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The GT Business Immigration Observer



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In this issue there is word of a long awaited authorization for spouses of L and E visa holders and an informative update on the importance of maintaining non-immigrant status in the U.S.

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Immigration news



Anthrax Decontamination Affects State Department's Processing of Visa Revalidations

Due to the anthrax scare, approximately 300 foreign passports and documents that were sent to the State Department for visa revalidation were taken from the mailroom to be decontaminated. It appears these 300 applications were most likely ones that were sent to St. Louis on October 17, 18 or 19th and which were then processed in St. Louis around October 22 and 23.

On October 25 everything in the Visa Office's mail room, which included those approximately 300 visa revalidation applications, was taken for decontamination. Unfortunately, this means those 300 applications will be inaccessible until the decontamination is complete. As such, for those affected applications, the normal procedure to request a passport back before processing is complete will not be an option. As the State Department realizes this could have a serious effect on individuals' travel plans who were expecting their passports and visas to be returned to them, they have put procedures into place for affected individuals.

In order to determine if an application has been effected by this decontamination, individuals may call the Public Inquiries line at (202) 663 – 3211. In addition, if an individual whose application is being decontaminated and the individual needs to travel because of genuine emergency, they may request a letter from the State Department to show their consulates in order to get new passports issued. These letters may be requested also by phoning the Public Inquiry number. These individuals must apply for their U.S. nonimmigrant visas abroad but the State Department has sent an email to U.S. consular posts advising them of the situation and advising them applicants in these situations may only have photocopies of the previous I-94s and I-797 approval notices.

At this point it is not known when the affected passports and documents will be finished with decontamination and returned to the State Department.

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Maintaining Status After September 11, 2001

Now more than ever before, a foreign national in the United States must be acutely aware of maintaining his or her immigration status. In house counsel and human resource personnel must take a special interest in assisting their foreign personnel in remaining in status. A lapse in status can have a significant impact on one's ability to stay in the U.S. lawfully. The INS is now taking even minor technical violations very seriously. Individuals should carefully consider that status violations affect eligibility for benefits and residence in the U.S.

Maintaining status is the foreign national's responsibility, but it is not always within his or her control. A foreign national can go out of status if he or she loses his or her employment in the U.S., such as an H-1B employee who is laid off. This action is beyond the foreign national's control, but it nevertheless immediately renders the foreign national out of status. Please note that although there has been discussion of a grace period being instituted for H-1B employees, no grace period exists in the regulations at this time. Therefore, as soon as the employment relationship between an H-1B employee and his or her employer is terminated, the H-1B employee is immediately out of status.

A failure to maintain status can result in denial of applications to extend or change status. It may also prevent a foreign national from being able to adjust status in the U.S.

There are, however, many things a foreign national and his or her attorney can do to ensure that the foreign national maintain status. Individuals should always:

- Inform the INS immediately of any change of address. Failure to do so could result in not receiving official correspondence affecting your status in the U.S.
- Timely file for extensions of stay. A timely filed extension application is one that is filed before your current status expires. Most individuals on employment-based nonimmigrant visas can continue to work while their extension is pending, even

after their current status expires, as long as the extension was timely filed.

- However, keep in mind that this benefit does not extend to individuals working under the authority of an Employment Authorization Document (EAD). If you are working with EAD, you must have the new EAD issued before your current one expires. If you file for an EAD extension and the new card is not issued by the time your old card expired, you are not work authorized. This does not necessarily mean, however, that you are out of status. Renewals can take 90 days.
- Comply with all of the conditions of your status. If you are a student, this means maintaining a course load that does not jeopardize your full-time student status. If you are an H-1B employee, this means maintaining your employment relationship with your employer according to the conditions described in your H-1B petition. Remember that material changes to your job, such as moving to a new worksite or receiving a promotion, could potentially affect your H-1B status.
- Keep in mind that your stay in the United States is governed by the date on your I-94 card and not the date on your visa or your INS approval notice. If your I-94 card reflects that you are admitted to the U.S. for a shorter period of time than is reflected on your INS approval notice or on your visa, it is the date on the I-94 card which controls. If you stay in the U.S. beyond this date without timely filing an extension or a change of status, you are out of status and you may be potentially accumulating unlawful presence.

Human Resource personnel and their immigration attorneys must ensure that an accurate tickler system is in place for tracking of their foreign employees. Greenberg Traurig uses a sophisticated real-time web based database that our clients have access to. This can assist in avoiding lapses in status and unauthorized work.

BIT for Lithuania Goes into Effect

The BIT (Bilateral Investment Treaty) for Lithuania has now gone into effect. As a result of the ratification of the BIT with Lithuania, Lithuanian citizens are now eligible to apply for E-2 Treaty Investor visas. At this

time, the E-2 visa would be valid for a single entry for three month only. The normal \$45.00 (US) processing fee applies.

