

# Immigration Law Alert

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January 2002

## **NEW FORM REQUIRED FOR MANY VISA APPLICANTS EFFECTIVE IMMEDIATELY (DS-157, SUPPLEMENTAL NONIMMIGRANT VISA APPLICATION)**

Effective immediately, all male visa applicants between the ages of 16 and 45 must provide additional information to the U.S. Embassy or Consulate abroad in conjunction with their visa applications. The information requested now goes far beyond the type of information previously required. For example, applicants must now provide information regarding their travel for the past ten years; disclose all professional, social and charitable organizations to which the applicant has belonged or contributed; identify specialized skills relating to firearms, explosives or chemicals; and disclose whether the applicant has ever been in an armed conflict as a participant or a victim.

*All* male nonimmigrant visa applicants between the ages of 16 and 45, regardless of nationality and regardless of where they apply for their visas, must complete and submit Form DS-157 (Supplemental Nonimmigrant Visa Application) in addition to the usual Nonimmigrant Visa Application (Form DS-156, formerly Form OF-156). Please note that posts may require *any* nonimmigrant visa applicant to submit a DS-157 in conjunction with the DS-156, regardless of their age, gender or nationality. The U.S. Embassy in London is requiring that all men and women holding Chinese, Cuban, Iraqi, Iranian, Libyan, Russian, Sudanese, Somali or Vietnamese passports must also complete Form DS-157.

If U.S. or foreign employers have any employees or prospective employees applying for U.S. visas abroad, please note that this Form will be required for men between the ages of 16 and 45 immediately, and may be required for others, depending upon the local U.S. Embassy/Consulate's requirements.

The U.S. Department of State released new Form DS-157, Supplemental Nonimmigrant Visa Application, on January 11, 2002. According to Secretary of State Powell: "In the aftermath of the September 11 terrorist attacks, the use of the DS-157 is an interim measure that will allow posts to elicit information which, in some cases, will lead to a security advisory opinion." We have attached a copy of the new Form, which was issued pursuant to emergency OMB approval, with no previous notice and without public comment.

Please note that the Revalidation Unit of the Visa Office in the United States will require that the new Form be filed with visa revalidation requests as of February 1, 2002. Therefore, visa applications filed before that date will not require Form DS-157. However, the Visa Office has been taking approximately 12 weeks to process visa applications, so this may cause a further delay in adjudication.

On The Flip Side...

### ***SOME GOOD NEWS FOR EMPLOYERS...***

On January 16, 2002 the President signed new legislation which will provide tremendous benefits to employers of foreign nationals in the United States. Prior to this new law, spouses of foreign transferees were permitted to accompany the visa holder for the length of their assignment, but were barred from working in the United States unless they obtained their own work visa. Multinational companies were finding it increasingly difficult to transfer foreign nationals to the United States because

the spouses of the transferees were not permitted to work here. Congress has now enacted this new legislation in order to make it easier for companies to transfer key employees to the United States.

The new law has two principal benefits.

1. *Spousal Employment*

Spouses of employees in L (Intracompany Transferee) or E (Treaty Trader or Investor) status will be able to apply for work authorization and accept any position in the United States. The benefit is not automatically conveyed – the spouse must apply to the Immigration & Naturalization Service (“INS”) in order to obtain an Employment Authorization Document.

2. *Intracompany Transferees*

Employers with foreign operations will be able to transfer certain employees to their United States branches or headquarters more quickly and easily. The new law will reduce the amount of time that an employee must be employed by a company abroad before being eligible for a Blanket L (Intracompany Transferee) visa. The law required a minimum of one year of employment with the company abroad before being eligible for L visa status. Under this new legislation, the requirement would be reduced to six months if the employer meets certain requirements. In order to take advantage of the new 6-month timeframe, the employer must qualify for “Blanket L” status, which requires 10 L visa petitions approved during the past year; or annual combined sales of at least \$25 million; or a workforce of at least 1,000 employees. If the employer meets these requirements, it can receive pre-approval to have an unlimited number of its executive, managerial and professional specialized knowledge employees apply for L visas without the necessity of filing petitions first with the INS.

***EMPLOYMENT VERIFICATION PILOT PROGRAM EXTENDED BY CONGRESS***

In December, 2001, Congress approved the Basic Pilot Extension Act, which extends the Employment Verification Program for an additional two years.

(The pilot program expired on November 30, 2001). Employers that elect to participate in the Employment Verification Program receive special software that allows them to access federal databases to screen new employees to confirm their employment authorization status. The bill awaits the President’s signature.

***IMPORTANCE OF LEGAL COMPLIANCE AFTER SEPTEMBER 11, 2001***

Since September 11<sup>th</sup>, it has become more important than ever for nonimmigrant workers to maintain lawful status in the United States. Nonimmigrants are being detained, denied entry or placed in removal proceedings for minor violations of immigration laws, including inadvertent overstays. We recommend that employers develop and maintain their tracking systems to monitor employees’ nonimmigrant status and expiration dates. All employees should be advised to carry documents of identity and proof of their right to be present in United States at all times, particularly when they travel (passport, I-94 and I-797s). Employees who travel abroad should carry these materials in addition to proof that they are maintaining status, *i.e.*, a recent letter from the employer confirming the employee’s position, or recent pay stubs.

