
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.

December 2002

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>.

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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. (Note that registration is required for dual nationals who are citizens of one of these eight countries.) 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.

Please note: We have anecdotal evidence that INS has begun to subject citizens of Pakistan to the Special Registration requirement upon entry to the United States at both land borders and U.S. airports. Special Registration upon entry can take several hours to complete, so please advise your employees or others who may be subject to this requirement to plan ahead when traveling.

INS is about to implement the third phase of the Special Registration program, which INS is designating "Special Call-In Registration." Effective November 15, 2002, 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. PLEASE NOTE: At the present time, only citizens and nationals of Iran, Iraq, Libya, Sudan and Syria are subject to Call-In Registration. Citizens of other countries ARE NOT REQUIRED to comply with the call-in requirements at this time.

Individuals subject to both Special Registration upon entry and Call-In Registration must register annually (plus or minus ten days of 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 eight countries, we urge you to carefully review the information on Special Registration and Special Call-In Registration from the INS website. Failure to comply with the Registration requirements can result in very severe penalties, including removal from the United States. If you have any questions regarding these procedures, please do not hesitate to contact us.



Change of Address Forms (Form AR-11)

As you know, INS has begun to enforce the long-existing requirement of aliens to notify the INS of any change of address. Aliens, which include all non-U.S. citizens, are required to notify the INS of a change of address within 10 days of the change. Failure to do so can result in severe penalties. Form AR-11 may be obtained from the INS website at <http://www.ins.gov/graphics/formsfee/forms/ar-11.htm>. Please note that aliens with applications pending at an INS office must also notify that office, either by mail directly to that office, or by phone to the INS National Customer Service Center. Additional information on the address notification requirement may be obtained at <http://www.ins.gov/graphics/howdoi/address.htm>.



Third-Country National Visa Applications Suspended at U.S. Consulate in Ciudad Juarez, Mexico

The U.S. Consulate General in Ciudad Juarez, Mexico, recently announced it will no longer accept visa applications from non-Mexican nationals, except for residents of Mexico with a valid Mexican work permit, and F-1 students who are continuing their studies in the US and who

can demonstrate that their initial F-1 visa was issued in their home country.



Increase in Machine-Readable Visa Fee

The State Department raised its machine-readable visa ("MRV") fee to \$100 effective November 1. The MRV fee is charged to all applicants for a nonimmigrant visa at all U.S. consular posts.



Delays in Obtaining Social Security Numbers

The Social Security Administration has begun verifying immigration status with INS prior to issuance of Social Security Numbers to work-authorized non-immigrants. Because INS has dedicated few resources to the verification process, some nonimmigrants are experiencing delays of as long as 30 to 45 days before they receive a Social Security Number. In order to alleviate some of the problems this delay may cause, your nonimmigrant employees may wish to inquire about obtaining an Individual Taxpayer Identification Number in the interim. Additional information about the ITIN may be obtained from your local office of the Internal Revenue Service, or the IRS website at www.irs.gov.

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Concurrent Filing of Forms I-140 and I-485 Now Permitted

INS recently published a rule which allows for concurrent filing of Form I-140, the employment-based immigrant petition, and Form I-485, the application to adjust status to permanent resident. Prior to this rule, green card applicants were required to wait for approval of Form I-140 before Form I-485 could be filed, resulting in lengthy processing times. A Form I-485 for the beneficiary of the I-140 and his/her dependents may be filed along with the Form I-140, or while the Form I-140 is pending. In cases where approval of the I-140 is potentially problematic, such as cases involving outstanding researchers or national interest waivers, it is advisable to wait until the I-140 is approved before filing Form I-485. As this procedure is new, we do not have any guidance from INS on how concurrent filing will affect processing times. For additional information, please contact Rosner & Associates.



