year.

In an effort to avoid backlogs and potential interference with planned travel, DOS is stressing the importance of early renewal. DOS cited several reasons for the expected increase in passport demands, including the ten-year anniversary of the North Hemisphere Travel Initiative, which required U.S. citizens to have passports to travel by air from Mexico, Canada, the Caribbean and Bermuda.

In addition, several countries are now requiring that U.S. travelers have a Passport with at least a six-month validity period. DOS has received numerous emergency renewal requests and frantic calls from American travelers who have been denied entry at foreign airports and borders because their passports expired in less than six months.

Individuals applying for a passport for the first time must submit the application in person at a designated post office, court, or other agency, and pay a \$135 fee. In general, U.S. Citizens can renew passports by mail, and are required to pay a \$110 renewal fee. DOS expects that renewals will take approximately six weeks to process in 2016, up from four weeks last year. Additional information on how to renew or apply for a U.S. Passport can be found [here](#).

**Reminder: Please Notify Us BEFORE Changing an Employee's  
Work Location or Position.**

As we reported in our July newsletter, USCIS has been more aggressive with enforcing the requirement that employers file amended petitions when a foreign national employee changes his or her work location, or job position. While the guidance promulgated by USCIS was specifically regarding H-1B employees, we would like to remind employers that

material changes in the employment of L-1, TN, and other nonimmigrant employees also require the filing of an amended petition. As such, it is critical that employers remain vigilant in notifying counsel before any meaningful change is made, so that we can properly determine if the change requires an amended petition. If you have any questions, please be sure to contact us so that we can do our part in helping you and the Company remain compliant.

*For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.*

**Sincerely,**

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