

Issues & Answers

IMMIGRATION ALERT

New Rules for Entering the U.S. and Big Changes Ahead for Temporary Workers

By Nancy-Jo Merritt

Immigration issues are in the news. Not only has the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program been instituted at 14 seaports and 115 airports across the country, but President Bush released his “Fair and Secure Immigration Reform” proposal.

First, it is important to note that the President’s policy announcement is just that and not a change in the statute or regulations. Although there are several similar work authorization bills pending in Congress, the President did not introduce specific legislation. His proposal describes elements of a three-year temporary worker program (renewable) for undocumented men and women currently employed in the United States. The proposal does not include a separate route to permanent residence and it requires the workers to return to their native country when their work authorization expires. (The President’s proposal includes allowing temporary workers to participate in U.S.

retirement plans which will present some complex income tax hurdles if U.S. retirement accounts become payable to non-resident foreign nationals). The President suggests that those workers who are eligible may pursue “citizenship,” but the proposal does not specify how this can occur under the current statutory requirements to obtain citizenship. There is no discussion, for example, of how workers required to return to their native country to obtain a work authorization visa could overcome the 10-year re-entry bar currently imposed on those who have overstayed their status for more than one year or who entered the country illegally. The proposal also does not call for a return of 245[i] or increases in the legal immigration quotas.

Even so, the President’s proposal provides focus and urgency to the current complex discussion of the important role that undocumented workers play in the economy of the country, the need to respond to security concerns by identifying those individuals, the protection of

employment opportunities for U.S. workers and the prevention of the exploitation of undocumented workers. We can expect a renewal of interest in solutions by Congress and while the solutions may expand the pool of potential workers, they will also bring new administrative and enforcement considerations for employers who use such workers.

Also this week the US-VISIT program began to collect biometric identifiers from persons entering the United States with nonimmigrant visas via a seaport or airport. Children under the age of 14 and persons over the age of 79 are exempt from US-VISIT as are persons entering at ports of entry along the Canadian and Mexican borders and individuals entering on the Visa Waiver program. Remember, however, that the U.S. Patriot Act mandated that countries whose citizens may enter on the Visa Waiver program must issue tamper-proof machine-readable passports that include biometric identifiers by October 26, 2004.

Individuals with old non-machine-readable passports will have to apply for visas at a U.S. consulate and will be subject to U.S. enrollment at the consulate. Their admission will then be recorded at the port of entry when they next travel to the United States. Legal permanent residents (green card holders) and U.S. citizens are also exempt.

Currently, there is no requirement for Mexican Laser Visa holders to be registered in US-VISIT. The Department of Homeland Security is considering including Laser Visa holders in US-VISIT only if the applicant is staying in the United States for longer than 72 hours or traveling outside the 25-mile limit from the border (a 75-mile limit in Arizona), and thus will

be issued an I-94 entry document.

We expect the US-VISIT program to continue to expand until all persons entering the United States are subject to placement of the biometric identifiers into U.S. databases.

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