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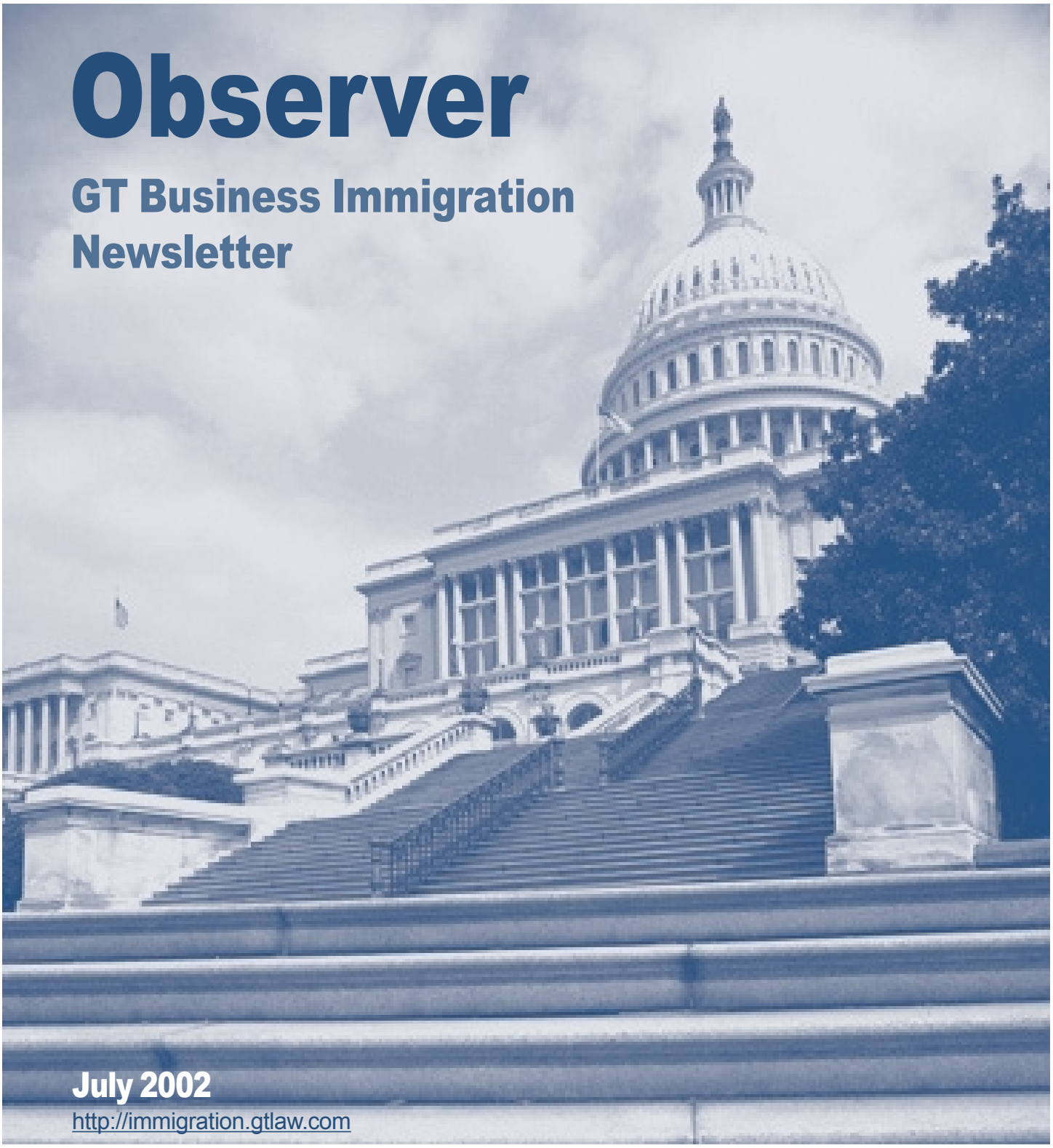

July 2002

http://immigration.gtlaw.com

Observer

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The GT Business Immigration Observer is published by the business immigration practice group at Greenberg Traurig. GT Of Counsel, Dawn M. Lurie serves as the Editor of the Observer. The newsletter contains information concerning trends and recent developments in immigration law. Moreover, the authors analyze and report on relevant immigration related issues as well as legislative issues.

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

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Zero Tolerance and Portability - Are You In Status?

