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Immigration Update - Changes in Immigration Reform and Re-entry Requirements

By Nancy-Jo Merritt

Update on Immigration Reform

Senator Arlen Specter has introduced his mark-up of the "Comprehensive Immigration Reform Act of 2006." He is the Chair of the Judiciary Committee, so this version is the beginning of the debate and will likely control elements of the final Bill.

Senator Specter's draft contains expected provisions increasing border and interior enforcement, and the following issues of specific importance to employers:

- The current prohibitions on hiring unauthorized aliens are strengthened and include a rebuttable presumption of unlawful hiring if an employer hires more than ten "unauthorized aliens" in a calendar year. A good faith defense is available to employers who voluntarily use a new electronic employment verification system, which will be mandatory after a five-year phase-in period. In addition, employers would be required to maintain records of Social Security no-match letters and the steps taken to resolve each issue described in the no-match notices.
- Senator Specter's version creates a new temporary worker category (H-2C) for individuals performing skilled and semi-skilled labor. H-2C workers would be required to pay a \$500 fee in addition to the cost of processing the application and undergo a medical exam and provide extensive background information. The Bill waives the re-entry bars applicable to undocumented individuals currently in the United States, but H-2C workers would not be eligible for permanent resident status, nor for work authorization beyond a six-year period until the individual has returned to his or her home country for at least one year. Spouses and children would be given H-4 status, which does not include work authorization.
- Employers of H-2C workers would have to pay a required wage rate and attest that no U.S. workers were displaced by the hire of a foreign worker and that there is no strike, lock-out, or work stoppage as a result of a labor dispute at the place of employment. The employer would also have to make good faith efforts to recruit U.S. workers, unless the Department of Labor previously determined there was a shortage of U.S. workers in that occupation and geographic area.
- There is no work authorization category for registered nurses.
- The Bill would establish an electronic job registry and a nationwide system of public labor exchange services to provide information on employment opportunities to U.S. workers.
- The Bill makes changes in student visa employment provisions, and provisions to eliminate or reduce quota backlogs in family-based and employment-based immigrant (green card) visas.

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- The Bill would create “conditional nonimmigrant” status for foreign nationals who were employed in the United States on January 4, 2004, and who agree to meet certain requirements of the Bill including payment of any unpaid back taxes, a \$500 application fee, a medical exam, and background checks. These individuals would have no further immigration rights and their spouses and children would not be eligible for employment.

The Specter draft is subject to debate and amendments before it leaves the Senate for the House where additional debate will result in additional changes. We'll keep you informed on further developments.

International Travel Changes for U.S. and Canadian Citizens

Within the next two years, U.S. travelers will be required to present a passport to re-enter the United States after traveling abroad, including to Canada and Mexico. The Intelligence Reform and Terrorism Prevention Act of 2004 mandated that the U.S. government develop a plan requiring all individuals, including U.S. citizens, present a passport or other appropriately secure documents when applying to enter the United States. This week, the Departments of State (DOS) and Homeland Security (DHS) provided some detail about the outline of that plan:

Phase One: Beginning January 1, 2006, U.S. and Canadian citizens traveling by air or sea from countries in the Caribbean, and Central and South America are required to present a passport in order to enter the United States.

Phase Two: By December 31, 2006, the passport requirement will be expanded to all travel to the United States by air or sea from anywhere within the Western Hemisphere, including Canada and Mexico.

Phase Three: By December 31, 2008, all travelers will be required to provide passports or a list of specifically approved travel documents at all air, sea, and land border ports of entry in the United States.

While the individual passport will still be the preferred document, DHS and DOS are considering alternative entry documents for Canadians and Mexicans at the land ports of entry. One of the documents being considered is the border-crossing card (BCC) currently used by Mexican nationals who visit the United States on a regular basis. Applicants for BCC cards must have a Mexican passport and thus the BCC would be used as a visa-type entry document.

Business travelers who enter frequently from Mexico now use the SENTRI card and DHS expects that it will continue to be allowed. For Canadians, the equivalent to the SENTRI card is the NEXUS, a similar entry document used by frequent business travelers from Canada, which DHS believes will also meet the security requirements.

Finally, the FAST, or “Free and Secure Trade” card, used by commercial truck drivers at both the northern and southern borders is also being considered. The SENTRI, NEXUS, and FAST cards all require background checks, biometric documentation, and other kinds of documentation requirements.

Currently, U.S. citizens are only required to present a driver's license or birth certificate for re-entry into the United States. Eventually, as described in the three phases above, U.S. citizens will be required to present a passport when returning to the United States.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A., (1974) J.D., (1978) from Arizona State University.



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