

# Immigration Law Alert

January 2003

## New Department of Homeland Security to Include Most Immigration Functions

On November 25, 2002, President Bush signed into law the Homeland Security Act of 2002, which created a new Cabinet-level position and the new Department of Homeland Security (“DHS”). As a result, this new Department will assume control of all immigration-related duties from the Immigration and Naturalization Service (“INS”), including border patrol, detention and removal, intelligence, investigations, and inspections. In addition to securing the borders against acts of terrorism, this change will move almost all immigration benefits matters (business-related as well as family-related) to the new Department. Upon completion of the transfer of these functions to the DHS, the INS is to be abolished.

Visa issuance, too, will be impacted by Homeland Security jurisdiction, with greater coordination between the DHS and the U.S. Department of State. The Department of State currently has sole authority to adjudicate visa applications. As a result of this new law, the Department of Homeland Security will train consular officers and staff consular posts with Homeland Security officers, who can review visa applications and may overrule consular officers.

The timetable set forth by the government for this massive restructuring anticipates that the INS will be transferred into the new Department this year, although regulations are not anticipated until 2004.

### Special Registration Requirements Impact Nationals of 25 Countries

Pursuant to the National Security Entry-Exit Registration

System (“NSEERS”) announced by the INS on August 12, 2002, the Attorney General of the United States now has the right to require the registration of any persons in the United States who are not U.S. citizens or lawful permanent residents. Effective September 11, 2002, foreign nationals from certain countries are required to register with the INS upon admission to the United States. This includes fingerprinting and photographing, which takes place at INS border inspection locations.

This federal directive has been subsequently expanded to include foreign nationals from 25 countries *currently present* in the United States. Males over the age of 16 from the following countries must present themselves at their local INS office in the United States for registration: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iraq, Iran, Jordan, Kuwait, Libya, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen. (Lawful permanent residents, U.S. citizens, diplomats in A or G visa status, and persons who applied for asylum on or before November 6, 2002, or who have been granted asylum, need not register.)

Male foreign nationals from **Pakistan and Saudi Arabia** who entered the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003, are required to register with the INS **between January 13, 2003 and February 21, 2003.**

Male foreign nationals from **Bangladesh, Egypt, Indonesia, Jordan and Kuwait** who entered the United States on or before September 30, 2002, and who will

remain in the United States after March 28, 2003, are required to register with the INS **between February 24, 2003 and March 28, 2003.**

The registration deadline for nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Iraq, Iran, Libya, Sudan and Syria has passed. However, dates for registration for these 18 were recently **extended to include the period between January 27, 2003 and February 7, 2003.**

Foreign nationals who are required to register must do so with the designated INS office in their area. They will be fingerprinted, photographed, and registered. They should bring with them evidence of employment, matriculation, residence, and their passport and Form I-94. If they intend to remain in the United States for one year or longer after they registered or within ten days of the anniversary of their registration, they are required to re-register with the INS. Persons who are required to register with the INS can depart from the United States only through specified ports of departure. Failure to register makes the alien removable from the United States. Please visit <http://www.ins.gov/graphics/lawenfor/specialreg/index.htm> for more information.

### Address Change Reminder

As always, *all aliens, both immigrant and nonimmigrant, especially those subject to special registration*, remaining in the United States for more than 30 days, must notify the INS of each change of address. Form AR-11 must be prepared for each family member and mailed to the INS within ten days of the address change in order to comply with the registration requirements. A copy of new Form AR-11 is attached.

### Other New Legislation and Policies

#### Business Immigration

- On November 2, President Bush signed a law that contains several positive immigration-related provisions. The new law clarifies that H-1B workers

who have labor certification applications pending for at least 365 days can extend their H-1B status beyond the six-year limitation. The new law also establishes ameliorative procedures for persons who obtained lawful permanent residence through investment.

- On November 7, 2002, the INS issued a guidance memo on the admission of Scientific Technicians/Technologists under the North American Free Trade Agreement (“NAFTA”). NAFTA permits Canadian and Mexican nationals to enter the United States as Scientific Technicians/Technologists provided that they can demonstrate they are professionals in their own right and they possess at least two years of training in a relevant educational program. Moreover, their work must be “inter-related” with their professional supervisor. Finally, the guidance memo restricts applicants who are applying as Scientific Technicians/Technologists from performing work normally done by the construction trade such as welders, carpenters, and electricians.

#### Health Care

- The law signed into effect by the President on November 2, 2002 increases the number of J-1 physician waivers available from 20 to 30 for each state.
- However, proposed regulations published October 11, 2002 would add a requirement that all nonimmigrants coming to the United States to work as health care workers, including those seeking a change of status, be required to submit a health care worker certification. These regulations have not yet been finalized.
- On a positive note, the INS recently released an opinion that would permit the INS to approve permanent resident petitions for nurses prior to obtaining a social security number, provided that the nurse has passed the NCLEX-RN examination and is eligible to be issued a state license to practice nursing.

- A November 27, 2002 INS memo on the adjudication of H-1B petitions for registered nurses clarifies nurses' eligibility for H-1B status. While the memo acknowledges that typical registered nurses do *not* ordinarily meet the requirements of H-1B status, advanced practice nurses are more likely to be granted H-1B status because they often possess Bachelor's degrees. Examples of this type of advanced practice nurse are nurses who specialize in acute care, neonatal care, psychiatric and mental health, and women's health.