A fair amount has been written about the changing nature of the "maintenance of status" issue following the attacks of September 11 and in the wake of a severe economic downturn. Truth be told, no one knows what the ultimate disposition of this issue will be either from a broad policy standpoint or from a case-by-case adjudication. We have shifting policy priorities, shifting focal points of attention; and now a proposal to move the entire immigration apparatus to a new agency. How do we advise clients with respect to hiring recently laid off foreign nationals in H-1B status?

The most conservative advice seems to require a "just say no" approach to portability when a layoff has occurred. A petition can be filed, but requiring the person to leave the US to obtain an H-1B visa may be the safest solution. Of course leaving the US in the current environment may also pose some problems for the employee and all the considerations of increased security checks, delays and denials should be explored with the clients.

Let's briefly review the background influences and policy discussions on this issue.

In March 2002, the INS granted visa waivers to four Pakistani crewmen from a tanker in Norfolk, Virginia. The visa waivers were granted without supervisory approval. All four crewmen disappeared after obtaining their visa waivers. On April 9, 2002, INS Commissioner, James Ziglar, testified before the House Judiciary Committee that as a result of the incident in Norfolk, he "reassign[ed] the supervising officer, pending an investigation, and instituted a *zero-tolerance policy* on failure to follow policy from headquarters." He stated that: "Effective immediately, I am implementing a zero-tolerance policy with regard to INS employees who fail to abide by headquarters-issued policy and field guidance."

The term "zero tolerance" found it's way into other aspects of INS statements. On April 17, 2002, the Vermont Service Center ("VSC") told representatives from the American Immigration Lawyers Association that "the INS has begun to institute a zero tolerance policy." The VSC explained that "[t]his means that if people are out of status, adjudicators will not be exercising discretion to consider the status violation de minimis and approve the benefit being sought. There is tremendous pressure being brought to bear by the Administration, the Congress, and the INS itself to ensure that the present state of the law is being followed precisely." *AILA, Practice Advisory, 4/30/02*. Although the Central Office of INS has backpeddled on this statement, the impact of these pronouncements throughout the adjudications ranks is proving to be significant.

We are already seeing an impact in the H-1B portability area, especially with increased issuances of Requests for Evidence.

INS and Related Statements

On June 19, 2001, a memorandum written by Michael Cronin, Acting Executive Associate Commissioner, attempted to clarify the proper considerations for H1-B portability benefits. Cronin references a prospective statement of policy concerning a reasonable period of time an H-1B employee may take between leaving one employer and beginning work for a new employer. He says "a reasonable period of time such as 60 days" is expected to be proposed by the Service. However, this 60 day grace period has never been included officially in a statement of Service policies. Statements from regional service centers, after September 11, as explained below tend to show that 60 days is generally considered too long.

One other interesting aspect of the Cronin memo should dispel the myth of a 10 day grace period. The 10 days is only referenced in terms of applicants re-entering the US after a portability case has been filed. The memo points out that "[t]he nonimmigrant applicant is admissible to the validity date of the previously approved petition, plus 10 days." This admissibility reference applies to the Service's January 29, 2001 memo concerning the four prerequisites an H-1B applicant "who is no longer working for the original petitioner" must have in order to be considered admissible at a port of entry. For reference purposes, these four prerequisites are:

(a) that the applicant is otherwise admissible;

(b) that the applicant, unless exempt, is in possession of a valid, unexpired passport and visa (including a valid, unexpired visa endorsed with the name of the original petitioner);

(c) that the applicant was previously admitted as an H-1B or otherwise accorded H-1B status. If a visa exempt applicant is not in possession of the previously issued Form I-94, Arrival/Departure Record, or a copy of the previously issued I-94, the applicant may present a copy of the Form I-797, Notice of Action, with the original petition's validity dates; and

(d) that an H-1B petition was timely filed on behalf of the applicant, before expiration of the validity dates of the applicant's previously authorized period of stay. This evidence shall be in the form of a copy of a dated Form I-797 receipt notice reflecting that a new petition has been filed, or other credible evidence of timely filing that is validated through a CLAIMS query.

On November 6, 2001, the Nebraska Service Center answered questions from AILA concerning various immigration policies. When asked about a laid off H-1B worker between H-1B employers, the NSC specifically stated that 30 days before filing for the new job "would be considered a significant break in status." The NSC also made it clear that it interpreted the regulations concerned to provide that "such incidents MAY be excused in the discretion of the Service, however does not mandate such use of discretion." The example the NSC gave of a situation where the circumstances are not extraordinary [*see* 8 C.F.R. 214.1(c)(4)] involved an H-1B employee being laid off by their H-1B employer.

