

December 2, 2002

Immigration Newsflash

President Bush Signs Homeland Security Bill – INS Abolished; INS Expands Special Registration to Certain Male Foreign Nationals Already Present in the U.S.; Update on Employment Authorization and Advance Parole Issuance; Nebraska Service Center Backs off I-140/TN Policy Change

President Bush Signs Homeland Security Bill – INS Abolished

On November 25, 2002, President Bush signed the “Homeland Security Act of 2002,” H.R. 5005, into law. The new law authorizes the largest reorganization of the federal government since the creation of the Defense Department in 1947. The newly created Department of Homeland Security will have 170,000 employees and will bring together 22 federal agencies, including such agencies as the Immigration and Naturalization Service, the Secret Service, the Customs Service, the Federal Emergency Management Agency, the Transportation Security Administration, and the Border Patrol.

With the implementation of the Department of Homeland Security will come a major shift in the U.S. immigration system. The Homeland Security Act expressly abolishes the Immigration and Naturalization Service, and, in its place, creates within the new Department two separate bureaus, the Directorate of Border and Transportation Security, and the Bureau of Citizenship and Immigration Services, which will regulate and process immigration-related matters. In addition, the Department will have final authority over the issuance of visas, although the State Department will continue to process visa applications.

The Administration has 60 days from the date the President signed the bill to submit its reorganization plan for

the new Department. Ninety days after the submission of the reorganization plan, the process may begin for transferring the twenty-two agencies which will now be under the new Department’s control. The Administration will have a year to consolidate the twenty-two existing federal agencies into the new Department of Homeland Security.

President Bush has nominated Tom Ridge, his current homeland security advisor, to serve as the Secretary of the Department. President Bush has also selected current Navy Secretary Gordon England to be Ridge’s deputy. The current Administrator of the Drug Enforcement Administration, Asa Hutchinson, has been selected by the President to be the Department’s Undersecretary of Border and Transportation Security.

As the implementation of the government reorganization proceeds, we will be closely monitoring these developments, and working through the American Immigration Lawyers Association and other business organizations to minimize the negative impact on employment-related immigration.

INS Expands Special Registration to Certain Male Foreign Nationals Already Present in the U.S.

INS has given formal notice in the Federal Register that certain nonimmigrants from **Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman,**

Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen must now report to the INS to enroll in the National Security Entry-Exit Registration System (NSEERS). It is expected that additional countries will be added in the coming months.

Effective November 15, 2002, all male nonimmigrant aliens (except those with A or G visa classification) from **Iran, Iraq, Libya, Sudan or Syria** must report in person to a designated INS office if they: 1) were born on or before November 15, 1986; 2) are nationals or citizens of Iran, Iraq, Libya, Sudan or Syria; 3) were inspected by the INS and last admitted to the U.S. as nonimmigrants on or before September 10, 2002; and 4) will remain in the U.S. until at least December 16, 2002. Affected nonimmigrants must report to the INS on or before December 16, 2002.

In addition, effective December 2, 2002, all male nonimmigrant aliens (except those with A or G visa classification) from **Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen** must report in person to a designated INS office if they: 1) were born on or before December 2, 1986; 2) are nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen; 3) were inspected by the INS and were last admitted

to the U.S. as nonimmigrants on or before September 30, 2002; and 4) will remain in the United States at least until January 10, 2003. Affected nonimmigrants must report to the INS on or before January 10, 2003.

The special registration program applies to any alien described above who is a national or a citizen of a designated country, notwithstanding any dual nationality or citizenship. As a result, a person who satisfies the criteria listed above and who was born in a designated country may still be subject to special registration, even though he may no longer be a citizen of that country. While the immigration law generally defines the term “national” to mean a person who owes permanent allegiance to a country, it is presently unclear whether INS will apply this definition in the special registration context. Please note, however, that U.S. permanent residents (*e.g.*, “green card” holders) and aliens who applied for or were granted asylum on or before November 22, 2002 are not required to register.

It is critical that any foreign national who may arguably be subject to special registration consult with immigration counsel before the expiration of the applicable time periods noted above. Individuals who are required to register will be photographed, fingerprinted and interviewed under oath by an INS officer. They will also be required to present certain documentation, including travel documents (*i.e.*, passport, I-94 card and any other government-issued identification) and proof of residence. In addition, the INS officer may require that such individuals present other, unspecified information.

Failure to comply is a federal misdemeanor (punishable by 30 days in jail

or a \$100 fine or both) and a deportable offense. Moreover, any violation can result in a permanent bar from entering the U.S., without possibility of a waiver.

Like all non-citizens in the U.S., individuals subject to special registration must notify the INS of any change of address within 10 days of moving. However, individuals subject to special registration must utilize a special form, the AR-11SR. This form can be accessed from <http://www.ins.usdoj.gov/graphics/forms-fee/forms/ar-11sr.htm>.

Additional information regarding the special registration program may be found on the INS website at <http://www.ins.gov/graphics/lawenfor/specialreg/index.htm>.

Update on Employment Authorization and Advance Parole Issuance

INS has instructed its offices to cease same-day adjudications of benefits when there is a temporary Alien Registration file (“A-file”) to “ensure that benefits are not granted to ineligible applicants.” This new policy will likely result in additional delays for adjustment of status applicants who have also applied for interim work authorization and advance parole.

The memo holds individual officers fully accountable “to obtain and review any and all information” provided in national or local background checks. Officers are now obligated to review the full contents of the A-file or petition for any disqualifying information or evidence that such information may exist, before granting an immigration benefit. Applications for employment authorization documents and advance parole are being processed subject to Interagency

Border Inspection System (“IBIS”) security checks and may not be approved without the completion of the requisite security checks.

In response to the memo, some District Offices that previously processed employment authorizations and advance paroles on a same-day basis have discontinued the practice, either on a blanket basis or for cases for which they do not have the complete A-file.

Nebraska Service Center Backs off I-140/TN Policy Change

The Nebraska Service Center (“NSC”) of the INS, which has exclusive jurisdiction over the processing of TN petitions filed in-country, had previously instructed its officers to deny TN petitions in cases where an immigrant petition on behalf of the beneficiary has been filed. The NSC based this policy on its assertion that the beneficiary of a TN petition in such a case could no longer demonstrate that he or she lacks the required “nonimmigrant intent.” The NSC has announced that it has backed off this blanket policy. Instead, the NSC has indicated that the filing of an immigrant petition is simply one factor to be considered in the adjudication of a TN extension, and that evidence of such a filing should not automatically result in a denial of the TN petition. To minimize the risk of an adverse adjudication, careful planning based on each individual’s circumstances is critical.

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.