### **Education**

- As colleges and universities are well aware, January 30, 2003 (now February 15, 2003) is the mandatory compliance date for schools to utilize the new SEVIS Program (Student and Exchange Visitor Information System). SEVIS increases the INS' ability to monitor persons admitted to the United States in F, M, and J status.
- On November 2, the President signed the "Border Student Commuter Act of 2002," which created a new border commuter nonimmigrant classification under the F and M visa categories for Canadian and Mexican nationals who reside in their home country of nationality and commute to United States schools. This legislation was necessitated by a May 22, 2002 INS proclamation that commuter students residing in contiguous territory would no longer be allowed to enter the U.S. as visitors to attend school on a part-time basis, which had a substantial negative impact on colleges and universities located in the United States on the Canadian and Mexican borders.

### **Procedural Changes**

#### **Consular Practice**

- The U.S. Embassies and Consulates in the United Kingdom and Germany now require in-person interviews for first-time visa applicants, even for business-related nonimmigrant categories such as H-1B, L, or O status. Interviews will be by appointment

only. We recommend that visa applicants apply as early as possible to obtain their appointments, as there may be substantial delays in scheduling. This does not affect applications for visa reissuances (except for people from certain countries) and does not limit the Visa Waiver Program. Applicants for E and J status have recently been exempted as well. We anticipate that the vast increase in workload due to this directive may cause the government to review this requirement. However, there is a possibility that the program will be expanded to include other Posts, given the current political climate in the United States.

- The U.S. Embassy in Caracas, Venezuela closed its Visa Unit on January 20, 2003 until further notice. The Post will handle only diplomatic and U.S. citizen-related matters at this time. Immigrant visa cases at Caracas can be transferred to Panama City or Port of Spain.
- Effective November 2002, the nonimmigrant visa application fee has increased from \$65.00 to \$100.00 per person.
- Effective January 24, 2003, filing fees for various INS forms changed, due to a provision of the Homeland Security legislation. Please note that these changes (fee reductions) may be short-lived. Petitions and applications filed with the wrong filing fees will be accepted for the short-term, and INS may refund the difference.
- From November 2002 through January 13, 2003, INS District Offices and Service Centers were not issuing approvals for immigration benefits. Adjustment of status applications, naturalization applications, and some asylum applications were affected. Aspiring citizens have had their naturalization ceremonies cancelled with one or two days' notice. INS indicated that these delays were due to a delay in completing security checks. On January 13, 2003, INS Headquarters advised us that the problems with the FBI checks have been resolved and that approvals of adjustment of status and naturalization applications are proceeding.

- INS adjudicators will no longer be exercising discretion in granting benefits to aliens who are out of status. This change in policy may prevent the INS from approving extension petitions on a nunc pro tunc basis. Therefore, it is imperative to ensure that both employers and employees are in full compliance with United States immigration laws.

For further information, contact your Vedder Price attorney or:

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# Alien's Change of Address Card

NAME (Last in CAPS) (First) (Middle) I AM IN THE UNITED STATES AS:  
 Visitor  Permanent Resident  
 Student  Other . . . . . (Specify)

COUNTRY OF CITIZENSHIP DATE OF BIRTH COPY NUMBER FROM ALIEN CARD



PRESENT ADDRESS (Street or Rural Route) (City or Post Office) (State) (ZIP Code)

(IF ABOVE ADDRESS IS TEMPORARY) I expect to remain there \_\_\_ years \_\_\_ months

LAST ADDRESS (Street or Rural Route) (City or Post Office) (State) (ZIP Code)

I WORK FOR OR ATTEND SCHOOL AT: (Employer's Name or Name of School)  
(Street Address or Rural Route) (City or Post Office) (State) (ZIP Code)

PORT OF ENTRY INTO U.S.	DATE OF ENTRY INTO U.S.	IF NOT A PERMANENT RESIDENT, MY STAY IN THE U.S. EXPIRES ON: (Date)
SIGNATURE	DATE	

AR-11 (Rev. 11/07/02)Y

## ALIEN'S CHANGE OF ADDRESS CARD

This card is to be used by all aliens to report change of address within 10 days of such change.

The collection of this information is required by Section 265 of the I&N Act (8 U.S.C. 1305). The data used by the Immigration and Naturalization Service for statistical and record purposes and may be furnished to federal, state, local and foreign law enforcement officials. Failure to report is punishable by fine or imprisonment and/or deportation.

This card is not evidence of identity, age, or status claimed.

**Public Reporting Burden.** Under the Paperwork Reduction Act, an agency may not conduct or sponsor an information collection and a person is not required to respond to an information collection unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. This collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including for reducing this burden to: Immigration and Naturalization Service, 425 I Street, N.W., Room 4034, Washington, DC 20536; OMB No. 1115-0003. **Do not mail your completed form to this address. MAIL YOUR FORM TO THE ADDRESSES SHOWN BELOW:**

For regular US Postal Service:

U.S. DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service  
Change of Address  
P.O. Box 7134  
London, KY 40742-7134

For overnight mailings, only:

U.S. DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service  
Change of Address  
1084-I South Laurel Road  
London, KY 40744

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## VEDDER, PRICE, KAUFMAN & KAMMHOLZ

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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.

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