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Zero Tolerance and Portability - Are You In Status? (Con't)

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On December 4, 2001, the California Service Center explained to AILA representatives that a strict reading of H-1B regulations concerning "an employer's notification of termination of an H-1B worker was necessary. The CSC stated that they "cannot honor a request to not revoke a petition when the H-1B worker is no longer employed."

One can argue that the laid off H-1B worker can receive benefits under the theory of portability. Indeed, the petitioning employer can employ the ported individual up until a denial is received on the petition extension. Given the current backlogs at many service centers, this may take between 3 and 5 months. One can also argue that the laid off worker's time out of status should be considered "extraordinary circumstances" and therefore should be forgiven. However, with notions of "zero tolerance" swirling through an examiners mind, the most conservative approach for practitioners may be to avoid H-1B portability when there is doubt as to the employee's maintenance of status at his/her previous employer. Zero tolerance has not traditionally been the *modus operendi* of the INS. We hope that a more reasoned policy will emerge.

Latest Trends - Students and EADs

As part of the zero-tolerance policies regarding maintenance of status of foreign nationals, we have observed an increase in the scrutiny by INS of the status of students during the post-completion practical training. This arises when the student seeks at the end of the practical training period to switch to another status (H-4 or H-1B being the most common). Students wishing to obtain a position through the employment authorization document need to be aware that they may have to document ongoing efforts to secure a position at some point. If the student does not intend to ever use the EAD to secure a position, and is only using the EAD to prolong their stay in student status, another status should be sought rather than relying on the EAD.

Department of State "Spot Checks" of Approved Visa Applications

A Department of State June 8, 2002 cable was released this week announcing a new official policy requiring spot checks of approved nonimmigrant visa applications. The new policy is effective immediately.

The cable reinforces a policy that has been in effect for quite some time even though it was not directly included in the Foreign Affairs Manual. The cable notes the official addition of the policy. Pursuant to the cable and the updated Foreign Affairs Manual, the Nonimmigrant Visa (NIV) Chief, the Visa Chief or the Consular Section Chief must spot check approved nonimmigrant visa applications H-1B, H-4, B-1, 0, etc. The purpose of such spot checks is to maintain the highest professional standards of adjudication and to ensure uniform and correct application of the law and regulations. The cable specifically references performing spot checks generally of issued visas. This could mean that a visa may be revoked if issues arise as a result of the random check.

Global Immigration Seminars

Greenberg Traurig continues its tradition of providing complimentary presentations to companies on outbound immigration issues as well as discussions on money saving tax strategies for employees as well as employers. GT provides information, guidance and assistance to our clients on visa matters relating to the international relocation of personnel to, and between, countries outside of the United States. Please contact Dawn M. Lurie at (703) 903–7527 or luried@gtlaw.com for further information.

Social Security Cards & No Match Letters

On May 24, 2002 GT reported that the Internal Revenue Service (IRS) is working on a proposal that would fine employers that file W-2 wage and tax statements with incorrect and mismatched social security numbers. Penalty fees would begin at $50 per incorrect or incomplete return, but the fee can increase significantly if the IRS believes the employer's actions are intentional. Mismatched social security numbers are a great source of incorrect wage information. It now appears that this policy could go into effect in June 2004 for W-2s issued for tax years starting in 2002.

Many employers are now receiving "No Match" letters from the Social Security Administration (SSA). These letters notify employers that Social Security numbers provided by the employer for specific individuals do not match the name in the SSA's data base. The SSA sends the letters to ensure that their records are accurate. Their goal is to ensure that each employee receives proper benefits. The agency's efforts in this respect have increased, as reflected in the number of letters sent out so far this year. Last year 110,000 No Match letters were sent; in 2002, to date, the agency has mailed 750,000. The main stated reason for the increase is that SSA is now sending a letter to employers where one of more employees have numbers that do not match; in past years, letters would only be sent where there were ten or more employees with non-matching SSNs. Many suspect, however, that increased scrutiny of foreign nationals is also involved.

In light of the SSA's increased vigilance and IRS' plans to fine employers, these letters now pose an additional liability and responsibility on employers to ensure that correct information is obtained and proper documentation is provided when an individual is hired. In part, this means that correct and complete I-9 verification and documentation will be essential in limiting an employer's liabilities as they relate to employment of individuals who do not have employment authorization.

