
Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner & 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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The Demise of INS

As many of you know, effective March 1, 2003, the Immigration and Naturalization Service was broken up and integrated into the Department of Homeland Security. Immigration benefit applications are being handled by the new Bureau of Citizenship and Immigration Services (BCIS). Interior enforcement is being handled by the Bureau of Immigration and Customs Enforcement (BICE). Border enforcement is being handled by the Bureau of Customs and Border Protection (CBP). At the present time, there have been no significant changes made with regard to offices and personnel; all benefit applications are filed with the same offices, with the same fees. We have been advised that checks written in payment of filing fees are to be made payable to the Department of Homeland Security.

Please note that Cleveland BCIS and many other district offices are no longer accepting applications for employment authorization documents (EADs) or advance parole in Employment-Based Adjustment Cases. All applications associated with employment-based adjustment applications are to be filed with the BCIS Regional Service Centers.



Effects of the War in Iraq

The war in Iraq is destined to have an impact on U.S. immigration policy and practice, and we have already seen some changes, as described below.



Closures/Delays at U.S. Embassies and Consulates

Many U.S. embassies and consulates ("posts") have closed to all but emergency services for American citizens, in part due to concerns about potential terrorist attacks. We have received information that

some or all posts have closed in Afghanistan, Argentina, Australia, Egypt, France, Indonesia, Israel, Jordan, Kazakhstan, Kenya, Macedonia, Nigeria, Norway, Pakistan, Romania, Saudi Arabia, South Africa, Syria, Turkey, Venezuela and Yemen. At other posts, including those in Bahrain, Brazil, Kuwait, Lebanon, Oman, Qatar, and United Arab Emirates, the State Department has reportedly ordered (or recommended) that "non-essential" employees and/or dependents of consular employees be sent back to the United States. Posts in other countries may be affected as the war progresses. Many posts that haven't closed are operating with a skeletal staff, and therefore processing of nonimmigrant and immigrant visa applications has slowed considerably. Before undertaking ANY foreign travel which will require application for a U.S. visa, please contact us or the appropriate consular post, or consult the Department of State website (<http://travel.state.gov>) for up-to-date information on visa processing. CNN's website, www.CNN.com, may also have up-to-date information.

Even if visa applications continue, delays may also occur after the visa interview as posts vet names of applicants through the Department of State's lookout system and FBI databases. Because of numerous variations in name spellings, the State Department uses a phonics screening device to check applicants. This can result in applicants with names similar to those of suspected terrorists, criminals, or others deemed ineligible to enter the United States being subjected to additional security checks. At the present time, a "hit" in one of these government databases requires the applicant to have their fingerprints taken and checked by the FBI for a determination of identity. This can add six weeks or more to the visa screening process. There is no way to predict whether an applicant will be delayed in this way, and there is no way to expedite the process.

In addition, visa applications are also compared with the State Department's Technology Alert List. Applicants whose work is related in some way to the technologies on the list can face an additional screening process due to the "potential sensitive nature" of their travel to the U.S. In our experience, citizens of China and Middle Eastern countries are more likely to be subjected to this additional screening, although the State Department may subject citizens of any country to the screening. This screening can add anywhere from 4 to 8 weeks, if not longer, to visa processing. Additional information on the Technology Alert List may be found on the State Department's website at <http://www.travel.state.gov/state147566.html>.

One way to take some of the risk out of visa application is to apply for a new nonimmigrant visa by mail through the Visa Office in St. Louis, Missouri. Current processing time is approximately eight weeks, and applications may not be expedited. Only certain applications are accepted; applicants getting a type of visa they have never had before, and F-1 or J-1 visa holders, must apply at a U.S. consular post outside the United States.



Effects of War on Domestic Travelers

The Department of Homeland Security (DHS) recently implemented "Operation Liberty Shield" which is purported to tighten security at U.S. airports and border posts. Local, state and federal authorities have begun screening cars and passengers at airports and land border posts, and surveillance of travelers has been stepped up. Before any travel, foreign and domestic, you are urged to give yourself extra time to account for these additional security measures.



Interviews of Thousands of Iraqi-Born Individuals in U.S.

DHS has also indicated that, in cooperation with the FBI, it will interview thousands of Iraqi-born individuals in the United States. Individuals who are suspected to be terrorists or to be somehow tied to terrorist activities will be detained. Individuals found to have immigration violations will also be detained and possibly deported. This operation is expected to be similar to that involving 5000 men conducted in the months following September 11, 2001.



Detention of Asylum Seekers

DHS has indicated that it will begin detaining applicants for asylum from countries in which al-Qaeda, al-Qaeda sympathizers or other terrorist groups operate. Applicants will be detained throughout the asylum process, which can take years to complete.

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 can also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation. Please consider us for your immigration law needs.



Rosner and Associates, L.L.C.
The Caxton Building, Suite 601
812 Huron Road
Cleveland, Ohio 44115
216-771-5588
216-771-5894 (Fax)
immigration@rosnerlaw.com