As the tides shift from full-employment to mass lay-offs and increased scrutiny of foreign workers, employers can expect more U.S. Department of Labor (“DOL”) and INS enforcement of employer sanctions and labor protections. As evidenced by the recent indictment of 69 individuals in Utah after an audit of airport security measures, the government has shown its willingness to use the I-9 as a basis for criminal prosecution. We recommend that employers ensure that their immigration-related public access records are in compliance with DOL and INS regulations.

For more information regarding these and any other immigration-related issues, please contact Gabrielle M. Buckley at (312) 609-7626 or any other Vedder Price attorney with whom you have worked.



U.S. Department of State  
**SUPPLEMENTAL NONIMMIGRANT VISA APPLICATION**

Approved OMB 1405-0134  
Expires 06/30/2002  
Estimated Burden 1 Hour\*

**PLEASE TYPE OR PRINT YOUR ANSWERS IN THE SPACE PROVIDED BELOW EACH ITEM  
PLEASE ATTACH AN ADDITIONAL SHEET IF YOU NEED MORE SPACE TO CONTINUE YOUR ANSWERS**

1. Last Name(s) <i>(List all Spellings)</i>	2. First Name(s) <i>(List all Spellings)</i>	3. Full Name <i>(In Native Alphabet)</i>
4. Clan or Tribe Name <i>(If Applicable)</i>		5. Spouse's Full Name <i>(If Married)</i>
6. Father's Full Name		7. Mother's Full Name
8. Full Name and Address of Contact Person or Organization in the United States <i>(Include Telephone Number)</i>		
9. List All Countries You have Entered in the Last Ten Years <i>(Give the Year of Each Visit)</i>	10. List All Countries That Have Ever Issued You a Passport	11. Have You Ever Lost a Passport or Had One Stolen?  <input type="checkbox"/> Yes <input type="checkbox"/> No
12. Not Including Current Employer, List Your Last Two Employers		
<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
<u>Job Title</u>	<u>Supervisor's Name</u>	<u>Dates of Employment</u>
13. List all Professional, Social and Charitable Organizations to Which You Belong (Belonged) or Contribute (Contributed) or with Which You Work (Have Worked).	14. Do You Have Any Specialized Skills or Training, Including Firearms, Explosives, Nuclear, Biological, or Chemical Experience?  <input type="checkbox"/> Yes <input type="checkbox"/> No    If YES, please explain	
15. Have You Ever Performed Military Service? <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, Give Name of Country, Branch of Service, Rank/Position, Military Specialty, and Dates of Service.		
16. Have You Ever Been in an Armed Conflict, Either as a Participant or Victim? <input type="checkbox"/> Yes <input type="checkbox"/> No    If YES, please explain.		
17. List All Educational Institutions You Attend or Have Attended. Include Vocational Institutions But Not Elementary Schools.		
<u>Name of Institution</u>	<u>Address/Telephone No.</u>	<u>Course of Study</u>
		<u>Dates of Attendance</u>
18. Have You Made Specific Travel Arrangements? <input type="checkbox"/> Yes <input type="checkbox"/> No    If YES, please provide a complete itinerary for your travel, including arrival/departure dates, flight information, specific location you will visit, and a point of contact at each location.		

**Paperwork Reduction Act Statement**

\*Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. You do not have to provide the information unless this collection displays a currently valid OMB number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State, A/RPS/DIR, Washington, DC 20520.

The *Immigration Law Alert* is published by the law firm of Vedder, Price, Kaufman & Kammholz. It is intended to keep our clients and interested parties generally informed on developments in the business immigration industry. It is not a substitute for professional advice.

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### The Vedder Price Business Immigration Group

U.S. companies—whether large or small—increasingly hire employees from around the globe. The search for talent within industries such as financial services, bio-medical, high tech, pharmaceutical, automotive, engineering and other key sectors of the U.S. economy is relentless in its intensity. In response to the needs of companies to manage their internationally mobile workforce, the law firm of Vedder Price has created a Business Immigration Practice Group, designed specifically to serve the immigration law and compliance needs of companies throughout the country. In addition, the firm provides counsel and assistance with respect to all types of employment-related immigrant and non-immigrant visa categories.

Specific services include:

- Determining and applying for the most appropriate visa categories for individuals who intend to stay temporarily in the United States for employment or other business-related reasons.
- Preparation and processing of permanent resident visas for executives and other professional employees.
- Due Diligence regarding immigration law issues in corporate mergers, acquisitions, divestitures, and other forms of corporate reorganization.
- Counseling employers regarding compliance with immigration laws (IRCA) in order to avoid civil and criminal penalties.
- Assisting in processing visa applications and resolving other State Department matters in U.S. Embassies and Consulates around the world.
- Assisting employers with their non-U.S. immigration needs through our network of attorneys licensed in other countries.

### Principal Members of the Business Immigration Group

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