Furthermore, employers should also be careful in the way they respond to such "No Match" letters. The letters request a correction of the error; it does not automatically imply that the referenced individual does not have employment authorization or that the individual is an "illegal alien." In fact, the letters explicitly state that they do not constitute this kind of notice, and such a presumption could lead to employment discrimination issues. Therefore, it is very important for the employer to ensure that the referenced individual is not automatically fired without attempting to resolve the matter, while ensuring that the company does not run afoul of various employment discrimination laws, including national origin discrimination.

Finally, while the SSA does not currently share information with the Immigration and Naturalization Service (INS), the IRS may refer such cases to the INS. In turn, the INS may audit or raid employers believed to be willfully employing undocumented workers.

As various agencies emphasize proper documentation and recordkeeping internally, it is becoming even more important for employers to follow suit and ensure that their employee records are properly completed and maintained. Internal I-9 audits are one way to gauge the company's current standing and liabilities with respect to employment of individuals who may either be undocumented or lack proper work authorization. Greenberg Traurig's immigration team can assist in setting up various levels of audits. Proactive review of these issues is key in avoiding fines and penalties. Please contact us to discuss your company's needs.

Student and Exchange Visitor Information System (SEVIS)

The SEVIS system will collect information on nonimmigrants and exchange visitors in the country via the internet-based system. The SEVIS system will track students in F-1 status as well as trainees in M-1 and J-1 status. The dependents of these individuals will also be tracked. The system will monitor the individuals from the time they initially receive their visa documentation up to and including the time they graduate from their degree program or finish the training program.

The system will begin on July 1, 2002 as a voluntary program for schools and training sponsors. On January 30, 2003, the program will be mandatory for all academic institutions. Prior to the voluntary implementation date, several schools and training sponsors have tested the system.

During the testing phase, the participating organizations were issued special forms that were distributed to the students so they could apply for the proper visas. As the program begins in the voluntary stages, different forms will used for both the F-1, M-1 and J-1 programs. Until the program is mandatory, the Department of State has indicated to all consular posts that all previous versions of the form are to be accepted. Exchange visitor sponsors should use their entire allotment of forms before switching to the new forms. The IAP-66 form for the J-1 programs will be replaced by the DS-2019. The DS-2019 will be a one-page form with a unique bar code. The DS-2019 for the principle will contain an addendum that lists the dependents. The I-20 will have only one page rather than two. The single sheet will contain a unique identifying bar code. For both academic students and training participants, the dependents will receive a separate dependent form.

At the present time, the Department of State is not yet linked to the SEVIS system nor is there a time frame indicated for the Department of State to begin using the SEVIS system. However, prior to the Department of State using the SEVIS system, all the consular posts will be given guidance on the use of the system.

Outline of White House's Proposed Dept. of Homeland Security

The White House announced on June 6th its intent to create a new Department of Homeland Security in order to develop and execute more effective policies with regard to this function. Currently over a hundred different agencies and organizations have responsibility for different aspects of homeland security and the White House feels that it would be better to have one unified body to coordinate and lead homeland security efforts. According to the White House press release, the new Department would consist of four divisions: Border and Transportation Security, Emergency Preparedness and Response, Chemical, Biological, Radiological and Nuclear Countermeasures, Information Analysis and Infrastructure Protection. The Department would be headed by a Cabinet level official though the current White House Office of Homeland Security and the Homeland Security Council would continue to exist. For a complete analysis of the Homeland Security Act of 2002 please link to: http://www.whitehouse.gov/deptofhomeland/analysis/index.html

The Border and Transportation Security division would be responsible for unifying federal security operations in connection with U.S. borders, transportation systems and territorial waters, and allow one governmental agency to handle entry into the U.S. As part of the White House plan, the INS would be included within the new Department in the Border and Transportation Security Division. This division would also incorporate the United States Customs Service (currently part of the Department of Treasury), the Animal and Plant Health Inspection Service (Department of Agriculture), and the Transportation Security Administration (Department of Transportation) along with the Immigration and Naturalization Service and Border Patrol as part of its border security jurisdiction. It appears the INS would still undergo some form of its currently-anticipated reorganization, with the processing of immigration benefits and services being separated in some way from the enforcement activities. Further, while it appears the State Department would still be responsible for processing and issuing visas through U.S. Embassies and Consulates abroad, the new Department would "assume the legal authority to issue visas to foreign nationals and admit them into the country" so it is unclear exactly how the new Department will interact with the State Department.