Social Security Cards, Licensing and H-1B Adjudication

Thomas E. Cook, Acting Assistant Commissioner for the Office of Adjudications at the Immigration and Naturalization Service (INS) has issued a memorandum to all Service Center Directors, District Directors, and Officers, addressing the issue of adjudication of H-1B petitions where the beneficiary is unable to obtain a state license solely because he or she is not in possession of a social security card.

According to the regulations of the Social Security Administration, an H-1B applicant needs to be physically present in the United States in order to obtain a social security card. In turn, the INS denied some H-1B petitions in cases where the alien beneficiary had not obtained the required state license. In most cases the applicants were unable to obtain such licenses as the State Regulatory Agencies required a valid social security card in order to obtain a state license.

The memorandum provides new guidelines for INS officers involved in the adjudication of these H-1B petitions. The guidelines provide that an H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of one year provided that the **only** obstacle to obtaining state licensure is the fact that the alien cannot obtain a social security card from the Social Security Administration. The petitioner must also provide proof that all other regulatory and statutory requirements have been met for obtaining the state license. Moreover, the alien beneficiary must obtain the valid state license by the time the extension application is filed. If the alien beneficiary has not yet obtained the valid state license, the extension application will be denied.

INS Fee Increases

The Immigration and Naturalization Service (INS) is proposing to adjust and increase fees for its immigrant and nonimmigrant applications and petitions. The fees, which are collected to fund the cost of processing and serving applicants, will become effective in mid-February, 2002. The new increase in application fees would serve to increase the INS' budget by \$127 million, and mirror those set out in the August 2001 proposed rule.

The new fees translate into a \$15-\$35 increase over the existing fees currently paid for most applications and

petitions. For example, the new proposal would increase the fee for naturalization applicants to \$260 for their applications, while those applying for adjustment of status and/or to obtain their lawful permanent residence would pay \$255. Additionally, fingerprint fees would be raised to \$50 from \$25, which is what INS has said is its actual cost in processing fingerprints.

http://immigration.gtlaw.com/news/alerts/2002/01/INS_2002_Fees.pdf

Work Authorization Bill for Spouses of Treaty Trader/Investors and Intra-Company Transferees Passes Congress

Bills concerning work authorization for spouses of Treaty Trader/Investors (E Visas Holders) and Intra-Company Transferees (L Visa Holders) were approved by the full Senate on December 20, 2001. E visas are granted to traders and investors from countries that have trade agreements with the U.S. These bills, H.R. 2277 and H.R. 2278, would allow spouses of Treaty Trader/Investors and Intra-Company Transferees respectively to obtain work authorization in the United States. In addition, H.R. 2278 cuts down the amount of time an L alien would have to work abroad for a qualifying related

company before transferring to the United States where the individual is applying under a blanket L petition and meets the requirements for expedited processing.

Both these bills are before the President for signature. Finally, if these bills are signed into law, the INS will need to implement them through regulations or policy directives in order for individuals to take advantage of them.

Detainees in INS Custody

A list of the countries of birth, charges, and dates charged for individuals taken into INS custody or returned to custody after 9/11/01 was recently released. Names have

not been released and it has been extremely difficult for attorneys to gain access to clients in custody.

Web-Based LCA System

The Department of Labor's Employment and Training Administration division issued a final rule establishing electronic filing of labor condition applications on December 5, 2001. The rule also creates a new Form ETA 9035E, and facilitates frequent filings by the same employer. This new web based system will eliminate

the need to fax in applications and will allow for companies who file large volumes of applications to keep common data resident on the system. The e-filing will eliminate the need for a hard copy filing with DOL.

Creation of a "Smart Border" and Joint U.S.-Canada Statement on Northern Border Priorities

On December 12, 2001, Canada and the U.S. signed an agreement to create a "smart border" between the two countries aimed at increasing security at the border while allowing for the free flow of people and goods.

As a result of increased security after the September 11 attacks, there have been long back-ups at the border which has affected the speedy transport of goods and parts across the border. On a normal day, approximately \$1.3 billion goods cross the border every day between Canada and the U.S., with many U.S. factories dependent on daily deliveries of goods from Canada. According to the terms of the agreement, trucks with goods going between the two countries would be permitted to go into a "fast lane" after being pre-cleared and electronically sealed and avoid long delays at the border. This agreement also allows the suspended Nexus program to be re-started. The Nexus program allowed travelers who had been pre-approved to cross the border without delay.

This agreement comes after some concerns have been voiced in the U.S. regarding Canada's immigration policies, which some U.S. officials view as being too flexible. In particular, some U.S. officials have concerns over Canada's policy which allows refugees to remain free until their hearings unlike in the U.S. where refugees are held until their claims have been decided. In addition, because of its lax immigration policies, some U.S. officials are concerned Canada is an attractive country for terrorists and has been infiltrated by terrorist cells. Nabil al-Marahb, who is a suspect in the terrorist attacks, was arrested near Chicago for allegedly providing the hijackers in the attacks with false travel documents, lived in a Toronto suburb.

