

Immigration Law Update

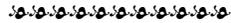
Current Developments in Employment-Based Immigration

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.

April 2002

This issue of the newsletter is a compilation of e-mail memoranda sent to clients from October 2001 through April 2002.



Evidence of Registration to be Carried at All Times

The purpose of this memorandum is to advise you of a little-known provision in the Immigration and Nationality Act (INA) which the Immigration and Naturalization Service has recently indicated it will begin to enforce.

Section 264(e) of the INA provides that all aliens (defined in U.S. law as any person who is not a citizen or national of the United States) over the age of 18 must at all times carry with them evidence of alien registration. Pursuant to 8 C.F.R. § 264.1(b), evidence of registration includes the following forms:

- I-94* Arrival-Departure Record
- I-95 Crewmen's Landing Permit
- I-184 Alien Crewmen Landing Permit and Identification Card
- I-185 Nonresident Alien Canadian Border Crossing Card
- I-186 Nonresident Alien Mexican Border Crossing Card
- I-221 Order to Show Cause and Notice of Hearing
- I-221S Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien
- I-551* Permanent Resident Card (or Alien Registration Card)
- I-688* Temporary Resident Card
- I-688A* Employment Authorization Card
- I-688B* Employment Authorization Document
- I-766* Employment Authorization Document

**Most common documents*

Any person who is not a citizen or national of the United States who fails to comply with this provision shall be guilty of a misdemeanor and shall upon conviction for each offense be fined an amount not to exceed \$100 or be imprisoned not more than thirty days, or both. An individual is most likely to be asked for documentation when traveling by air, even when flying domestically.

We will keep you apprised of any important changes in immigration law and procedures as the world responds to the terrible events of September 11. In general, please be advised that security has been tightened at U.S. airports and at U.S. government facilities worldwide, and that increased documentation may be required when seeking admission to the United States or when applying for U.S. visas.



Lengthy Visa Processing Abroad

Press reports have indicated that, beginning November 2001, the State Department and the FBI will conduct additional security checks on nonimmigrant visa applications filed by men between the ages of 16 and 45 who are citizens of the following countries: Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, the United Arab Emirates and Yemen. Applicants will also apparently be required to complete a detailed questionnaire on their backgrounds, including questions about any military service or weapons training, previous travel, and whether they ever lost a passport.

Some sources, including the on-line Visa Appointment Reservation System, say that the security checks will take 20 days, although the State Department in a recent press conference refused to confirm that processing would be completed within that time. The Department has indicated this

is a temporary policy, but has not stated specifically how long this policy will be in effect.

If you have employees who are natives of these countries who are contemplating foreign travel and who will require a new visa to return to the United States, please advise them of this new policy, so that they may make an informed decision about the necessity of foreign travel at this time.

Note: All male nonimmigrant visa applicants between the ages of 16 and 45 are now required, regardless of nationality, to submit Form DS-157. This form may be obtained at <http://travel.state.gov>.



Interviews of 5,000+ Young Men Being Conducted

On November 9, the Attorney General ordered law enforcement officials throughout the United States to begin conducting interviews of more than 5,000 men, ages 18 to 33, who entered the United States after January 1, 2000 directly from a country with suspected terrorist links. These interviews are strictly voluntary, and those contacted are not required to answer any questions. If individuals do choose to answer questions, they are permitted to have an attorney present. Although it is unlikely that any of your employees will be contacted, we did want to bring the matter to your attention.



INS Restructuring Planned

The Attorney General last fall announced a plan to restructure the Immigration and Naturalization Service. Similar plans have been under consideration for the past several years, but were stalled. Under the Administration's Plan, the agency will be split in two, with one half engaged in enforcement activities, including deportation and border patrol, and the other engaged in service activities, including adjudication of visa petitions. There are at least two bills currently pending in

Congress which provide for similar restructuring, although the Administration has indicated that it believes its plan can be implemented administratively, without an act of Congress. The Administration stated that it hopes to have the new structure in place by the end of Fiscal Year 2003. If such plans are successful, we can anticipate some expedited processing of cases currently in the pipeline, but also a certain amount of confusion, lost files and processing delays.

