

## WOLFSDORF IMMIGRATION NEWSLETTER JANUARY 2008

### 1. Fees Raised for Nonimmigrant, Immigrant Visa Applications, and Mexican BCCs

The Department of State has published an interim final rule, effective January 1, 2008, that raises the fee charged to process an application for a nonimmigrant machine-readable visa (MRV) and Border Crossing Card (BCC) from \$100 to \$131, and increases the immigrant visa fee by \$20, to \$355. Applicants who paid the prior \$100 application fee before January 1st will be processed only if they are scheduled and appear for a visa interview on or before January 31st. Applicants who paid the prior \$100 application fee and appear for visa interviews after January 31, 2008, must pay the difference (\$31) before they will be interviewed.

The Department said it is adjusting the fees "as an emergency measure to ensure that sufficient resources are available to meet the costs of processing nonimmigrant and immigrant visas in light of increased security measures put in place since 2004 and fee collection mandates on behalf of the Federal Bureau of Investigation." The primary reason for increasing the fees, the Department noted, is that in January 2008, the Department "will begin paying fees to the FBI for checking the fingerprints against the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and for running visa applicant names through Security Advisory Opinion (SAO) processes."

The estimated total increase in cost for nonimmigrant visa applicants is \$310 million (\$31 per applicant, with an estimated 10,000,000 applicants). The estimated total increase in cost for immigrant visa applicants is \$14 million (\$20 per applicant, with an estimated 700,000 applicants).

The full text of the interim final rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-24646.pdf>. The Department's related notice is available at <http://www.state.gov/r/pa/prs/ps/2007/dec/97384.htm>.

### 2. India Second Preference Cut-Off Date Retrogresses

The Department of State (DOS) announced that, for January, it has been necessary to retrogress the India employment second preference cut-off date because of continued heavy applicant demand for numbers by U.S. Citizenship and Immigration Services for adjustment of status cases. The DOS said it is likely that the annual limit for this category

will be reached within the next few months, at which time the category would become "unavailable" for the remainder of fiscal year 2008.

Indian and Chinese employment first preference may also become unavailable in February 2008.

Employment second preference cut-off dates for other than Indian and Chinese should be available but may retrogress in September 2008.

The January 2008 Visa Bulletin is available at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3897.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3897.html).

### 3. USCIS Reaches H-2B Cap for the 2<sup>nd</sup> Half of fiscal year 2008

The U.S. Citizenship and Immigration Services (USCIS) announced on January 3, 2008 that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the second half of the Fiscal Year 2008. USCIS further notified the public that January 2, 2008 is the "final receipt date" for new H-2B worker petitions requesting employment start dates prior to October 1, 2008. The "final receipt date" is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of fiscal year 2008.

The cap was reached with existing totals for that day. USCIS will reject petitions for new H-2B workers seeking employment start dates prior to October 1, 2008 that arrive after January 2, 2008.

USCIS will apply a computer-generated random selection process to all petitions that are subject to the cap and were received on January 2, 2008. USCIS will use this process to select the number of petitions needed to meet the cap. USCIS will reject, and return the fee, for all cap-subject petitions not randomly selected.

Petitions for workers who are currently in H-2B status do not count towards the congressionally mandated bi-annual H-2B cap. USCIS will continue to process petitions filed to:

- Extend the stay of a current H-2B worker in the United States;
- Change the terms of employment for current H-2B workers and extend their stay; or
- Allow current H-2B workers to change or add employers and extend their stay.

More information about the H-2B work program is available at [www.uscis.gov](http://www.uscis.gov) or by calling the National Customer Service Center at 1-800-375-5283.

### 4. Revised I-9 Verification Forms Now Required

USCIS reminded employers that they should have transitioned to using the revised Employment Eligibility Verification Form (I-9). The revised I-9, which includes the revision date (*Rev. 06/05/07*) printed on the lower right corner of the form, is now the only version valid for use. Effective December 26, 2007, employers who fail to use the revised form will be subject to applicable penalties.

