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COUNSEL FOR CORPORATE IMMIGRATION



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Immigration Law Update

Current Developments in Employment-Based Immigration

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.

EAR AND ITAR 101

With the introduction of the new EAR/ITAR attestation to the Form I-129, many H-1B employers are seeing delays in processing nonimmigrant visa petitions. In order to alleviate some of the processing stumbling blocks, we recommend that employers first work with the direct supervisor of the beneficiary to obtain a comprehensive list of items with which the individual will be working. This list can then be used by a designated official within the employer's organization to review the EAR and ITAR regulations, and determine whether a license is needed. If your organization does not currently have a designated export control official, please contact our office for information on training programs available through the American Immigration Lawyers Association (AILA).

Have You Filed An FBAR Yet? Deadline is June 30th

The Report of Foreign Bank and Financial Accounts (FBAR) is an annual informational report that **must** be filed by any "U.S. Citizen" who has one or more qualifying foreign accounts with an aggregate value greater than \$10,000 in a calendar year. Individuals whose qualifying accounts are currently less than \$10,000 still need to file if the account exceeded \$10,000 at any point in the relevant calendar year.

For purposes of the FBAR a "U.S. Citizen" is defined more broadly than in other areas of law. Under the FBAR regulations, an individual is considered a "U.S. Citizen" if they are a citizen or resident of the United States, a domestic partnership, a domestic corporation and a domestic estate or trust. Foreign nationals are considered residents of the United States in two different instances: if they are permanent residents or if they have been "substantially present" in the United States. An individual is "substantially present" if "they have been physically present in the US at least 31 days during the current year, **and** 183 days during the 3 year period that includes the current year and the 2 years immediately before.

Practically speaking this means that individuals working in the US in non-immigrant status are required to file FBARs. The FBAR statute language actually states that any individual "doing business in the United States" must file the report, which encompasses individuals in the US in B-1 status or in accordance with the visa waiver program as well. However, a temporary reprieve from filing FBARS has been given to these B-1 and visa waiver individuals.

Foreign nationals working in non-immigrant status with qualifying accounts should take steps now to complete an FBAR which must be filed with the U.S. Department of the Treasury in Detroit, Michigan by June 30th each year. Failure to file an FBAR can result in both civil penalties and criminal prosecution.

2012 Diversity Lottery Results Invalidated

On May 13, 2011, the Department of State voided the results of the 2012 Diversity Lottery due to a computer programming error. The error prevented the computer from making a truly random selection. Individuals who received notice the first week of May from the website regarding the status of their entry should disregard this notice as it has been invalidated. A new selection will be made of qualified entries submitted from October 5, 2010 to November 3, 2010. Individuals who submitted an entry between these dates are still eligible for the lottery, and the confirmation number given to check results remains valid. The results of a new selection will be available online on July 15, 2011.

Latest FY 2012 H-1B Cap Count Numbers

Cap Type	Cap Amount	Cap Eligible Petitions	Date of Last Count
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H-1B Regular Cap	65,000	12,300	5/20/2011
H-1B Master's Exemption	20,000	8,500	5/20/2011

NSEERS Special Country Designation List Eliminated

The Department of Homeland Security announced this month that it is eliminating its controversial country designation list which formerly necessitated compliance with the National Security Entry-Exit Registration System (NSEERS). NSEERS required individuals from these selected countries to undergo special registration, fingerprinting and photographing at the time of entry into the United States. NSEERS also required foreign nationals from specified countries to comply with designated exit procedures, including limiting the ports-of-exits individuals could utilize to exit the United States. A chart listing the countries whose citizens no longer have to comply with NSEERS can be found below.

AFGHANISTAN	MOROCCO
ALGERIA	NORTH KOREA
BAHRAIN	OMAN
BANGLADESH	PAKISTAN
EGYPT	QATAR
ERITREA	SAUDI ARABIA
INDONESIA	SOMALIA
IRAN	SUDAN
IRAQ	SYRIA
JORDAN	TUNISIA
KUMAIT	UNITED ARAB EMIRATES
LEBANON	YEMEN
LIBYA	

Combined Employment Authorization Card and Travel Document Means Faster Processing Time

USCIS has begun issuing one document for individuals who apply for both Employment Authorization Cards and Advance Parole. The combination of these two documents is good news for time-sensitive international travelers as they will now receive their combined travel and work authorization document

within 90 days, in light of the regulation that Employment Authorization Cards must be adjudicated within 90 days of receipt. Recipients of the combined documents should check to ensure the Employment Authorization Document states "Serves as I-512 Advance Parole" at the bottom of the card. Please remember to scan a copy of the document and send it to your case manager at Rosner Partners upon receipt so that we can ensure the card is correct prior to your international travel.

I-9 Central

This month USCIS announced the launch of I-9 Central, a comprehensive, online resource for employers on completing Form I-9. I-9 Central provides employers with step-by-step instructions on the form, information on acceptable documents, and provides the answers to several frequently asked questions. To learn more about I-9 Central, please go to www.uscis.gov/I-9central.

Secure Mail Initiative

USCIS' Secure Mail Initiative is now fully-operational. Secure Mail Initiative (SMI), a joint venture between USCIS and the U.S. Postal Service allows applicants who have received approval notices for green cards, employment authorization and travel documents to track the delivery of these sensitive documents. Individuals can call USCIS Customer Service Center two weeks after receipt of their relevant approval notice and request tracking information for their document packages. Individuals can then track the status of their documents online at www.usps.com using USPS' track and confirm function.

For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.

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