
Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner and Associates, L.L.C.

This periodic newsletter features current developments in employment-based immigration. It is designed to inform you of changes in immigration law that may affect your business.

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Freeze Placed on I-485s, I-131s, Naturalization Applications

Last Friday, we were informed by INS Cleveland that INS Headquarters has instituted a national hold on adjudication of adjustment applications and naturalization applications. INS Cleveland has issued a temporary hold on advance parole adjudications pending clarification from INS Headquarters; we are unaware if this hold exists in other offices. The hold is due to logistical issues relating to background checks. We do not know how long this hold is likely to last - it could be weeks, or even months. We will keep you posted as the situation develops.



Special Registration Procedures, Continued

As we have mentioned in this newsletter before, INS has begun to implement "Special Registration" procedures for certain nonimmigrants to the United States. To recap, effective September 11, 2002, INS implemented special procedures requiring registration of nonimmigrants seeking to enter the United States who are citizens of Iran, Iraq, Libya, Sudan and Syria. Effective October 1, 2002, INS began "Phase II" of this project, which requires the registration of male nonimmigrants seeking to enter the U.S., aged 16 to 45, who are citizens of Pakistan, Saudi Arabia, and Yemen. In addition, INS inspecting officers have discretion to require registration of arriving nonimmigrants who made unexplained trips to Iran, Iraq, Libya, Sudan, Syria, North Korea, Cuba, Saudi Arabia, Afghanistan, Yemen, Egypt, Somalia, Pakistan, Indonesia or Malaysia. Officers also have discretion to require registration of arriving nonimmigrants who have engaged in other travel "not well explained by the alien's job or other legitimate circumstances," have previously overstayed a visa, have "characteristics established by current intelligence updates

and advisories," are identified by a law enforcement agency as requiring monitoring, or whose "behavior, demeanor, or answers" indicate that the nonimmigrant should be monitored.

INS implemented the third phase of the Special Registration program, which INS is designating "Call-In Registration," on November 15, 2002. As of that date, men aged 16 or over, who lawfully entered the U.S. as nonimmigrants prior to September 10, 2002, who will remain in the U.S. at least until December 16, 2002, and who are citizens or nationals of Iran, Iraq, Libya, Sudan or Syria, must comply with the Call-In Registration requirements ON OR BEFORE December 16, 2002. These individuals must go to a designated INS office, where they will be asked a number of questions, fingerprinted, and photographed.

Effective December 2, 2002, INS added another list of countries to Call-In Registration. Male nonimmigrants, aged 16 or over, who are citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, the United Arab Emirates, or Yemen who lawfully entered the United States as nonimmigrants before October 1, 2002 and who plan to stay in the United States until at least January 10, 2003, must register with their local INS office ON OR BEFORE January 10, 2003. These individuals must go to a designated INS office, where they will be asked a number of questions, fingerprinted, and photographed.

Additional countries are expected to be added in the coming months.

NOTE: INS is taking the position that the Special Registration requirement applies to individuals who were born in one of the above-mentioned countries, even if an individual is not a citizen of one of the countries. If there is any doubt regarding whether an individual is subject to the registration requirement, he is urged to err

on the side of caution and appear for registration.

Individuals subject to the registration requirements must register annually (plus or minus ten days from the anniversary of the initial registration). When departing the United States, even for brief trips, registrants must report to INS and depart through specially designated ports of departure. Additional information concerning Special Registration, including the list of designated ports of departure, may be obtained from the INS website at <http://www.ins.gov/graphics/lawenfor/specialreg/index.htm>. Information on Call-In Registration may be obtained at <http://www.ins.gov/graphics/lawsregs/fr110602.pdf>. Please consult www.ins.gov for updates to this information.

If you are, or if you know, a nonimmigrant from any of the above-mentioned countries, we urge you to carefully review the information on Special Registration and Call-In Registration from the INS website. Failure to comply with the Registration requirements can result in removal from the United States. If you have any questions regarding these procedures, please do not hesitate to contact us.