Earlier in the month, on December 3, 2001, Attorney General John Ashcroft, Solicitor General of Canada, Lawrence MacAulay, and Canadian Minister of Citizenship and Immigration, Eleanor Caplan, also signed a Memorandum of Cooperation addressing border security and immigration priorities along the shared border.

This agreement addresses various areas of concern arising after the September 11th terrorist attacks including: the expansion of the Integrated Border Enforcement Teams to add up to 8 geographic locations to share information; enhancement of existing communications of intelligence between U.S. and Canadian law enforcement under the direction of Project North Star; joint review of U.S.-Canadian visitor visa policies and development of joint visa requirements to control unlawful migration; establishment of Joint Passenger Analysis Units assessing passenger information at key international airports in both countries; development of common biometric identification cards; and development of Safe Third Country Agreement supporting the free exchange of asylum information to help determine the identity and background of asylum seekers.

Some in Canada have been critical of efforts to more closely align immigration policies as they feel Canada is giving up sovereignty solely due to U.S. security concerns. Canadian government officials disagree, arguing the security of Canada and the free flow of goods and people is Canada's key concern.

INS Clarification on I-193 Waivers and Policy for Deferred Inspection and Parole

The INS recently sent out a memo detailing the procedures for I-193 Waivers to Ports of Entry (“POEs”) in a INS memorandum. Initially, at some POEs, there was some confusion over the memo’s instructions and some POEs interpreted the memo to mean there was a change in the standards to allow the waiver only in dire medical or humanitarian circumstances. A I-193 waiver allowed District Directors and their designees at ports of entry, in their discretion, to waive the documentary requirements for entry in the cases of unforeseen emergencies. However, as confirmed by Michael Pearson, Executive Associate Commissioner for the INS, the only change in the procedures relates to who may grant waivers. The standards for who qualifies for a I-193 remain unchanged.

As such, in addition to I-193 waivers, POE officers must also obtain approval from the District Director, Deputy District Director and Assistant District Director for Inspections and Assistant District Director for Examinations for waivers for returning permanent residents who do not possess the normal documents required for entry. Further, while refugees may still be

eligible for 30-day deferred inspection, approval for the deferred inspection now must be granted by a District Director, Deputy District Director and Assistant District Director for Inspections or Assistant District Director for Examinations.

Moreover, all Authorizations for Parole of an Alien (Form I-512) issued by overseas INS offices must be approved by the District Director or Deputy District Director. However, stateside authorizations of Form I-512 do not need to have the approval of the District Director, Deputy District Director or Service Center Directors.

Finally, in the case of aliens in possession of Form 512 or Form 512L pursuant to adjustment applications or the LIFE act, POE officers do not need to obtain the approval of District Director, Deputy District Director and Assistant District Director for Inspections and Assistant District Director for Examinations to parole them. However, please note that they are still subject to the normal INS inspection process.

Courtesy of the American Immigration Lawyers Association.

Employment Verification Pilot Program Clears Congress

The House on December 11 and the Senate on December 20 approved the Basic Pilot Extension Act, H.R. 3030, introduced by Representative Tom Latham (R-IA). Under this measure, the employment verification program would be extended for an additional two years. The pilot program was part of IIRAIRA (PL 104-208) and

expired on November 30 of this year. Under the employment verification pilot program, employers receive software that allows them to access federal databases to screen potential employees to determine if they are eligible to work. The bill awaits the President’s signature.

Guest Worker Essential Worker Immigration Still Needed

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled (“essential worker”) labor.

of the coalition. GT Of Counsel, Dawn Lurie serves as a regional coordinator for the American Immigration Lawyers Association (AILA) and facilitates communication between AILA and EWIC.

Greenberg Traurig Shareholder Laura Reiff is a co-chair

For more information see www.EWIC.org

January 2002 Resources

January 2002 State Department Visa Bulletin Link:
http://travel.state.gov/visa_bulletin.html

Service Center Processing Times

Vermont:
<http://immigration.gtlaw.com/processing/ins/vermont.htm>

California:
<http://immigration.gtlaw.com/processing/ins/california.htm>

Texas:
<http://immigration.gtlaw.com/processing/ins/texas.htm>

Nebraska:
<http://immigration.gtlaw.com/processing/ins/nebraska.htm>

<http://immigration.gtlaw.com/newsletter/2001/12Dec/item11.htm>

Department of Labor Regional Processing times:
<http://immigration.gtlaw.com/processing/dol.htm>

<http://immigration.gtlaw.com/newsletter/2002/01jan/item13.htm>

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The *GT Business Immigration Observer* is published by the business immigration practice group at Greenberg Traurig <http://www.gtlaw.com/about/overview.htm>. Our newsletter contains the most recent developments in immigration law. Moreover, the authors analyze relevant immigration related issues as well as pertinent or proposed legislation.

Finally, the GT Newsletter serves as an invaluable resource to individuals, and human resource managers who must keep current on these matters.

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Immigration news



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