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Immigration Update - Latest Immigration News

By Nancy-Jo Merritt

“Machine Readable” Passports Now Required by Visa Waiver Visitors

Beginning June 26, 2005, all tourists or business visitors traveling to the United States on the Visa Waiver Program (VWP) must possess “machine readable” passports to be admitted into the United States. Individuals whose passports are not machine readable will be turned away. A “machine readable” passport contains two optical-character type face lines at the bottom of the biographic page of the passport, which allows inspection at the ports of entry to quickly confirm the passport holder’s identity. (A sample image of a machine-readable passport can be viewed at: http://www.travel.state.gov/visa/temp/without/without_1990.html#4.)

Although most visitors to the United States must first obtain a visa from a U.S. consulate abroad, the VWP allows citizens of certain countries to enter the United States without a visa. Although the VWP still exists, it is now available only to visitors with “machine readable” passports. This means that unless they have the newer machine-readable passports, visitors from the VWP countries must obtain visas from U.S. consulates before traveling to the United States.

An interview is now required before visa issuance and scheduling an appointment for a visa application can take weeks. Individuals who plan to apply for the B-1/B-2 visitor visa can find out how long it will take to get an interview at the local U.S. consulate by checking at: http://travel.state.gov/travel/tips/embassies/embassies_1214.html.

The Real ID Act

When President Bush signed the Emergency Supplemental Appropriations package this month it contained the Real ID Act of 2005, the provisions of which restrict *habeas corpus* review for certain individuals in removal proceedings, increase the difficulty for asylum applicants attempting to receive refuge in the United States, and remove barriers to completion of a fence between Mexico and the United States. In addition, it imposes minimum document requirements and issuance standards on state-issued identification cards and drivers licenses. The restrictions require applicants for state documents to prove that they are citizens, nationals or in lawful immigration status. If the states do not impose those standards on identification cards and drivers licenses, their cards may not be used at federal agencies for official purposes. “Official purposes” include boarding federally regulated commercial aircraft.

Currently, Arizona is one of the many states that already require proof of legal immigration status prior to issuance of a drivers license or Arizona identification card.

A New Work Authorization Category for Citizens of Australia

Congress also included a provision in the Emergency Supplemental Appropriations package that created a new work authorization category for Australian nationals, the E-3, who will perform services in a “specialty occupation,” the occupational category required for H-1B work authorization. The prospective U.S. employer must have filed

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a Labor Condition Application, which governs the required wage rate for the worker and ensures that working conditions will be the same as provided to similarly employed U.S. workers in the company. The new visa is limited to 10,500 workers each U.S. fiscal year.

New Benefit of Employers of Registered Nurses

The same supplemental appropriations bill that created reciprocal visas for nationals of Australia and the Real ID Act also provided for the recapture of 50,000 immigrant (permanent resident) visas that were not used in the past four years due to the slow progress by the Department of Homeland Security (DHS) of adjudicating immigrant visa petitions. These visa numbers will be reserved for registered nurses, physical therapists, and performing artists of exceptional ability, three subcategories of the Department of Labor (DOL) Schedule A regulations which do not require labor certification. These immigrant quota numbers will be available this summer, although U.S. Citizenship and Immigration Services (USCIS) will first have to identify and adjudicate RN and physical therapist petitions currently on the shelves due to the prior lack of visa quota slots.

Labor Certification: PERM and the Backlog Reduction Centers

PERM is in place, but the percentage of applications accepted for filing has been low thus far, due to the unfamiliar aspects of the new form and also to technical glitches with the on-line filing system. We'll keep you updated on progress in the new application procedure. DOL has published several PERM FAQs, which can be seen on our webpage at: http://immigration.fclaw.com/docs/PERM%20Backlog%20Processing%20FAQs_v1.PDF.

The labor certification Backlog Reduction Centers (BRC), located in Philadelphia and Dallas, were created to complete processing of the prior process for certifying jobs for foreign national workers. They are now entering transferred cases into their database system and sending out 45-day letters requesting that employers confirm the viability of their pending applications.

Congress Makes Changes to the Seasonal and Temporary Worker Program (H-2B)

The H-2B program has been limited to 66,000 visas annually, which has meant that the H-1B program visas have often been used up early in the fiscal year. Congress has addressed the shortage of available workers by temporarily exempting "returning workers" from the annual cap and USCIS will now accept petitions for seasonal and temporary workers in industries where there is a demonstrated shortage of U.S. workers. In fiscal year 2006, beginning October 1, 2005, the law has added an anti-fraud surcharge of \$150 for each H-2B petition and has increased fines for employers who fail to meet the obligations of the statute or who make willful misrepresentations in their applications.

Immigration Reform Legislation Filed in Congress

On May 12, 2005, Senators John McCain (R-AZ) and Edward Kennedy (D-MA) and Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Guitierrez (D-IL) introduced the bi-partisan Secure America and Orderly Immigration Act. A summary of the provisions of the bill would be lengthy, but it contains provisions to improve border security, including a Border Security Advisory Committee, reimbursement to states and local governments for the costs of incarceration of undocumented aliens convicted of crimes, provisions promoting migration agreements, a new electronic work authorization system that will ultimately replace the I-9 system, and an increase in the quota for family sponsored green cards. In addition, the bill creates a new work authorization category for skilled and semi-skilled workers, the H-5A, and a procedure for undocumented workers currently in the United States to register for a temporary work authorization category, the H-5B. We will keep you informed on the progress of the bill in future updates.

Nancy-Jo Merritt focuses her practice in immigration law and has over two 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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