Arrests of Formerly Out-of- Status Nonimmigrants who Appear for Registration

Reports have been trickling in from around the country of arrests of individuals appearing for Call-in Registration who were formerly out-of-status, but who are now lawfully present in the U.S. For example, an individual who overstayed the date on his Form I-94, and who has since married an American citizen and filed for adjustment of status. Despite the fact that having a pending adjustment application is a "status authorized by the Attorney General," INS is arresting these individuals, releasing them on their own

recognizance, and issuing a Notice to Appear for removal proceedings. This is reportedly a new policy issued by INS Headquarters.

INS has indicated that individuals appearing for registration are entitled to representation by counsel. If you are, or if you know, an individual subject to registration who may have a status violation, we **STRONGLY** urge you to contact an immigration attorney to assist you in the registration process.

PLEASE NOTE that registration is absolutely required, and failure to appear may result in removal from the United States. A fear of being arrested is not a reason to avoid registration - if you or someone you know has concerns about registration, we again urge you to contact an immigration attorney to discuss the specifics of your situation.



New Requirements to be Implemented for Certain Nonimmigrant Health Care Workers

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) created a new ground of inadmissibility for certain immigrant and nonimmigrant health care workers. Pursuant to that provision, an alien who seeks to enter the U.S. for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless he or she presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent credentialing organization approved by the Attorney General. At the present time, the provision is in effect for individuals who are immigrating to the United States, but has been waived for individuals seeking entry as nonimmigrants. On October 11, 2002, INS published a proposed rule which, when finalized, will implement this ground of inadmissibility.

When the rule becomes effective (probably in early- to mid-2003), aliens seeking entry as nonimmigrants (or a change of status or extension of stay) to work in the following professions will be required to possess the necessary certification, in addition to the other requirements of whichever visa classification they are seeking: nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants. The certification will verify the alien's credentials and provide evidence that the alien has the required English language proficiency. There are currently three organizations which have been approved by the Attorney General to issue these certifications: the CGFNS (www.cgfns.org), for all occupations; the National Board for Certification in Occupational Therapy (www.nbcot.org), for occupational therapists, pending final adjudication of its credentialing status; and the Foreign Credentialing Commission on Physical Therapy (www.fccpt.org), for physical therapists, pending final adjudication of its credentialing status.

If you are or if you know a nonimmigrant working in one of these professions, we strongly suggest that you contact the appropriate credentialing organization to obtain the necessary certification before the proposed rule becomes effective. As obtaining the certification may take several months, obtaining it now could prevent problems with future entries to the United States, or delays in adjudication of future nonimmigrant petitions. We will provide additional information when the final rule is published. In the meantime, please contact us if you have any questions.



Update on Homeland Security

On November 25, President Bush signed into law the Department of Homeland

Security Act of 2002. Under the new law, the INS will be abolished, and its functions transferred to the new Department of Homeland Security (DHS). Enforcement and border functions will be transferred to the DHS Border and Transportation Security Directorate. Benefit functions, such as the adjudication of applications for nonimmigrant status, immigrant status and naturalization, will be transferred to the DHS Bureau of Citizenship and Immigration Services. These functions are expected to be transferred on March 1, 2003. Visas will continue to be issued by employees of the Department of State, but an officer of DHS will be installed in each consular post abroad with authority to review visa applications and to veto visa approvals. We do not know at this time how transfer of INS functions will be accomplished, or what effect this process will have on adjudication of applications.

We will continue to monitor this issue, and will advise you as new developments occur. In the meantime, updates on implementation of the Homeland Security Act will reportedly be posted at <http://www.whitehouse.gov/homeland/> and at <http://www.ins.gov/graphics/homeland.htm>.

Rosner and Associates helps corporations to bring foreign nationals to the U.S., and to obtain employment visas for U.S. citizens transferred abroad. We also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation.



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