

Immigration News and Updates

November 9, 2004

Changes to the Employment Verification Program

On November 4, 2004, President Bush signed into law an amendment to the Immigration and Nationality Act to improve the process and recordkeeping of verifying an individual's eligibility for employment. The amendment allows employers to electronically complete and store employment eligibility verification (I-9) forms. In addition to e-storage of the forms, the amendment allows employers to use either handwritten signatures or electronic signatures in completing the Forms I-9.

Diversity Visa Lottery Program The registration period for the 2006 Diversity Visa Lottery Program, or more popularly known as the "Green Card lottery", has begun. Between November 5, 2004 and January 7, 2005, all foreign nationals seeking to apply must register electronically with the designated Department of State website: www.dvlottery.state.gov. This marks the second year that online registration is required. Mailed in, or paper, entries are no longer accepted. The Diversity Lottery Program awards 50,000 permanent resident visas annually to persons from countries with low immigration to the U.S. The visas are chosen randomly by a computer-generated random lottery drawing. Citizens of countries that have sent more than 50,000 immigrants to the U.S. in the past five years are not eligible to apply. For example, citizens of Canada, China, Colombia, U.K., El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, and Vietnam are not eligible to apply. However, citizens of Northern Ireland, Hong Kong SAR, Macau SAR, and Taiwan are eligible to apply.

Machine-Readable Passports

U.S. Department of Homeland Security Officers began enforcing requirements for machine-readable passports for travelers seeking admission under the Visa Waiver Program as of October 26, 2004. All foreign nationals from countries that participate in the Visa Waiver Program who seek admission to the U.S. must now hold: a machine-readable passport, or a valid nonimmigrant visa. U.S. Customs and Border Protection ("CBP") officers are authorized to grant a one-time exemption to some foreign nationals. These foreign nationals will be issued a letter explaining the new U.S. entry requirements and the individual's passport will be annotated with the exemption. If the foreign national fails to obtain a machine-readable passport or a non-immigrant visa for subsequent visits to the U.S., they will then be refused entry under the Visa Waiver Program.

Families seeking admission to the U.S. under the Visa Waiver Program must present a machine-readable passport for each member of the family. While in the past families were admitted under one passport, the new requirement is for every family member including children. CBP officers are also authorized to grant one-time exemptions to families.

Reengineering of Labor Certification Application Process

Continued

There is still no news on the expected date of implementation of, or of proposed regulations for, the new electronic program for filing Labor Certification Applications ("PERM"). However, we have been informed that San Francisco (Region VI) has transferred more than 20,000 backlogged cases to the Philadelphia and Dallas backlog reduction centers. The U.S. Department of Labor has determined that all centers will adhere to a First-In-First-Out ("FIFO") approach and will utilize a different contractor to monitor productivity and ensure a "level playing field". A representative from the U.S. Department of Labor has informed us that they will try to provide public information about the locations of batches of cases. Whether individual employers will receive letters directly from the Department of Labor informing of the transfers is still not clear.

If PERM is implemented, the national processing centers in Chicago and Atlanta will be the main processing centers for all foreign labor program processing. The U.S. Department of Labor has secured the locations for those national processing centers and is currently in the process of building the infrastructure for web-based or electronic filing of Labor Certification Applications. While little is known about PERM, we do know that the program may eliminate arguments for business necessity, related experience/education requirements, and experience gained through an overseas affiliate of the U.S. petitioner.

Considering that new regulations have not been published and very little is known about the implementation of the program, the consensus among immigration practitioners is that employers should submit any Labor Certification Applications for foreign nationals before January 1, 2005. When and if PERM is implemented, employers can then withdraw and refile the applications under the new program if it benefits those applications. PERM may also allow for conversion of previously filed cases, and for the retention of priority dates.

We will keep you informed of any new developments in this area.

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.