The revised form is available at <http://www.uscis.gov/files/form/i-9.pdf>, and accompanying instructions are at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>. The "Handbook for Employers,

Instructions for Completing the Form I-9" is available at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. The reminder is available at <http://www.uscis.gov/files/pressrelease/FormI9Reminder112307.pdf>.

#### 5. Around the States: Illinois, Arizona, REAL ID/WHTI Update

In the void created by Congress's lack of action on comprehensive immigration reform, states are not sitting idly by. The following is an update on key developments around the nation.

Illinois. In September, the Department of Homeland Security (DHS) filed a lawsuit in federal court to declare invalid an Illinois statute, the "Right to Privacy in the Workplace Act," that effectively forbids Illinois employers from enrolling in the DHS's E-Verify (employment authorization verification) system. According to the DHS, the statute was to become effective on January 1, 2008, but in papers filed with the court on December 13, 2007, the state agreed not to enforce it until the DHS's lawsuit against the state is resolved. It also disclosed that the Illinois legislature is considering a bill to address the legal issues raised in the suit.

The DHS says it will communicate with each of the Illinois employers enrolled in E-Verify to let them know that they may continue using E-Verify without fear of a state enforcement action on January 1. The state's decision also allows employers planning to enroll in E-Verify to do so without the threat of state enforcement against them.

In a motion filed with the DHS, the state requested a 60-day stay of the lawsuit so that the Illinois legislature would have an opportunity to consider proposed changes in the Illinois statute. Secretary of Homeland Security Michael Chertoff said, "I remain hopeful that Illinois will amend its law so that Illinois employers can continue to utilize this valuable tool without the need for further litigation."

The DHS's statement is at [http://www.dhs.gov/xnews/releases/pr\\_1197585316378.shtm](http://www.dhs.gov/xnews/releases/pr_1197585316378.shtm).

Arizona. The *Washington Post* termed Arizona the "new ground zero" in the debate over undocumented immigration in an editorial published on December 26, 2007. Arizona passed a law that, effective January 1, 2008, prescribes sanctions for companies that knowingly hire undocumented workers. On a second offense, the company's business license would be revoked, which Arizona Governor Janet Napolitano has called a corporate "death penalty." The *Post* said the Arizona law may become "a test case for how much pain a state is willing

to endure, and inflict, in the name of ridding itself of a population that contributes enormously to its economic growth and prosperity." The *Post* noted that an estimated 9 to 12 percent of Arizona's 3 million workers are undocumented. Business associations and others are reportedly challenging the law in court.

According to "Immigrants in Arizona: Fiscal and Economic Impacts," a study by Judith Gans of the University of Arizona, the total state tax revenue attributable to immigrant workers in 2004 was an estimated \$2.4 billion (about \$860 million for naturalized citizens plus about \$1.5 billion for noncitizens). Balanced against estimated fiscal costs of \$1.4 billion (for education, health care, and law enforcement), the net 2004 fiscal impact of immigrants in Arizona was positive by about \$940 million. The 2004 total economic output attributable to immigrant workers was about \$44 billion (\$15 billion for naturalized citizens and \$29 billion for noncitizens). This output included \$20 billion in labor and other income and resulted in approximately 400,000 full-time-equivalent jobs. The study did not distinguish between authorized and unauthorized workers. The study, which includes demographics and other details about immigrant workers in various industries in Arizona, is available at [http://udallcenter.arizona.edu/programs/immigration/publications/immigrants\\_in\\_arizona.pdf](http://udallcenter.arizona.edu/programs/immigration/publications/immigrants_in_arizona.pdf).

WHTI/REAL ID update. Meanwhile, on December 6, 2007, the DHS and Arizona signed a Memorandum of Agreement (MOA) to enhance the security of state driver's licenses, to offer a Western Hemisphere Travel Initiative (WHTI)-compliant document to U.S. citizen residents and to pledge future compliance with the requirements of the REAL ID Act.