The Emergency Preparedness and Response division would be responsible for managing the federal response and assistance for domestic disasters. In particular, the division would be responsible for training first responders and would coordinate federal disaster response efforts. The division would also coordinate all federal emergency responses plans into one government-wide response plan. The Federal Emergency Management Agency (FEMA) would be included in this division and would be a main component. This division would take over the responsibility for coordinating and administering grant programs for firefighters, emergency personnel and police which is currently managed by several parties including FEMA, the Department of Justice and the Department of Health and Human Services.

The Chemical, Biological, Radiological and Nuclear Countermeasures division would be responsible for setting national policy and setting guidelines for state and local governments for responses to threats involving weapons of mass destruction such as nuclear bombs or biological attacks. Moreover, this division would be responsible for setting up and running exercises and drills on responses to attacks involving weapons of mass destruction on the federal, state and local levels. The division would also be responsible for coordinating the government's efforts to develop scientific and technological advances to combat terrorist threats. The division would also conduct research involving the development of new vaccines, antidotes, diagnostics and therapies used to detect and combat the effects of a nuclear, biological or chemical attack. This division would also be responsible for coordinating development in the areas of science and technology towards use for homeland security purposes.

The Information and Analysis and Infrastructure Protection division will be responsible for coordinating and analyzing intelligence data and other information from various sources on threats to homeland security. This information will come from such agencies as the FBI, NSA, CIA, DEA, INS, DOE, DOT, and Customs. This division will be in close contact with the FBI's newly formed Office of Intelligence. These divisions will be responsible for analyzing data and assessing threats against U.S. soil as well as issuing warnings based on this data. The division will also be empowered to take either preventive or protective action in response to a threat. Finally, this division will be responsible for evaluating and protecting critical infrastructure which is determined to be a high-risk target for a terrorist attack. This critical infrastructure includes food and water systems, health systems, information and telecommunications, banking and finance, energy, agriculture, national monuments and icons, chemical and defense industries, and postal and shipping entities.

For immigration and visa purposes, the Homeland Security Act, with the new Department taking over the INS functions, along with the proposed reforms of the INS, is likely to have a significant impact on future immigration policy. The department's emphasis on homeland security will undoubtedly take precedence over immigration benefits—how much so remains to be seen. The White House has called on Congress to establish the new Department by the end of their current session and has transmitted proposed legislation to Congress that establishes the new Department of Homeland Security. Finally, since the Department will be pulling parts that are currently under the jurisdiction of other agencies, the White House plan calls for a phase-in period of the different parts.

Link to White House page of Department of Homeland Security
http://www.whitehouse.gov/deptofhomeland/

Important Information from the 2002 AILA Annual Conference

The 46th Annual Conference of the American Immigration Lawyers Association (AILA) was held in San Francisco, California from June 12-16. Several members of our immigration team attended the conference and were invited panel speakers. More than 3,500 immigration professionals, government officials and business professionals attended the conference. The panels included sessions focusing on various immigration issues, recent regulations affecting employment sponsored immigration, updates on interpretation and application of laws and regulations from government representatives, and a review from the INS Commissioner James Ziglar. The following are highlights from the conference.

Commissioner James Ziglar

Defending the agency, INS Commissioner James Ziglar acknowledged that while the INS was in need of systemic improvement, it was not entirely responsible for the events leading to the September 11 attacks or for the federal government's response to the attacks. According to the Commissioner, INS policies and procedures have been tightened across the board to enhance national security since September 11.

The Commissioner affirmed his support of President Bush's restructuring proposals which include a Department of Homeland Security that will oversee and combine approximately 22 agencies, one of them being the INS. Last week, President Bush proposed creating a Homeland Security Department, combining 22 agencies - including the INS - to defend America against terrorists. According to the Commissioner, the transformation is expected to considerably improve enforcement efforts. In addition, he stated that the reorganization would provide the agency with a fresh start that would also improve the services it provides to foreign nationals, U.S. employers and families.

Balancing security and constitutional rights was also stressed by the Commissioner as he noted that many recent proposals are likely to be criticized by various associations including AILA. The Commissioner also appeared to encourage discourse over these proposals to ensure that constitutional freedoms and rights will not be sacrificed in the name of national security. As new regulations and policies take effect, it will be interesting to see how the INS will be able to manage its enforcement and security responsibilities while adhering to long-held constitutional principles.