We will keep you advised of any significant changes in processing as the restructuring plan is implemented.

[Note: As of April 2002, a restructuring bill was passed by the House. A companion bill is expected to be introduced in the Senate soon.]



Employment Authorization Available for Spouses of L and E Visa Holders

On January 16, President Bush signed into law two bills allowing spouses of intracompany transferees, treaty traders and treaty investors to obtain employment authorization in the United States. People who may benefit from the law are spouses of foreign nationals who hold L-1, E-1 or E-2 nonimmigrant status. Benefiting spouses would thus hold L-2, E-1 or E-2 nonimmigrant status. Children of L-1, E-1 or E-2 visa holders are not covered by this new law, and are not authorized to work in the United States.

How do they obtain employment authorization? Although INS has not yet issued formal guidance, the agency has indicated that to obtain employment authorization, L-1, E-1 or E-2 spouses generally must apply for employment authorization on Form I-765 to the INS Service Center with jurisdiction over their place of residence. These applications may take up to 90 days to be processed. L-2, E-1 and E-2 spouses may not commence work in the United States until their applications are approved and they have received an employment authorization document.

We will advise you if INS changes these procedures in its formal guidance.



Relaxed Blanket L Rules

One of the two laws mentioned above also relaxes requirements for certain L visa applicants. Employers who have an approved Blanket L petition (allowing for expedited processing of L visas through application at a U.S. consular post) can now transfer employees who have worked for the employer's foreign affiliate for six months within the past three years. The old rules required the transferee to have worked for the foreign entity for at least one year. It is not clear whether the law applies to individual L petitions, filed with the INS in the United States, if the employer has an approved Blanket L but is not using it to transfer the employee. INS has not yet issued regulations implementing this new provision, but the provision appears to be effective immediately.



Increased INS Filing Fees

Effective February 19, 2002, INS filing fees will increase. A list of the new fees for the most common employment-related forms follows.

- I-129 Petition for Nonimmigrant Worker - \$130
- I-131 Application for Travel Document - \$110
- I-140 Immigrant Petition for Alien Worker - \$135
- I-485 Application to Adjust Status to Permanent Residence - \$255
- I-539 Application to Change Nonimmigrant Status - \$140
- I-765 Application for Employment Authorization - \$120
Fingerprint Fee (for Adjustment and Naturalization) - \$50

A complete list of the new fees is available from Rosner & Associates or from the INS website at www.ins.gov.

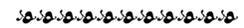


Schengen Visa Requirements

In 1995, certain European countries joined together to create a Schengen visa, which allows the holder to travel freely in all of the issuing countries. The current Schengen-issuing countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy,

Luxembourg, The Netherlands, Norway, Portugal, Spain, and Sweden.

Business or tourist visitor entries to Schengen countries, with or without a visa, are now limited to a maximum stay of ninety (90) days for every six (6) months. After a 90-day stay in Schengen territory, the person must leave Schengen territory for 90 days before being eligible to reenter as a visitor.



Department of State Regulations Regarding Visa Applications in Canada and Mexico

The Department of State (DOS) recently promulgated a regulation, effective April 1, 2002, regarding travel of nonimmigrants in the United States to Canada or Mexico (or adjacent islands). As you may know, DOS regulations previously allowed nonimmigrants in the United States with a valid Form I-94 to travel to Canada or Mexico for less than 30 days and to return to the United States without obtaining a visa stamp. This provision essentially acted as an "automatic revalidation" of a previously issued visa. This was helpful for individuals who simply sought to visit either of those countries, or to apply for visas at American consulates in those countries. If the visa was denied, those individuals could return to the U.S. without penalty.

The 30 day provision no longer applies to individuals who were born in and/or are citizens of the following countries, designated as foreign states which sponsor terrorism: Iraq, Iran, Syria, Libya, Sudan, North Korea and Cuba. Individuals from these countries must have a visa to return to the United States after ANY trip abroad, regardless of destination or duration of the trip. The regulation does not limit the restriction to these countries; the list may be modified in the future.

