

Immigration Law Alert

October 2003

New Passport Requirements Go into Effect October 1, 2003 and October 26, 2004

The U.S. Department of State and the Department of Homeland Security ("DHS") announced that, starting October 1, 2003, every traveler entering the United States under the Visa Waiver Program must have a machine-readable passport. Any traveler without a machine-readable passport would be required to obtain a visa before coming to the United States, in accordance with the USA Patriot Act of 2001. This meant that all adults and children who planned to enter the U.S. after October 1, 2003 as tourists or business visitors using the Visa Waiver Program had to have a machine-readable passport.

Fortunately, on September 25, 2003, the State Department announced that this requirement would be **delayed until October 26, 2004**, for most of these countries. However, persons traveling on the Visa Waiver Program must have machine-readable passports if they are citizens of Andorra, Belgium, Brunei, Liechtenstein, Luxembourg and Slovenia. Citizens of Visa Waiver Program countries are permitted to enter the United States for general business or tourist purposes for a maximum of 90 days without a visa. Citizens of the rest of the Visa Waiver countries **must have machine-readable passports by October 26, 2004**. These include: Australia, Austria, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Spain, Sweden, Switzerland and the United Kingdom.

Effective August 1, 2003, More Visa Applicants Must Be Interviewed

Because of heightened security concerns, the U.S. Department of State changed its policy regarding personal interviews for visa applicants. Since August 1, 2003, many more visa applicants have had to schedule interviews at a U.S. Consulate or Embassy abroad in order to obtain visas to enter the United States. This change has impacted business travelers, students and intracompany transferees, as well as tourists.

At most posts, these interviews must be scheduled ahead of time, and the passports will be mailed back to the applicant. Many drop-boxes or mail-in programs will no longer be available, particularly for first-time visa applicants. Persons still able to obtain visas without an interview are:

- (1) children (16 and under);
- (2) persons aged 60 years or older;
- (3) most applicants for diplomatic or official visas;
- (4) applicants who are renewing visas that have only recently expired; and
- (5) applicants for whom a waiver is warranted, as determined by the consular officer.

Each post is revising its visa application procedures to accommodate the new requirements. For example:

- **U.S. Embassy/Tokyo:** Will still issue H and L visas without an interview—E visa applicants must appear in person.
- **U.S. Embassy/Paris:** Most French national applicants are temporarily exempt from the 100% interview requirement. Third Country Nationals physically present must make an appointment with the scheduling subcontractors and should expect delays.
- **U.S. Consulate/Frankfurt:** Has required in-person interviews since November 2002. All E visas applicants must apply in person effective July 24, 2003.
- **U.S. Embassy/London:** Has required in-person applications since January 2003.
- **U.S. Embassy/Seoul, Korea:** Will no longer accept walk-in applications, except in “life or death emergencies”; TARP ended on July 18, 2003.

All employers should be aware that these requirements are changing *daily*, and should confirm visa application procedures before making any travel plans.

Reissuance of Visas in the U.S.

The Diplomatic Liaison/Visa Revalidation Division of the Visa Office accepts applications for revalidation of employment category (E, H, I, L, O and P) visas from applicants who hold a visa of the same category and meet certain other criteria. *Please note that it is currently taking 10–12 weeks* for the Visa Office to process applications in the U.S., and the Office will not accept applications until the visa is within sixty days of expiration.

It’s Back . . . The H-1B Cap

Beginning on October 1, 2003, the number of new H-1B (specialty occupation) visas available will be reduced from 195,000 to 65,000. As employers may recall, before the number was increased three years ago, we were “running out” of H-1B visas as early as March of each year. This means that employers employing students on OPT may wish to apply this fiscal or calendar year for H-1B status for those employees to ensure that they can continue their employment without interruption. Based on statutory language, there is some question as to whether physicians previously in J-1 status who have agreed through a state health department to work in underserved areas in exchange for waiver of the J home residence requirement will be subject to the numerical limit after September 30, 2003. **We strongly suggest that employers of H-1B workers contact their Congressional representatives to advise them of the need for these well-educated professional employees.**

Diversity Visa Lottery DV-2004

The U.S. Department of State has notified the winners of the DV-2004 Diversity Lottery by mail. The Diversity Lottery makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. People who have been notified that they have won the lottery should file *immediately* for permanent residency, as more winners are selected than visas are available.

DV-2005

Entries for the DV-2005 Diversity Visa Lottery must be submitted *electronically* between Saturday, November 1, 2003 and Tuesday, December 30, 2003. Paper entries will not be accepted. Applicants may access the electronic Diversity Visa entry form during

the 60-day registration period beginning November 1, 2003 at: <http://travel.state.gov/dv2005.html>.

As in previous years, applicants must be citizens or nationals of certain countries who have a high school degree or two years of work experience. Please note that there is *no* filing fee required to register for the DV Lottery—beware of “notarios” advertising to prepare these applications for a fee.

U.S. Government Suspends Programs for Certain International Travelers

On August 4, 2003, the DHS and the U.S. Department of State suspended two programs that allowed certain international air passengers to travel through the United States for transit purposes without first obtaining a visa. The programs, known as the Transit Without Visa program (TWOV) and the International-to-International transit program (ITI), have been suspended for at least 60 days. **This action does not affect U.S. citizens or citizens from visa waiver countries (see list of waiver countries above).**

However, passengers from nonwaiver countries who plan to change planes and/or airports in the U.S. must obtain a visa prior to travel in order to do so, with some very limited exceptions. In 2002, the top five countries from which TWOV passengers arrived in the United States were Brazil, Mexico, Korea, the Philippines and Peru, and they transited the U.S. principally through airports in Los Angeles, Miami, New York, Dallas and Houston.