A number of other proposals were addressed and defended. These included changes regarding tourist and business travelers and the practice of authorizing six-month stays upon entry. Currently the minimum admission period is 1 year, the proposed regulations would reduce this to 6 months, establishing greater control over a visitor's ability to extend status or to change status to that of a nonimmigrant student, and they will have a presumed limit of 30 days upon entry unless the foreign national provides the Immigration Officer with information and documentation supporting a request for a longer period of time.

The development and implementation of an entry-exit tracking system was also stressed as one of INS' highest priorities. The Commissioner stated that a system will be fully functional by the end of 2004. Individuals who are eligible for the Visa Waiver Program will utilize an online system for this purpose that may be available by the end of this year according to the Commissioner. He also commented that implementation of the Student and Exchange Visitor Information System (SEVIS), the student tracking program, would begin this July. A new electronic security system is also being implemented to address photo substitution. The system will allow immigration inspectors to view a photograph of the person who was issued a visa, and compare it with the photograph in the visa that is presented to the them.

Commissioner Ziglar warned against a new wave of anti-immigrant sentiment, and acknowledged the difficult task INS faces in balancing liberty and security. Throughout his speech he also affirmed the INS' commitment to serving the United States as a nation of immigrants.

Updates from Department of Labor Officials

Meetings with officials from the Department of Labor (DOL) focused on the proposed PERM program and on recent DOL memos relating to labor certification applications and the effects of the recent economic downturn on the adjudication of these applications.

Update on Pending Applications
Currently, there are more than 280,000 applications for labor certification pending with state workforce agencies and the regional DOL offices nationwide. There are only 250 people in the state agencies and 70 people at the regional level processing these cases. Movement on these cases is very slow, particularly in states where they have not pushed through the backlogs created last year due to the April 30, 2001 deadline of Section 245(i).

PERM Regulations
While proposed regulations for the PERM program have been published, it is open for comment and final regulations may be at least a year away. The DOL's goal is to improve processing times with a new attestation based system replacing state and federal official examination of all supporting evidence filed with each application under the current system. Unfortunately, the program as outlined in the proposed regulations do not account for real-world employment practices and may hinder the ability of many employers to use the labor certification process as a means for finding and employing qualified foreign nationals when U.S. workers are not available. For a more detailed

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Important Information from the 2002 AILA Annual Conference (con't)

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discussion of the proposals please refer to our May 7, 2002 news flash

http://www.gtlaw.com/practices/immigration/news/2002/05/07a.htm.

Impact of Current Economic Climate

Through the late 1990s, due to the strong economy and tight labor market, the labor certification and reduction in recruitment system which provided U.S. employers with an avenue to conduct real-world recruitment on their own and file an application requesting certification of their need for employing foreign nationals proved to be an asset to U.S. companies and to the economy. However, as the economy has faltered in the last couple of years, and companies experience increasing layoffs, particularly in high tech and telecommunications industries that frequently used the labor certification process, this process has become more and more tenuous. In light of this, the DOL is requiring many employers to conduct additional recruitment efforts to test the current labor market in addition to the recruitment conducted to test the market as it existed at the time the application was filed.

Dale Ziegler, Chief of the Division of Foreign Labor Certification for the Department of Labor ("DOL"), issued a memorandum on March 25, 2002 which provides guidance to Regional Certifying Officers ("CO") regarding adjudication of RIR labor certification applications in an economy experiencing layoffs. For a more detailed discussion of the proposals please refer to our March 27, 2002 news flash http://www.gtlaw.com/practices/immigration/news/2002/03/27.htm.

Updates From the INS Service Center Directors

The Directors of all five INS regional service centers were present at the conference. They provided an overview and update of processing at their respective centers. All of the directors noted that the new background checks conducted on all applications have resulted in some delays. To conduct the IBIS background checks, officers have to be trained on accessing the database, then they are trained on how to use the database. The training was approximately a one month project that was conducted and completed in March. Some local INS offices are also encountering processing delays due to the additional checks as a result of lack of personnel, training or equipment (computers and software) needed to conduct the checks.

Within the next 12 months a number of other changes are also expected. Applications for employment authorization documents are expected to be filed electronically, hopefully sometime before the end of this year. Over the course of the next three to five years, the agency will be involved in transferring to electronic filing of more applications. The long awaited premium processing of I-140 is also expected sometime during 2002 according to the directors, and concurrent filing of I-140s and I-485s is apparently also a possibility being discussed by the service.