Diversity Visa Lottery Begins October 7

On October 7, the Department of State will open a one month application period for the Fiscal Year 2004 green card lottery. To be eligible, applicants must NOT be natives of any of the following countries: CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, INDIA,

JAMAICA, MEXICO, PAKISTAN, PHILIPPINES, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM. Persons born in all other countries, including Hong Kong SAR, Macau SAR and Taiwan, are eligible. Application procedures and additional eligibility requirements are available from Rosner & Associates, or on the State Department's website at <http://travel.state.gov/DV2004.html>. We are sending a separate letter concerning the lottery to our clients via "snail mail"; if you would like to be on our mailing list, please let us know.



Annual INS Internal Audit, September 23 - October 4

INS has announced that it has begun its annual internal audit in its four Regional Service Centers. As a result, movement of files currently in process will be halted at least until October 4. This does not necessarily mean that adjudicators will not be working on pending cases, but it does mean that no files will move between INS offices (or from one workstation to another) until the audit is complete. Reportedly, INS will continue to work on premium processing cases. We do not have word, at the present time, on how INS District Offices are affected by the audit.



Online INS Status Inquiries

INS has just launched an online case status inquiry capability on its website. Using this system, you may check the status of a case that is pending at an INS Service Center. The information provided is the same information which is accessible from the INS automated telephone system. The web address is <https://egov.ins.usdoj.gov/graphics/cris/jsps/index.jsp>.



Special Registration Procedures Implemented

Effective September 11, 2002, INS implemented special procedures requiring registration of nonimmigrants applying for admission to the United States who are citizens of Iran, Iraq, Libya, Sudan and Syria. Effective October 1, 2002, INS reportedly plans to implement "Phase II" of this project, which will require the registration of male nonimmigrants applying for admission, aged 16 to 45, who are citizens of Pakistan, Saudi Arabia, and Yemen. (Note that registration is required for dual nationals who are citizens of one of these eight countries.) In addition, INS inspecting officers will 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 will 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," had previously overstayed their 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.

Although INS has provided detailed information concerning the registration of citizens of the first five countries, INS has been silent on the requirement to register nationals of the remaining three countries. Detailed information on the registration process may be obtained from the INS website at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp>. Information on Phase II, as leaked to the media, may be obtained at http://209.17.95.115/news/article.asp?ARTICLE_ID=29014.

If you are, or if you know, a nonimmigrant

from any of the above-mentioned eight countries, we urge you to carefully review the information on Special Registration from the INS website. If you have any questions regarding these procedures, please do not hesitate to contact us.



Increases in INS and Consular Processing Times

As you may know, INS processing times have increased in recent months, due primarily to newly mandated background checks of all applicants. INS has been delivering on its promise to adjudicate premium processing cases in 15 days, however, Requests for Evidence in such cases are not uncommon. Please keep these considerations in mind when planning to file petitions or applications

for employment authorization or advance parole.

Delays are also occurring at U.S. Embassies and Consulates overseas. Many consular posts no longer allow application by mail or travel agent, but are requiring applicants to schedule appointments, and consular officers are conducting longer interviews. In addition, consular posts are continuing to run names of applicants through computerized "lookout" systems provided by government and law enforcement agencies. If an applicant's name is similar to a name in a database, additional delays can be caused by mandatory processing of the applicant's fingerprints by the FBI, and consultation with the Visa Office in Washington, DC. Unfortunately, delays of this nature cannot be predicted, nor can processing be expedited. Please consider the possibility

of delays when applying for visas outside the United States.



Increased Scrutiny of L-1B and Certain H-1B petitions

In recent months many petitions for L-1B and H-1B status have generated Requests for Evidence (RFEs) from INS. The L-1B RFEs are requesting evidence that the beneficiary possesses, and the job requires, specialized knowledge. We have also seen a marked increase in RFEs in H-1B petitions involving beneficiaries who do not have a Bachelor's degree. Although we are doing everything possible to address INS concerns when filing these types of petitions, please be advised that RFEs are not unusual, which can result in increased processing times and higher legal fees.

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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.

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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 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.



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