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COUNSEL FOR CORPORATE IMMIGRATION



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## Newsletter

### Immigration Law Update

**Current Developments in Employment-Based Immigration**  
*By Rosner Partners, L.L.C.*

September 2008

- **New Rule Will Require Federal Contractors To Use E-Verify**
- **USCIS Has Begun Issuing Two-Year Employment Authorization Documents**
- **USCIS Publishes Proposed Rule To Increase Lengths Of Stay For TN Professional Workers**
- **DHS Announces Electronic System For Travel Authorization**

*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.*

#### **NEW RULE WILL REQUIRE FEDERAL CONTRACTORS TO USE E-VERIFY**

On June 6, President Bush issued an Executive Order instructing Federal agencies to require contractor participation in E-Verify as a term of future contracts. On June 12 the Federal Register published a proposed rule providing detailed guidance on how that requirement is to be implemented.

E-Verify is a web-based system that electronically verifies the employment eligibility of employees. The program is voluntary and supplements the employer's obligation to verify employment authorization and record that verification on Form I-9.

Under the proposed rule, federal contractors will be required to enroll in the E-Verify program within thirty days of the date a contract is awarded. Contractors will be required to verify all employees participating in the project within a 30-day timeframe. New hires will be required to be verified in the system within three days, regardless of whether they are assigned to the contract. The rule makes a significant departure from current policy in requiring that the system to be used for existing employees assigned to a federal contract, in addition to new hires employed by the Company. The rule also requires that subcontractors participate in E-Verify, if their work under the contract exceeds \$3000.

We expect that the final rule will follow in the not-too-distant future. During the comment period, the E-Verify program remains a voluntary program for all employers, including federal contractors. The final rule will be effective 30 days after it is published in the Federal Register.

#### **USCIS HAS BEGUN ISSUING TWO-YEAR EMPLOYMENT AUTHORIZATION DOCUMENTS**

On June 30, U.S. Citizenship & Immigration Services (USCIS) began issuing Employment Authorization Documents (EADs) valid for two years. The new two-year EAD is available only to individuals who have filed to become a Lawful Permanent Resident using Form I-485 Application to Register Permanent Residence or Adjust Status but are unable to become a Permanent Resident because an immigrant visa number is not currently available. Applicants who have applied to become a Lawful Permanent Resident and who have a visa number available will be granted employment authorization valid for a one-year period.

As a reminder, an Application for Employment Authorization may be filed concurrently with an Application to

Adjust Status to Permanent Resident. Although no additional fee is required, Form I-765 must be submitted along with the Adjustment forms and documents.

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### **USCIS PUBLISHES PROPOSED RULE TO INCREASE LENGTHS OF STAY FOR TN PROFESSIONAL WORKERS**

USCIS has published a proposed rule that would increase the length of stay of TN nonimmigrants. The TN category is reserved for citizens of Canada and Mexico who are coming to the United States to work in one of the professional occupations enumerated in Appendix 1603.D.1 of the North American Free Trade Agreement. TN nonimmigrants are currently admitted in one year increments. The proposed rule changes the authorized length of stay to three years and implements changes in the filing requirements in this category. Rosner Partners will keep you informed of any developments in this area.

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### **DHS ANNOUNCES ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION**

The Department of Homeland Security (DHS) has published an interim final rule introducing the Electronic System for Travel Authorization (ESTA), a new online system that will require certain travelers to provide information online prior to traveling to the U.S.

ESTA will affect travelers who enter the U.S. pursuant to the Visa Waiver Program, which entitles eligible nationals of member countries to travel to the U.S. for tourism or business for stays of 90 days or less without obtaining a visa. Currently, citizens of Visa Waiver Program countries complete a written I-94W Arrival-Departure Record providing basic biographical, travel and eligibility information while en route to the U.S. Under the ESTA, travelers will provide this information online prior to departure. Travelers will be required to receive an electronic travel authorization prior to boarding a U.S. bound plane or cruise ship. Travelers who do not receive authorization through ESTA will need to apply for a visa in order to travel to the United States.

Voluntary ESTA applications are currently accepted on the ESTA website at

[http://www.cbp.gov/xp/cgov/travel/id\\_visa/esta/](http://www.cbp.gov/xp/cgov/travel/id_visa/esta/). DHS hopes to make ESTA mandatory by January 12, 2009.

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For additional information about any of the topics presented here, please **contact us**.

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