Other Hot Topics

MANDATORY Address Updates for Foreign Nationals

The INS will begin to strictly enforce the requirement that all noncitizens keep the INS informed of address changes. The Immigration and Nationality Act requires all foreign nationals within the U.S. to notify the INS of address changes within 10 days of the change, using form AR-11. This requirement includes almost all foreign nationals; everyone who is a permanent resident or in any other status other than U.S. citizen is required to comply. Failure to do so can result in a $200 fine and 30 days in jail. Violation of this requirement is also grounds for deportation — for which there is no waiver available.

For individuals who are required to register with the INS, which currently includes people from Iran, Iraq, Libya and Sudan, as well as nationals from as many as 33 countries to be named later and any other person an INS inspector determines should be required to register, failure to apprise the INS of an address change will also result in a $1000 fine and up to six months in jail. For more information regarding the registration refer to our June 18 newsflash, http://www.gtlaw.com/practices/immigration/news/2002/06/18.htm.

For nonimmigrants (i.e. individuals in B, H, L, F, O, etc. status) failure to keep the INS informed of an address change is a status violation and can lead to deportation.

J-1 Physicians

Efforts to extend and increase the Conrad State 20 waiver program for J-1 physicians continue. A number of bills are being sponsored. One such bill, HR 4858, passed the House on June 25, calling for a two-year extension. Others call for the elimination of the expiration date altogether. There are also proposals to increase the number of waivers available from 20 to either 30 or 40.

INS Requests for Evidence

Both attorneys and INS representatives commented on the fact that INS adjudications officers are issuing more requests for evidence than ever before.

According to the service center directors and AILA liaison members on the panel, some of the requests may be coming from inexperienced examiners who are seeking information that is either not relevant to the application or is clearly excessive. The directors noted that the INS has hired a substantial number of new employees (50 new examiners at the Nebraska Service Center). The goal is to reduce the inappropriate or excessive requests as the officers gain experience.

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INS Proposes New Registration System to Monitor Non-Immigrants

The Department of Justice and the Immigration and Naturalization Service ("INS") have proposed a law that would create a registration system for monitoring certain nonimmigrants entering the United States. This registration system is in response to the terrorist attacks of September 11, 2002 on the World Trade Center and the Pentagon.

The purpose of the registration system is to monitor the activities of certain nonimmigrants from the time they enter the United States until they leave the country. It was determined after September 11, 2001 that the INS did not have a reliable method to ensure that nonimmigrants in the country were complying with the terms of their visas, and departing by the authorized period of stay. The INS also found that it could not locate certain nonimmigrants if necessary once they entered the country. INS believes this system will prove to be a useful tool in monitoring the activities of certain nonimmigrants once they enter the United States and ensuring that these individuals exit the country and do not stay beyond the period of authorized stay granted by INS.

The registration system will not apply to all nonimmigrants. According to the Department of Justice only a "small percentage of nonimmigrant aliens" will be affected by this system. Those individuals who will be required to participate in the registration system are nonimmigrants "from selected countries specified in notices published in the Federal Register; and individual nonimmigrant aliens who are designated by a consular officer outside the United States or an inspection officer at the port of entry based on information that indicates the need for closer monitoring of the alien's compliance with the terms of his or her visa admission in the national security or law enforcement interests of the United States." The Attorney General and the Secretary of State may add and exempt certain classes or individuals from this list requiring registration. The INS wants to prevent violations of immigration laws and criminal activity by nonimmigrants

Nonimmigrants not subject to the registration system are those who enter as ambassadors, public ministers, career diplomats and those working as representatives or employees of an international organization. These individuals will qualify for either A or G visa status, respectively.

The registration process begins upon entry to the United States. If the proposed stay in the United States is longer than 30 days, the individual will be registered, fingerprinted and photographed at the port of entry. In addition, if the address should change while in the country, the INS must be notified within 10 days of the change.

If an immigration officer at the port of entry believes an individual will violate the terms of the requested status or may present a risk to national security, under the registration system, the individual can be required to register and submit to fingerprinting and photographs. The immigration officers at the ports of entry will be given specific criteria by the Department of Justice. The Department of Justice expects the criteria to change over time, however the specific criteria will be distributed to the immigration officers at the port of entry prior to the officers being able use the criteria. It is unclear at this point, how the criteria will be developed and how often the Attorney General will amend the criteria. The proposed rule is silent on these issues. The proposed rule is also silent on whether the registration system has safeguards in place to ensure a fair and equitable application of the criteria by the immigration officers.