The Arizona agreement is much like those established with the states of Washington, Vermont, and New York earlier this year, the DHS said. The state of Arizona will develop a technologically enhanced driver's license that will securely validate the identity and U.S. citizenship of Arizona residents who voluntarily apply and qualify. The enhanced driver's license, which is proposed to be accepted for border-crossing purposes under WHTI, is expected to be slightly more expensive than a standard Arizona driver's license and will require proof of citizenship, identity, and residence. The enhanced document also will be aligned to comply with REAL ID over time. The DHS, in turn, will provide the technology and data-sharing specifications to facilitate the use and verification of the enhanced driver's license at a port of entry.

In addition, Arizona has pledged to become compliant with REAL ID as soon as practicable, the DHS said. The agency plans to issue soon the REAL ID final rule, which is intended to strengthen identification through both physical security features and a secure issuance process. Arizona's REAL ID-compliant license would be available to U.S. citizen residents who do not wish to obtain an enhanced driver's license.

REAL ID establishes minimum standards for state-issued driver's licenses and identification cards in compliance with the REAL ID Act of 2005. The requirements include security features that must be incorporated into each card; verification of information provided by applicants to establish their identity and lawful status in the United States; and physical security standards for locations where licenses and identification cards are issued. A REAL ID driver's license will be required in order to access a federal facility, to board federally-regulated commercial aircraft, and to enter nuclear power plants.

The DHS and the Department of State expect the date of full WHTI implementation to be in the summer of 2008, at which time U.S. citizens traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, and Bermuda by land or sea will be required to present a valid U.S. passport or other acceptable document. The precise implementation date will be formally announced with at least 60 days' notice, the DHS said in a statement at [http://www.dhs.gov/xnews/releases/pr\\_1196971699639.shtm](http://www.dhs.gov/xnews/releases/pr_1196971699639.shtm).

#### 6. State Department Publishes Final Passport Card Rule

On December 31, 2007, the Department of State published a rule finalizing the proposed rule published on October 17, 2006, and implementing certain provisions of Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The IRTPA provides that United States citizens and nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. Effective February 1, 2008, the final rule requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require virtually all travelers entering the United States to present a passport or other document or combination of documents that are deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship. The legislation also requires that the Department of Homeland Security (DHS) and the Department of State seek to facilitate the frequent travel of those living in border communities. This final rule takes into account the amendment to section 7209 by the 2007 Department of Homeland Security Appropriations Act calling for the availability of a passport card for land and sea travel between the United States and Canada, Mexico, the Caribbean and Bermuda.

The Department of State is promulgating the final rule with limited changes to clarify the proposed rule. Primarily, the final rule explains that the passport card does not need to be signed in order to be valid, whereas the passport book requires a signature to be valid. In addition, it makes clear that those requesting and eligible for a no-fee passport will receive a passport in book form only.

Additionally, the Department of State will reduce the execution fee to \$25.00 for the passport card. The application fee for applicants age 16 and over will be \$20, and the fee for applicants under the age 16 will be \$10. The Department of State is not proposing to lower the execution fee for the passport book at this time. Changes to the passport book fee schedule will be addressed in separate rulemakings.

The Administration's proposal to address the remainder of the legislative requirements in section 7209, called the Western Hemisphere Travel Initiative (WHTI), is being addressed in separate rulemakings.

For further information, you may contact: Consuelo Pachon, Office of Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, 2100 Pennsylvania Avenue, NW., Suite 3000, Washington, DC, telephone number 202-663-2431.

## 7. Oral Declarations of Citizenship Are No Longer Sufficient At Land/Sea Ports-of-Entry

Citizens of the United States, Canada, and Bermuda entering the U.S. at land or sea ports-of-entry (POEs) must establish their identity and citizenship to the satisfaction of a U.S. Customs and Border Protection (CBP) officer. Under current CBP procedures, such individuals may provide any proof of identity and citizenship. Although most individuals provide documentary evidence of citizenship, such as a passport or birth certificate, individuals currently may be admitted on an oral declaration, depending on the circumstances. Effective January 31, 2008, however, all travelers will be expected to present documents proving citizenship (such as a birth certificate), and government-issued documents proving identity (such as a driver's license), when entering the U.S. through land and sea POEs. CBP retains its authority to request additional documentation when warranted and to make appropriate individual exceptions.