Unfortunately, the regulation does not stop here. It also prevents automatic revalidation of any existing visa if a nonimmigrant applies for a new visa while on a brief trip to Canada, Mexico or an adjacent island. The effect of this is nil if a nonimmigrant applies for a visa and it is granted; the nonimmigrant may enter the United States pursuant to the new visa. However, if the application for a visa is denied, the nonimmigrant may NOT enter

the United States until he or she has obtained a new visa, which may require return to his or her home country.

We do not believe that many individuals will be adversely affected by this regulatory change. However, we do advise that individuals from the countries listed above, as well as individuals who may be at risk of a visa denial in Canada or Mexico, apply for new visas either in their home countries, or, if eligible, through the DOS Visa Office in St. Louis. If you have any questions concerning this new regulation, please contact Rosner & Associates.



INS Policy Regarding Advance Parole

As you know, an individual who has applied to adjust status to permanent resident is required to obtain advance parole prior to departing from and reentering the United States. Formerly, upon an individual's entry to the United States pursuant to advance parole, INS issued a Form I-94 endorsed with the statement, "Paroled Indefinitely." This allowed the individual to remain in the United States at least until final adjudication of the adjustment application. Recently, however, INS has been issuing Forms I-94 to persons entering pursuant to advance parole marked with an expiration date, usually one year from the date of entry. INS has now indicated that remaining in the United States beyond this date, even while adjustment is pending, renders the individual out of status and subject to removal (deportation). The date on the Form I-94 may be extended, simply by leaving the United States and reentering, or by appearing at the INS District Office with jurisdiction over the individual's place of residence and requesting a new Form I-94.

We have not heard of any cases in which an individual's adjustment application has been denied and the individual placed in removal proceedings as a result of this new provision. However, given the current climate, such a result is not beyond the realm of possibility. We strongly advise you to advise your employees of this policy change, and to advise them to keep careful note of the expiration dates on their Forms I-94. We have the capability to track these dates, so please advise us if you would like

our assistance.



Update on Employment by E and L Spouses

INS recently issued a memorandum which provides basic procedures for obtaining employment authorization for E and L spouses. Applications on Form I-765 must be filed with the INS Regional Service Center with jurisdiction over the individual's place of residence. The application must be accompanied by the following:

- Two INS-style photos of the applicant;
- The applicant's Form I-94;
- A copy of a photo identity document, such as a passport or driver's license;
- A copy of the principal employee's Form I-94;
- A copy of the principal employee's approval notice (Form I-797), if applicable;
- Evidence of the spousal relationship between the employee and the applicant; and
- Filing fee of \$120.

If you have any questions regarding obtaining employment authorization for E and L spouses, please contact us.



Department of Labor Policy Regarding Layoffs and Labor Certification

The Department of Labor has recently issued a policy directive which discusses layoffs in the context of labor certification. Essentially, this memorandum gives the DOL broad powers to investigate layoffs on its own (through news articles, state employment agency reports, etc.), and to request specific information from employers who have filed labor certification applications. If the DOL is confident that qualified U.S. workers exist in the geographic area of employment for a particular application, the DOL is permitted to deny a Reduction in Recruitment application and remand it to the state for standard processing. The DOL may also choose to request additional information from an employer-applicant concerning layoffs in the occupation described in the application, or, in the case of general layoffs by other employers, to request additional advertising.

If you have a labor certification application which may be affected by this new policy, please feel free to contact anyone at Rosner & Associates for additional information.

Note About INS Cleveland District EAD Procedures

Those of you within the jurisdiction of the INS Cleveland District Office (State of Ohio) may be interested to learn that INS Cleveland has changed its procedures for issuing Employment Authorization Documents (EADs). Effective April 1, 2002, INS will no longer accept walk-in applications for employment authorization. Applicants must submit their applications by mail, and wait to be scheduled for an appointment. At the present time, INS expects appointments to be scheduled approximately three weeks after receipt of the application. EADs will be issued almost immediately after the appointment. While it is likely this new procedure will dramatically reduce the time an applicant must physically be at INS, it obviously increases total processing time.

If you have any questions about procedures of INS Cleveland or other local INS offices, please contact us.



If you have any questions or concerns regarding these developments, please contact a member of our staff at 216-771-5588.

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. 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