

CONNECT!

A MONTHLY NEWSLETTER ON BUSINESS IMMIGRATION

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WELCOME TO *CONNECT!*

Connect! focuses on business immigration issues that top the agenda in our nation's capital. This newsletter includes information useful to employers, such as updates on new legislation and regulations that will impact the business community's access to foreign workers, and articles that will help employers learn about the pitfalls and opportunities of our immigration laws. By working with members of Congress on these issues, employers can help shape our laws so that they are more responsive to, and respectful of, the business community's needs and concerns.

LEGISLATIVE UPDATE

New Law Extends Employer Verification Pilot Program and Immigrant Investor Pilot Program

President Bush, on December 3, signed into law legislation extending and expanding the employment eligibility verification pilot program. The pilot program, which had sunset on November 30, 2003, allowed companies with a presence in any of six states (California, Texas, Florida, New York, Illinois, and Nebraska) the option to use an Internet-based program to determine the employment eligibility of applicants. The program was criticized by a congressional report that found that the databases supporting the on-line system had substantial problems—including incorrect information, problems with the correction of information, as well as issues concerning the protection of private information.

The new law extends the basic pilot program through 2008 and mandates the expansion of the program to all 50 states no later than December 1, 2004. Participation in the employment eligibility verification pilot program remains voluntary. In an effort to resolve the problems associated with the current system, the law requires a report by the

Department of Homeland Security that would evaluate whether previously identified problems with the program have been substantially resolved, and describe what action DHS intends to undertake to resolve any outstanding problems prior the program's expansion.

Companies interested in participating in the employment eligibility verification pilot program should discuss both the program's function and its problems with their AILA attorney.

Also included in the law signed on December 3 was a provision extending for an additional five years the immigrant investor regional center pilot program, which lapsed at the end of FY 2003, and a second provisions mandating a study of the program within one year. Under this pilot program, immigrant investors may invest the required capital in INS-designated regional centers, that use the investment capital to create jobs indirectly through revenues generated from increased exports resulting from the pilot program. The pilot program originally authorized up to 300 visas annually for investors whose required capital is invested in approved regional centers established to promote economic growth, export trade, job-creation and increased domestic capital investment on a regional basis. Later

legislation expanded the number of visas available annually to 3,000.

For more information on these regional centers and their utilization of international investment, contact your AILA attorney. ♦

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Visa Restrictions and Backlogs Continue to Create Problems for Businesses

Visa policies continue to make international travel and commerce a nightmare. In response to the growing public outcry from the business community, the House Small Business Committee recently held a follow-up hearing to a previous June 2003 hearing that focused on visa delays and the negative consequences for American business of the numerous visa restrictions implemented since September 11.

As underscored at the hearing, visa delays act as a trade barrier, discourage foreign visitors from coming to the U.S., have negative consequences for American companies, and do not increase security. Businesses have reported economic losses based on these backlogs, and companies are finding it increasingly difficult to send foreign national employees working in the United States out of the country for business or to attend conferences since their return trip could be delayed for months due to problems with visa issuance.

The committee heard examples of monumental delays at both U.S. consulates abroad and at the Department of Homeland Security's Citizenship and Immigration Services. Many of these delays resulted from the failure of the Federal Bureau of Investigation, and of other agencies who screen visa applicants, to process security checks in a timely manner.

Although government agencies have cited security concerns when questioned about visa delays, security experts have suggested alternative actions that would not jeopardize the flow of foreign investors and critical personnel into the U.S. Such alternatives include focusing our law enforcement efforts on investigation

and surveillance based on individual suspicion, not over-reaching, time-consuming checks on every visa applicant.

At the second hearing, immigration advocates discussed the "culture of no" that pervades the visa adjudication procedure whereby it is easier for an adjudicator or consular officer to delay or deny a visa than to approve it. In fact, there has been a dramatic drop (from 6.9 million to 4.9 million) in the number of visas issued since 2001 for all visitors to the United States. Similarly, visa applications have decreased 15% from 2002 to 2003.

Increased interview requirements that went into effect on August 1 also have contributed to the slowing of the visa issuance process. In addition, the pending requirement that by October 26, 2004, all citizens of countries participating in the Visa Waiver Program (VWP) must possess machine-readable passports (MRPs) in order to visit the U.S. under the VWP is expected to increase future delays significantly by further adding to the consulates' workload.

Employers and international personnel should talk to their AILA attorney about how best to get their visa delay examples (anonymous or not) to key members of Congress. It is vital that U.S. businesses, large and small, speak out about the impact of these visa delays and urge Congress to step in and mandate action to ameliorate the delays. ♦

Employers' Access to Critical Foreign Professionals Unresolved by Congress

The first session of the 108th Congress ended without Congress addressing the issue of how to ensure that U.S. companies have adequate access to highly

educated foreign national professionals via the H-1B visa program.

The H-1B program, which allows U.S. employers to hire foreign professional workers with unique skills and knowledge, special expertise in overseas needs, markets, trends and distribution, was limited as of October 1 by a 65,000 cap for initial visas. However, the actual number of visas available under this cap is, in reality, less than 65,000. Approximately 11,000 visa petitions that were left in the pipeline from last year will count against this fiscal year's numbers. In addition, 6,800 visas have been set aside for use by Chile and Singapore per the Free Trade Agreements signed into law earlier this year.

These highly educated foreign professionals represent the best and brightest in their respective fields and enable U.S. companies to develop new products, platforms and programs, enter new markets, and expand their client base. These professionals also often represent the majority of graduates from U.S. universities' Masters and PhD programs. If Congress does not provide some relief, it is likely that the H-1B cap will be hit by February or March of 2004. After the cap is hit, companies will be unable to employ an initial H-1B visa holder until the next fiscal year.

