

Immigration Newsflash

Senate Passes Important H-1B Extension Provisions; INS Designates Departure Control Points for Certain Nonimmigrants; Denial of TN Extensions When an Immigrant Petition Has Been Filed; Diversity Lottery Reminder

Senate Passes Important H-1B Extension Provisions

The Senate, on October 3, 2002, passed a much needed revision of the law governing H-1B visa extensions. The H-1B provisions are contained in H.R. 2215, the "21st Century Department of Justice Appropriations Authorization Act," which we previously discussed in our September 27, 2002 Client Alert (see *Immigration Newsflash – Sept. 27, 2002*). Currently, the law permits an extension of H-1B status beyond the 6-year limitation, but only where a labor certification (where one is required) was filed at least 365 days prior to the extension petition, *and* where such labor certification was approved so that an immigrant visa petition could be filed. The new provisions will permit an H-1B visa to be extended beyond the current 6-year limitation if a labor certification application for permanent residence has been pending for at least 365 days, even though such labor certification has not yet been approved.

The new provisions should apply not only to persons who are currently in H-1B status, but also to persons who have already exceeded the 6-year limitation and who have obtained another status (*e.g.*, student or business visitor) or relocated abroad. Although the legislation is not completely explicit in this particular respect, the legislative history makes it clear that this was the intent of Congress.

The President is expected to sign the new provisions into law in the near future.

INS Designates Departure Control Points for Certain Nonimmigrants

As we previously reported in June 2002 (see *Immigration Newsflash – June 2002*), the Immigration and Naturalization Service ("INS") has implemented a system to register and monitor certain nonimmigrants who apply for admission to the United States. As a result, INS has started subjecting nonimmigrants from certain designated countries, as well as other nonimmigrants who meet certain criteria specified by the Attorney General, to these special registration procedures, which include fingerprinting, mandatory reporting and departure control requirements. A nonimmigrant subject to special registration who fails to satisfy the conditions imposed on him/her, may be subjected to deportation proceedings and may also be denied future immigration benefits, including admission to the U.S.

Who is subject to special registration?

1. All nonimmigrants who are nationals or citizens of Iran, Iraq, Libya, Sudan, or Syria, or who consular officials or INS inspectors have reason to believe may be nationals or citizens of those countries;
2. Males between the ages of 16 and 45 who are nationals or citizens

of, or who consular officials or INS inspectors have reason to believe may be nationals or citizens of, Pakistan, Saudi Arabia and Yemen;

3. Individuals who have made unexplained trips to Iran, Iraq, Libya, Sudan, Syria, North Korea, Cuba, Saudi Arabia, Afghanistan, Yemen, Egypt, Somalia, Pakistan, Indonesia or Malaysia, or whose explanation of such trips lacks credibility;
4. Individuals who have engaged in other travel, which is not well explained by work or other legitimate circumstances;
5. Individuals who have previously overstayed in the U.S. on a nonimmigrant visa, and whom the INS decides to monitor in the interest of national security; and
6. Individuals who a consular official or INS inspector has reason to believe present a national security or law enforcement risk, *including the risk that the alien in question may violate the terms of his/her visa or exceed his/her authorized period of stay.*

It is widely expected that additional countries will also be designated in the coming weeks or months, subjecting nonimmigrant nationals or citizens of those countries to special registration.

Departure Control Ports Enumerated

As noted above, included among the special registration procedures is the requirement that nonimmigrants sub-

ject to special registration may only depart the U.S. from designated ports of departure. INS recently published its list of these designated ports of departure, which include most major U.S. airports and border crossing ports of entry. (A detailed list of the designated departure points, along with hours of operations, may be obtained at <http://www.ins.gov/graphics/lawenfor/specialreg/BLISTOFP.pdf>.) It is extremely important that an individual who is subject to special registration departs the United States only from a designated point of departure, and that he/she informs an appropriate INS inspector of his/her departure before leaving the U.S., since the failure to do either of these things may lead the INS to presume that he/she is inadmissible to the U.S. in the future.

Denial of TN Extensions When an Immigrant Petition Has Been Filed

The Nebraska Service Center of the INS, which has exclusive jurisdiction

over the processing of TN petitions filed in-land, has announced that officers have been instructed to deny TN petitions in cases where an immigrant petition on behalf of the beneficiary has been filed. It may, therefore, be necessary to evaluate alternative strategies for persons in TN status who are pursuing permanent residence. For example, an H-1B change of status petition could be filed, or an adjustment of status application with an application for employment authorization could be filed concurrently with the immigrant petition.

Diversity Lottery Reminder

The registration period for the Diversity Visa ("DV") "Lottery" Program for fiscal year 2004 began at noon on October 7, 2002 and continues through noon on November 6, 2002. Please see our client alert of August 2002 (*Client Alert – August 27, 2002*). Successful applicants will be notified between April and July of 2003.

For additional information regarding procedures and requirements for the "lottery," you may call the Department of State at 202-331-7199. DV information is also available in the "Visa Bulletin" on the Internet at <http://travel.state.gov> or the Consular Affairs automated fax at 202-647-3000 (code 1103). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller's fax equipment.

*The information in this Alert is not intended to be legal advice. However, if you require legal assistance or would like additional information about immigration matters, please contact your local Paul Hastings representative or **Daryl Buffenstein** at 404-815-2232 or via email at darylbuffenstein@paulhastings.com.*

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