

Immigration News and Updates

February 17, 2005

New Law Regarding Electronic I-9 Form Storage & Signature

The new act allowing for electronic storage of Forms I-9 which was signed on October 30, 2004 will not take effect until the Department of Homeland Security (DHS) publishes final implementing regulations, or until April 28, 2005, whichever comes first. The HR 4306 act allows the requirement that a Form I-9 be signed to be met by an electronic signature, and allows employers to store electronic images of their Forms I-9 rather than (or in addition to) paper copies. These changes should allow employers to better incorporate I-9 compliance into their existing HRIS systems. Many details have not yet been addressed, such as the requirement for an electronic signature, the format of the electronic form, and the specifications regarding image storage. These issues will be addressed by the implementing regulations. However, if the DHS does not publish final regulations by April 28, 2005 then the law will take effect without those regulations and employers will lack guidance as to whether or not their systems comply with the new law.

Labor Certification Applications

The state workforce agencies are now sending out acknowledgement letters for all Labor Certification Applications submitted in December 2004. Many employers took advantage of the opportunity to file Labor Certification Applications under the old system, before the Program Electronic Review Management System ("PERM") comes into effect on March 28, 2005. Those acknowledgement letters state the date of receipt, priority date, and location of the case. Most cases filed with the Michigan Department of Labor and Economic Growth have been boxed up to be shipped to the Dallas Backlog Reduction Center on March 25, 2005.

In all cases, the state workforce agency acknowledgement letters do not indicate processing times for those applications, nor has the Department of Labor's website been updated to reflect current processing times for either RIR or standard Labor Certification Applications. We hope to obtain information on processing times once the Department of Labor implements PERM.

Biometric Visa Program

The Department of State announced that the Biometric Visa Program is now a permanent program. This program was created by the Enhanced Border Security and Visa Entry Reform Act and requires that applicants for immigrant and nonimmigrant visas at U.S. Consulates abroad enroll fingerscans of two of their index fingers as well as photographs with their applications. The biometric reading is meant to enable consular officers to deny immigrant visas and nonimmigrant visas to those individuals who may be on any watchlists. In conjunction with the US-VISIT program (or "U.S. Visitor and Immigrant Status Indicator Technology Program"), the fingerprint scans will then be forwarded to U.S. ports of entry for comparison when individuals enter the U.S.

Implementation of Border Commuter Student Act of 2002

The Department of Homeland Security issued a final interim rule in January 2005 to implement recent legislation creating new visa classifications available to part-time students who commute across the border. This rule creates F-3 and M-3 categories for border commuter students who maintain a residence in either Canada or México but who enter

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the U.S. within 75 miles of the border to attend school. When the rule is made effective, any student from Canada or México wishing to enroll in a reduced course load for purposes of commuting must obtain an F-3 or M-3 visa. These students will also be tracked in the Student Exchange and Visitor Information System ("SEVIS") administered by the Department of Homeland Security's Immigration and Customs Enforcement Agency ("ICE") and the Student Exchange and Visitor Program ("SEVP"). The comment period for this regulation ends in March 2005.

For more information about this, or other U.S. immigration issues, please contact our Miller Canfield Immigration Practice. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.