Foreign Health Care Workers

On July 25, 2003, the DHS published a final regulation establishing that certain nonimmigrant health care workers are required to obtain certification as to their credentials. Although these regulations will not affect physicians, they will affect nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, clinical laboratory scientists, clinical laboratory technicians and physician assistants. The DHS may exercise its

discretion to waive the certification requirement for a period of one year. However, we strongly recommend that all health care employers ensure that their health care workers obtain appropriate certification as soon as possible.

US-VISIT Electronic Entry-Exit System

The DHS is setting up a new electronic entry-exit system, called US-VISIT, that will collect and share information, including biometric identifiers, on visitors to the United States. **Effective January 1, 2004, all persons entering the U.S. pursuant to visas will be fingerprinted and photographed.** The information in the US-VISIT system will be available to inspectors at ports of entry, special DHS agents, DHS adjudications staff, U.S. consular offices and other law enforcement agencies. This information will be made available only “to authorized officials for official duties, including identifying nonimmigrants who may have overstayed their visas or otherwise violated the terms of their admission, assisting in the adjudication of immigration benefits, and assisting other federal, state, and local law enforcement agencies as necessary.”

The National Security Entry Exit Registration System (“NSEERS”)

NSEERS was a pilot project that permitted inspectors at ports of entry to conduct more detailed inspection of persons deemed to be of risk to national security. Also, under NSEERS, males born on or before November 15, 1986 who are nationals of designated countries, were required to register at a local district immigration office. NSEERS will eventually become part of the US-VISIT system. However, individuals subject to Special Registration should ensure that they enter and exit the U.S. through the ports designated by DHS. **Please note that persons who registered pursuant to NSEERS must re-register every year, and persons who registered last fall should contact DHS to re-register.**

New Nonimmigrant Visas Photo Requirement

The photograph format for nonimmigrant visa applications has changed. The new format is similar to that required for U.S. passport processing, with a larger (2" x 2") picture requirement.

DHS Internet Appointment Scheduling in Miami

The Miami office of the DHS is experimenting with an on-line appointment scheduling system. If the system is successful, DHS officials have indicated a desire to use it nationwide. The *Miami Herald* reports that applicants can still line up, but appointments will be given priority.

Social Security Issues

Since September 1, 2002, the Social Security Administration (SSA) has been following a nationwide policy requiring the SSA to verify a foreign national's immigration documents and status. This has resulted in delays of up to four months in assigning social security numbers. Please note that employers can—and, in many cases, must—put the new employee on the payroll before the number is issued.

Driver's Licenses

On March 26, 2003, SSA issued a Notice of Proposed Rulemaking (NPR) that would eliminate a driver's license as a "valid non-work purpose" for obtaining an SSN. The SSA reports: "SSA acknowledges the hardship this would cause to individuals who are in the United States legally but cannot get an SSN for work purposes, but asserts that it is up to the states to allow applicants to provide alternative identifiers to the SSN since SSA is restricting issuance of non-work SSN's for national security reasons. It should be noted that while all states need to collect SSN information under the Welfare Reform Act, the SSN is not required for driver's licenses or other purposes unless there is a separate state statute imposing such a requirement."

DHS Begins Offering "Online" Filing for Two Popular Immigration Forms

On May 29, 2003, the DHS began accepting electronic filing (e-filing) of two of the most commonly submitted immigration forms—the application used to renew or replace a "green card" (Form I-90) and the Application for Employment Authorization (Form I-765). However, in order to pay the filing fees, the applicant must provide a bank account number for electronic payment as well. After filing electronically, aliens schedule themselves for an appointment to visit an Application Support Center at a convenient time for the collection of a digital photograph, signature and fingerprint.

New I-140 and Seven Other New DHS Forms Required on and after October 1, 2003

The DHS has revised eight forms in recent months for which the newly revised versions will be required on and after October 1, 2003. These are Forms I-140, I-824, I-129S, I-102, N-470, I-526, I-829 and N-336.

Reminders

- The Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) on March 1, 2003. Services are now provided by the newly named Bureau of Citizenship & Immigration Services (USCIS), Immigration Customs Enforcement (ICE) and Customs & Border Protection (CBP).
- We recommend that all non-U.S. citizens residing in the United States carry documents proving legal status at all times; **each non-U.S. citizen is also required to file Form AR-11 with USCIS within 10 days of an address change.**

- Nationals of British Commonwealth countries and Ireland who are permanent residents (or “Landed Immigrants”) of Canada and Bermuda and were not previously required to present a passport and nonimmigrant visa to enter the United States now *are required* to present these documents for entry into the United States.
- U.S. laws prohibit the entry of anyone who seeks to export strategic goods, technology or sensitive information from the U.S. without an export license. Certain occupations and technologies are included on the government’s “Technology Alert List.” If your employees, students or researchers work with these technologies, they could be subject to additional delays in visa adjudication. For further information, please go to: <http://travel.state.gov/state147566.html>.

For more information, please contact your Vedder Price attorney, or:

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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, biomedical, 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 nonimmigrant 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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