For more on the new requirements, see [http://travel.state.gov/travel/cbpmc/cbpmc\\_2223.html](http://travel.state.gov/travel/cbpmc/cbpmc_2223.html).

## 8. USCIS Field Office in Ciudad Juarez Adopts Teletch Call Appointment System For Filing Waiver of Inadmissibility Applications

The U.S. Citizenship and Immigration Services announced that as of December 17, 2007, immigrant visa applicants seeking to file an application for waiver of inadmissibility (Form I-601) with the USCIS field office in Ciudad Juarez can now use the Teletch Call Center to make an appointment. This represents a changeover from the pilot InfoPass program in a joint effort between the USCIS and the Department of State to improve customer service through more timely appointment scheduling.

The Teletch Call Center located in Mexico is the same system currently used by the Department of State for scheduling nonimmigrant visa interview appointments at U.S. Consulates in Mexico. Customers will pay a small fee to use the Teletch Call Center. Customers have the option of either calling direct, using a credit card or purchasing a Personal Identification Number (PIN) to access the system and make an appointment.

Appointments made through the call center must be scheduled at least three business days after the date of an immigrant visa interview. Customers may schedule appointments using the following numbers:

### Direct Calls

México: 01-900-849-49-49 (12 pesos/min.)

U.S.: (900) 476-1212 (\$1.25/min)

### Credit Card Calls

Mexico: 01-477-788-70-70 (\$57.50 pesos/call)

U.S.: (800) 919-1754 (\$7.00 USD/call)

### Personal Identification Number (PIN) Calls

Banamex Bank purchase: (\$10.00 USD)

Phone Purchase: 01-800-112-25-00 (24 hours for PIN activation) 9. State Department Issues Final Rule on Exchange Visitor Program Sanctions, Terminations

Effective January 22, 2008, the Department of State is adopting as final, with "minor edits," its proposed rule on exchange visitor program sanctions and terminations as published on May 31, 2007.

The rule included two new grounds for sanctions or terminations: actions that may compromise national security or undermine U.S. foreign policy objectives. The DOS also eliminated the requirement that it find alleged violations to be willful or negligent before imposing sanctions. "Since knowledge and ability to comply and remain in full compliance with the regulations are fundamental requirements of sponsor designation, it is essentially irrelevant whether a sponsor violates regulations willfully, negligently, or even inadvertently," the DOS noted. "Violations, whether or not willful or negligent, may harm the national security or the public diplomacy goals of the United States, or pose a threat to the health, safety or welfare of program participants, and the DOS must have the capacity to respond appropriately. Moreover, the process set forth in the revised sanctions regulations provides that a sponsor being sanctioned may submit a statement in opposition to or mitigation of the proposed sanction."

The supplementary information to the final rule, which was published on December 20, 2007, and is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-24650.pdf>, includes a number of comments received on the proposed rule, along with the DOS's responses.

#### 10. DHS Publishes Semiannual Regulatory Agenda

The Department of Homeland Security (DHS) has published its semiannual regulatory agenda, which is a summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the DHS.

Among the upcoming actions, the DHS and the Department of Labor's Employment and Training Administration (DOL) plan to propose changes "to reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States." The DHS is considering the elimination of the substitution of beneficiaries on permanent labor certifications, among other options. In addition, the DHS is proposing to reduce further the likelihood of the submission of "malafide" Forms I-140, Immigration Petitions for Alien Worker, which the DHS defines as employment-based petitions "that are supported by fraudulent or stale labor certification applications," by proposing a 45-day period for employers to file approved permanent labor certifications in support of I-140 petitions with the DHS after the issuance of an approved labor certification by the DOL. The notice of proposed rulemaking is targeted for publication in March 2008.

Also targeted for publication in March 2008 is a notice of proposed rulemaking that will modify DHS regulations governing the established Student and Exchange Visitor Information System (SEVIS) I-901 and the Student and Exchange Visitor Program (SEVP) certification

fees to defray actual costs of related SEVP operating expenses. The proposed rule also would establish a fee to defray SEVP operating expenses related to oversight and recertification of SEVP-certified schools.

