

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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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 some of your employees, and we urge you to communicate them to any affected employees. As always, if you have any questions, please do not hesitate to ask anyone at Rosner & Associates.



Notification of Change of Address

INS recently announced its decision to enforce Section 265 of the Immigration and Nationality Act, which requires all non-U.S. citizens present in the United States to notify INS of a change of address within 10 days of the change. A willful failure to do so is punishable by a fine of up to \$200, imprisonment of up to 30 days, and/or removal from the United States. Please note that this requirement applies to nonimmigrants as well as permanent residents.

Although it is unlikely that failure to notify INS of an address change will result in the most severe penalty, we strongly recommend that all persons subject to this requirement comply with it wherever possible. INS must be notified of a change of address by filing Form AR-11 with INS Headquarters in Washington. The form is available from any INS office or on the Internet at <http://www.ins.usdoj.gov/graphics/formsfee/forms/files/ar-11.pdf>. In addition, if an individual has a petition or application pending with INS, a change of address must also be sent to the office which is processing the application.



Fingerprinting of Certain Visitors to the United States

INS recently proposed a rule which would require certain nonimmigrants to submit to fingerprinting and additional monitoring

requirements while in the United States. The rule, which is not yet effective, will apply to the following individuals:

1. Nonimmigrants who are natives (born in) or citizens of a country designated by the Attorney General (these countries have not yet been designated, but are expected to be in the Middle East);
2. Nonimmigrants whom a consular officer or an INS inspecting officer has reason to believe are natives or citizens of a country designated by the Attorney General; or
3. Nonimmigrants who meet, or whom a consular officer or INS inspecting officer has reason to believe meet preexisting criteria, determined by the Attorney General or the Secretary of State to indicate that such nonimmigrants' presence in the United States warrants monitoring in the interests of national security or law enforcement.

The monitoring requirements include:

1. Nonimmigrants who meet the above criteria who are applying for admission to the United States will be fingerprinted and photographed at the port of entry.
2. Nonimmigrants who meet the above criteria who remain in the United States for 30 days or more must appear, within 30 to 40 days after admission, at an INS office, in person, to provide additional documentation confirming compliance with the terms of the nonimmigrant's visa status. This documentation can include, but is not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution.
3. Nonimmigrants who meet the above criteria must re-register annually (within 10 days of the anniversary of the nonimmigrant's original admission to the United States) in person at the INS district office with jurisdiction over the nonimmigrant's place of residence.
4. Nonimmigrants who meet the above criteria must report changes of address to INS within 10 days of the change.
5. Nonimmigrants who meet the above criteria are required to report to a

departure control officer of the INS at a specified port of entry upon departure from the United States. Any nonimmigrant who is required to report and who fails, without good cause, to do so, is thereafter deemed inadmissible to the United States as an alien whom the Attorney General has reason to believe seeks to enter the United States to engage in unlawful activity. This presumption is rebuttable.

We will advise if/when these requirements are made effective.



Processing Delays/Security Checks

INS has recently implemented a system whereby all beneficiaries of petitions filed with INS, as well as visa applications submitted to the Department of State, are run through the "IBIS" computer system. IBIS, which stands for the Interagency Border Inspection System, contains names of individuals who have been deemed inadmissible to the United States for various reasons. Due to the time involved in conducting these checks, INS processing of applications and petitions has slowed considerably. INS has recently advised that processing of nonimmigrant petitions on Form I-129 is expected to take approximately 120 days, although INS hopes to reduce this to 90 days by the end of the year. Processing time may be shortened by payment of the INS "premium processing" fee of \$1000. If you do not wish to pay the extra fee, please plan accordingly for processing delays when filing nonimmigrant petitions.

Please note that we have recently received reports of visa applicants outside of the United States being subjected to additional security checks in the event a consular post gets a "hit" on their names when conducting the IBIS check. The check, and therefore the possibility of a "hit," is not limited to persons of a certain nationality or gender. Although in the vast

majority of cases the hit is simply a case of mistaken identity, consular posts reportedly must request an additional security clearance through the State Department in Washington. Visas may not be issued until this clearance is obtained, which can delay the process of visa issuance by several weeks. Because this is a new requirement, we are not sure what options, if any, may be available to expedite the process. Again, please consider the possibility of delays if any of your nonimmigrant employees must apply for a visa when traveling abroad.



End of Visa Exemptions for Canadian Residents who are British Commonwealth Citizens

The State Department is planning to change its regulations at 22 CFR 41.2(b) to require "aliens resident in Canada...having a common nationality

with nationals of Canada" to obtain nonimmigrant visas to enter the United States. These individuals, who are permanent residents of Canada and citizens of British Commonwealth countries, are currently exempt from the nonimmigrant visa requirements, as well as from passport requirements if they are entering the U.S. from a Western Hemisphere country. Presumably, the passport exemption also would be eliminated, as would the exemption for such nationals resident in Bermuda. As far as we are aware, this change has not yet gone into effect, but as with many of these new proposed rules, some overzealous INS officers are likely to begin to implement the requirement. Proposed Rules for Obtaining Bank Accounts The United States Treasury Department has issued proposed rules requiring "non-U.S. persons" (generally, anyone other than a US Citizen, permanent resident, asylee or refugee) to provide a U.S. government-issued ID number when opening an

account with a financial institution in the United States.

Although these rules are not yet in effect, many financial institutions have been requiring such an ID number for some time. In most cases this will be a Social Security Number. If an individual is not eligible to obtain an SSN, they may apply for an Individual Taxpayer Identification Number (ITIN). Additional information on ITINs may be obtained at www.irs.gov. Please note that ITINs do not provide evidence of work authorization - appropriate authorization from INS is required to work in the United States. ITINs are distinguishable from SSNs in that ITINs always start with "9." B Visa Update In a previous newsletter we advised you of proposed changes to the B (visitor) visa regulations. Although the public comment period has ended, the rules have not yet been finalized. We will advise you of any new developments.

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.



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