Be sure to contact your AILA attorney regarding your company's use of and need for H-1B visas. Your attorney will also have information on how you can contact your congressional representatives on this very important issue. ♦

Special Registration Modified— Many Requirements Continue

Special Registration requirements under the National Security Entry-Exit Registration System (NSEERS) have changed. As background, under NSEERS, specified groups of foreigners have been required to be photographed, fingerprinted, and interrogated upon their arrival at a U.S. port of entry and, for those already in this country, at a designated immigration office. Under the program, these individuals (most of them males from Middle Eastern countries) also have been obligated to follow re-registration requirements after one year, or, in some cases, thirty days.

The recently announced changes include the following: (1) suspension of annual re-registration for all special registrants; (2) suspension of the 30/40-day follow-up interview requirement applicable to individuals who registered for NSEERS at a port of entry.

The changes apply **ONLY** to registrants whose re-registration deadline or 30/40-day deadline is on or after December 2, 2003. Anyone who will-

fully missed a deadline before that date is still considered to have violated Special Registration. All other requirements for special registrants remain in effect.

In place of the former blanket re-registration rule, DHS can require selected individuals to re-register at any time, with notice of only 10 days. Notice of the re-registration requirement may be given by any means, including regular mail, e-mail or publication of a notice in the Federal Register. It is very important for anyone who has ever been registered under special registration to be vigilant and watch for information about such a requirement.

Employers and Human Resource personnel should note that individuals who were required to register under NSEERS still continue to be subject to strict rules. Every person who was specially registered continues to be subject to “departure registration.” Special registrants must (1) depart only from specially designated ports and (2) comply with special departure processing, which involves an appearance before a Customs and Border Protection (CBP) officer. Turning in the I-94 or being processed by airline personnel does **NOT** satisfy this requirement. If employees subject to NSEERS special

registration must travel for business, it is critical that their travel plans route the individuals through a designated port of departure.

In addition to the departure requirements, registration at the ports of entry and notification requirement still continue. Nonimmigrants who are citizens or nationals of Iraq, Iran, Syria, Libya and Sudan will be subject to special registration upon entry to the United States. Others can be designated for special registration on a case-by-case basis. **Special registrants are still required to report to DHS any changes of address, employment, or educational institution.** Such notice must occur within 10 days of the change, and must be written on a special form.

If Human Resource personnel or employees have any questions about the special registration program, including how to register, how to depart properly from the United States, and whether a registration waiver is an option, please contact your AILA attorney. Additionally, AILA attorneys can provide your business with further materials and information about contacting your members of Congress to express your concerns about this program. ♦

SPOTLIGHT

First Phase of US VISIT Begins January 5th

On January 5th, the first phase of the United States Visitor and Immigrant Status Indicator Technology program (US VISIT)—the new automated entry/exit system—is scheduled to be operational at 115 airports across the country and 14 seaports. The overall plan of US VISIT calls for the collection of personal data, photos, fingerprints at U.S. consular offices abroad, as well as broad database- and information-sharing. Expansion of the program at airports and seaports is expected to continue

throughout 2004. Unless Congress acts to delay the implementation deadlines, DHS will be required by law to expand the entry/exit program to the top 50 high traffic land border ports by December 31, 2004, and to the remaining ports of entry by December 31, 2005.

According to DHS, US VISIT will apply only to nonimmigrant visa holders. Green Card holders and U.S. citizens are exempt. Under current law and regulations, Canadians not required to have a visa upon entering the United States and foreign nationals entering the United States pursuant to a Visa Waiver will not

be included in US VISIT. Conversely, Canadians entering the U.S. in a status requiring a visa will be required to enroll in US VISIT, as will citizens of a visa waiver country entering the U.S. in a status requiring a visa.

US VISIT will be implemented in phases at our nations ports. During the first implementation phase of US VISIT, visa holders will be enrolled in US VISIT only if they enter the United States through an air or seaport that has US VISIT capability. At the port of entry, the individual’s travel documents will be scanned and a digital photo and

inkless fingerprints of both index fingers will be taken and checked against the databases and watch lists. Information will be collected on immigration and citizenship status, nationality, country of residence, and the person's address while in the United States.

Only about 30 airports, as well as the Miami seaport, will have exit capability as of the January 5 Phase One implementation date. The exit stations for US VISIT are self-service kiosks that closely resemble automated teller machines (ATMs). DHS has indicated that the kiosks will be located within the secure area of the air and seaports. The agency also has stated that attendants will be assigned to monitor the kiosk area and

offer assistance. Visa holders will be required to document their departure from the United States with US VISIT only if they depart the United States through an air or seaport that has US VISIT exit capability. According to DHS officials, no requirements currently obligate foreign nationals to depart from a port that has US VISIT exit facilities.

DHS will consider exit registration mandatory for visa holders who depart from an air or seaport with US VISIT exit capability. Additionally, departure information will be stored in the Arrival and Departure Information System (ADIS). The ADIS database contains arrival/departure, biographic and biometric indicator information on

immigrants and nonimmigrants entering and departing the United States, as well biographic arrival/departure information on legal permanent residents. According to DHS, ADIS information is constantly updated, and if a visitor overstays his or her authorized period of entry, US VISIT will record the failure to depart.

Employers and human resources personnel should note that US VISIT will likely exacerbate delays for foreign employees and clients. Contact your AILA attorney for more information on US VISIT—specifically the departure requirements—how to set up international business trips, and how best to gain access to foreign national personnel. ♦