The fingerprinting and photographs will help determine if the individuals have known associations with terrorist organizations or have committed criminal acts in the past. The registration system will also help ensure that if the individual commits an act of terrorism in the United States that they will not be allowed to reenter in the future.

When the registration system goes into effect there will be individuals subject to registration already in the United States. Those individuals will be required to register with INS. When this occurs, the Attorney General will publish a notice in the Federal Register providing guidance as to which individuals must register. The notice will also include the location of the registration and instructions detailing the proper procedure for providing fingerprints and photographs.

Individuals extending their stay in the United States must confirm their status with INS through the registration system if they were required to register upon initial entry. This confirmation of registration must take place at a designated registration site on or after the thirtieth day or before the fortieth day in the country. As the registration is a condition of admission to the United States, if an individual does not want to participate in the initial or confirmation registration they may withdraw the application for admission and depart the country.

Annual registration is required for those individuals who fall under the registration criteria and are issued visas for one year or more. These individuals must reconfirm their registration on the anniversary of their entry in to the United States. There is a ten day period after the anniversary date when the confirmation of registration may also be done. During the annual registration, the individual must confirm their activities in the United States, address, and any other information previously provided to the INS. The ten day rule also applies to these individuals when their address changes during the course of their stay in the country.

In addition to registration while in the country, the affected individuals must adhere to already established regulations requiring INS notification when a nonimmigrant leaves the United States. If the individual does not submit to inspection by the INS

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Guest Worker Essential Worker Immigration

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.

Greenberg Traurig Shareholder Laura Reiff is a co-chair of the coalition.

For more information see: www.EWIC.org

2002 AILA Annual Conference (con't)

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The American Competitiveness in the 21st Century Act (AC21)

The INS has not yet issued regulations or provided additional interpretation regarding the I-485, Adjustment of Status portability provisions. This provision allows a foreign national to switch employers 180 days after the adjustment application is filed provided certain requirements have been met.

GT Panel Speakers

Elissa McGovern led the Core Curriculum Question and Answer assisting new attendees. Dawn Lurie was one of three experts on the Trainee Visa Panel which discussed H-3, and B-1 visas as well as setting up and utilizing J-1 programs. Laura Foote Reiff participated in a standing room only session on H-1Bs. Martha Schoonover moderated a panel entitled, "The Final Step for Employment-Based Workers", covering adjustment of status vs. CP, 245(k) and (i), AC21 portability and changes that occur after filing the I-485. Cora Tekach, current DC Chapter Chair, was on a panel for post-conviction removal relief.

INS Proposes New Registration System (con't)

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upon departure from the country, that individual will be deemed to still be in the country. As the program develops, the ports through which a nonimmigrant may depart may be limited to specified ports of entry that are equipped with departure control offices.

The penalties for failure to register, confirm registration, annual registration or making false statements during the registration process are a fine up to $1,000 or imprisonment up to six months. In addition, providing false statements can lead to detention and removal once convicted.

Immigration News

Business Immigration Group:

Mahsa Aliaskari 703.749.1385	Tysons Corner aliaskarim@gtlaw.com	**Elissa McGovern** 703.749.1343	Tysons Corner mcgoverne@gtlaw.com	**Brenda Supple** 305.579.0734	Miami suppleb@gtlaw.com
Kristina Carty-Pratt 703.749.1345	Tysons Corner prattk@gtlaw.com	**Mary Pivec** 202.452.4883	Washington pivecm@gtlaw.com	**Cora Tekach** 703.749.1391	Tysons Corner tekachc@gtlaw.com
Craig A. Etter 703.749.1315	Tysons Corner etterc@gtlaw.com	**Laura Foote Reiff** 703.749.1372	Tysons Corner reiffl@gtlaw.com	**Shana Tesler** 202.331.3144	Washington, D.C. teslers@gtlaw.com
Oscar Levin 305.579.0880	Miami levino@gtlaw.com	**John Scalia** 703.749.1380	Tysons Corner/D.C. scaliaj@gtlaw.com	**Carol Williams** 703.749.1376	Tysons Corner williamsc@gtlaw.com
Elizabeth Lewis 703.749.1321	Tysons Corner lewise@gtlaw.com	**Elliot Scherker** 305.579.0579	Miami scherkere@gtlaw.com		
Dawn Lurie 703.903.7527	Tysons Corner luried@gtlaw.com	**Martha Schoonover** 703.749.1374	Tysons Corner schoonovermgtlaw.com		

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