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Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner Partners, L.L.C.

November 2008

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This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

The Diversity Visa Lottery Is Now Open

On October 2, 2008, the U.S. State Department opened a two month application period for the Fiscal Year 2010 green card lottery. This is an opportunity for you or your foreign national employees to win green cards for themselves and dependent family members. The program is known as "DV-2010." This year marks the fourth year that electronic registration is required. Paper entries and mail-in requests for registration will not be accepted.

The program makes available a maximum of 55,000 Diversity Visas (DV) each fiscal year via a random selection process intended to benefit natives of "low admission" countries, which are countries as defined by U.S. Citizenship and Immigration Services as having low rates of immigration to the United States.

To be eligible, the applicant **MUST NOT** be a native of any of the following "high admission" nations: Brazil, Canada, China (Mainland-Born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, South Korea, United Kingdom and its Dependent Territories (except Northern Ireland), and Vietnam. (Nativity in most cases is determined by country of birth, not necessarily country of current citizenship.) In other words, natives of these countries are not eligible to enter the lottery. Natives of all other countries are eligible, as are natives of Hong Kong SAR, Macau SAR, Taiwan, and Northern Ireland, provided they meet certain employment and education requirements. Specifically, the applicant must have **EITHER** a high school education (or its equivalent), **OR** two years of work experience within the past five years in an occupation that requires two years of experience or training. Persons born in an ineligible country may apply if their spouse was born in an eligible country.

For DV-2010, Russia has returned to the list of eligible countries. Kosovo has also been added to the list of eligible countries. No countries have been removed from the list of eligible countries for DV-2010.

The 50,000 visas for 2010 will be distributed to natives of the following six global regions: Africa; Asia; Europe, North America (Bahamas only); Central America, South America and the Caribbean; and Oceania. No single nation may be granted more than 7% of the available diversity visas in any one year. An additional 5,000 visas are reserved for use under the Nicaraguan and Central American Relief Act of 1997 ("NACARA").

The application process is easy and something that anyone should be able to complete without assistance from an immigration lawyer or immigration consultant. Use of a lawyer or consultant will not improve the chances of

being selected. No application fee is required. The applicant must complete the Electronic Diversity Visa Entry Form (E-DV), which is accessible only at: www.dvlottery.state.gov during the registration period. Go to: [http://www.travel.state.gov/pdf/T1026V-DV-2010bulletin\(3\).pdf](http://www.travel.state.gov/pdf/T1026V-DV-2010bulletin(3).pdf) for Instructions for the 2010 Diversity Immigrant Visa Program (DV-2010).

Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in website delays. No entries will be accepted after Noon, EST, on December 1, 2008. The Department of State will send entrants an electronic "notice of receipt" containing their name, date of birth, country or chargeability, and a time/date stamp confirming the information was properly registered.

Please feel free to contact us at immigration@rosnerlaw.com for assistance or for additional information regarding participation in this year's green card lottery program.

Guidance for Employers Who Receive Social Security 'No-Match' Letters

Each year the Social Security Administration (SSA) informs thousands of U.S. employers via "no-match" letters that certain employees' names and corresponding Social Security numbers provided on the employers' Form W-2 wage reports do not match SSA's records. Of the approximately 250 million wage reports that the SSA receives each year, as many as 4 percent of these belong to employees whose names and corresponding Social Security numbers do not match SSA records.

On October 23, 2008, the Department of Homeland Security (DHS) issued a Supplemental Final Rule that provides additional background and analysis of the Department's No-Match Rule, which was originally proposed in June 2006 and issued in August 2007. The implementation of the No-Match Rule has been stayed following a preliminary injunction issued by the U.S. District Court for the Northern District of California last year. The new DHS regulation addresses specific items raised by the Court, including clarifying what steps employers can take to resolve discrepancies identified in "no-match" letters issued by the SSA.

The new No-Match Rule details steps employers may take when they receive a "no match" letter and provides a "safe harbor" for employers who follow those steps. If an employer follows the procedures in good faith, U.S. Immigration and Customs Enforcement (ICE) will not use the employer's receipt of a "no-match" letter as evidence to find that the employer violated the provisions of the Immigration and Nationality Act by knowingly employing unauthorized workers.

In the coming days, DHS will return to the District Court to request that the injunction be lifted so that implementation of the rule can proceed. As updates become available on the No-Match Rule, we will notify you of changes in the law that may affect your business practices.

Update on New TN Regulation – Status Granted in Three-Year Increments as of 10/16/2008

The TN nonimmigrant category, available to designated Canadian and Mexican professionals, is one of the least burdensome and most affordable options under our country's current visa scheme. One of its most frustrating drawbacks has been its limited duration. TN nonimmigrants heretofore have been admitted for a temporary one-year period. While TN status is renewable indefinitely, the limited period of admission has been a logistical burden and an obstacle to immigration strategy. The good news is that the one-year admission period is now a thing of the past.

As of October 16, 2008, the maximum allowable period of admission for TN nonimmigrants has increased from one year to three years. Additionally, otherwise eligible TN nonimmigrants are now eligible for an extension of stay in increments of up to three years instead of one year. This rule grants the same periods of admission or extension to the spouses and unmarried minor children of TN nonimmigrants.

Please contact us at immigration@rosnerlaw.com if you would like to learn more about the TN nonimmigrant classification.

The U.S. Includes Seven New Countries into its Visa Waiver Program

Having met a number of new security enhancements, seven new countries are now included in the United States Visa Waiver Program (VWP). On October 17, 2008, President Bush welcomed the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea into the VWP. Nationals of these countries are expected to

be able to travel without obtaining a visa for tourist and business travel of 90 days or less beginning in mid-November 2008. Like all visa waiver travelers, travelers from the newly admitted countries will be required to possess tamper-proof biometric passports and register on-line through the Electronic System for Travel Authorization (ESTA).

The Visa Waiver Program of the United States currently allows the citizens of 27 countries to travel to the United States for tourism or business without obtaining a visa. Nationals participating in the VWP must:

- 1. Travel only for business, pleasure, or transit;**
- 2. Stay in the United States for 90 days or less; and**
- 3. If arriving by sea or air, hold a valid ticket for return or onward travel and enter the United States aboard an air or sea carrier designated as a participant in the VWP.**

Bulgaria, Cyprus, Greece, Malta, Poland, and Romania are now participating in a process called the "visa waiver road map" that is helping them qualify for the Visa Waiver Program. All six nations are currently on track for future admission.

Here is a list of all of the participating countries in the U.S. Visa Waiver Program, including those that are newly approved:

- Andorra
- Australia
- Austria
- Belgium
- Brunei
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Monaco
- The Netherlands
- New Zealand
- Norway
- Portugal
- San Marino
- Singapore
- Slovakia
- Slovenia
- South Korea
- Spain
- Sweden
- Switzerland
- United Kingdom

For more information about the expansion of the Visa Waiver Program and to learn about how certain employees will qualify to use the VWP, please contact us at immigration@rosnerlaw.com.

For additional information about any of the topics presented here, please [contact us](#).

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