Portions of the DHS's semiannual regulatory agenda are available at <http://a257.g.akamaitech.net/7/257/2422/10dec20070800/edocket.access.gpo.gov/ua071210/pdf/ua071008.pdf>. The federal government is moving agencies' full regulatory agendas online. Because publication in the Federal Register is mandated, the DHS's printed agenda entries include regulatory actions that are in the agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities. Printing of these entries, however, is limited to fields that contain information required by the Act's agenda requirements. For more information on the full regulatory agendas, see <http://www.reginfo.gov/public/do/eAgendaMain>.

#### 11. Rhetoric on Support for Science Doesn't Match Reality of Appropriations

The appropriations bill (H.R. 2764) signed into law by President Bush on December 26, 2007, included what some observers are calling meager funding for advances in scientific research rather than the more substantial increases that had been expected. "[W]hat began as a year of soaring rhetoric in support of science seems likely to end with agency officials and research advocates shaking their heads and wondering what went wrong," said the American Association for the Advancement of Science (AAAS).

The White House had promoted the "America Creating Opportunities To Meaningfully Promote Excellence In Technology, Education, And Science Act (America COMPETES)" Act, signed into law in August 2007, as, among other things, a comprehensive strategy to "attract[ ] the world's best and brightest workers." The new appropriations package, however, "makes moot the double-digit hikes authorized for research, education and training, and investment in innovation spelled out" in America COMPETES, said AAAS.

There was some advance warning that funding might not rise to meet expectations raised by the earlier legislation and accompanying rhetoric. In a White House statement issued in August in conjunction with President Bush's signing of America COMPETES, Mr. Bush said he was "concerned that the legislation include[d] excessive authorizations and new duplicative programs." The statement noted that the bill created over 30 new programs that were "mostly duplicative or counterproductive," including a new Department of Energy agency to fund late-stage technology development "more appropriately left to the private sector," and that the bill provided "excessive authorization for existing programs." Accordingly, the August statement noted that the President would "request funding in his 2009 budget for those authorizations that support the focused priorities of the [President's "American Competitiveness Initiative" (ACI)], but will not propose excessive or duplicative funding based on authorizations in the bill."

"Riding the Rising Tide: A 21<sup>st</sup> Century Strategy for U.S. Competitiveness and Prosperity," a report by the Alliance for Science & Technology Research in America (ASTRA) released in

December 2007 shortly before the appropriations legislation was signed into law, provides a 14-point action program. ASTRA recommends, among other things, that the U.S. "strengthen efforts to attract top foreign students and Ph.D.-level professionals in science, engineering and technology. This includes developing a national strategic plan for recruiting top international students, scientists, engineers and technologists, and evaluating the U.S. immigration system to remove barriers to these talented individuals migrating to the U.S." This approach, ASTRA said, "should include incentives to attract leading foreign-born scientists, engineers, and technologists, including public funding for their research if they migrate to and carry out that research in the United States."

The ASTRA report is available at <http://www.aboutastra.org/pdf/ASTRARisingTide121107.pdf>. An ASTRA statement about the appropriations legislation is available at [http://www.aboutastra.org/latest\\_news/12-18-2007\\_funding.asp](http://www.aboutastra.org/latest_news/12-18-2007_funding.asp). AAAS's statement is available at <http://sciencenow.sciencemag.org/cgi/content/full/2007/1218/1>. The August 2007 White House statement is available at <http://www.whitehouse.gov/news/releases/2007/08/20070809-6.html>.

## 12. Recent Firm News

On December 12, 2007, Bernard P. Wolfsdorf met with Assistant Secretary of Homeland Security's Immigration and Customs Enforcement (ICE) Chief Julie Myers and other senior ICE officials as part of the American Immigration Lawyers Association's (AILA's) national liaison effort. In November, Mr. Wolfsdorf met with June Kunsman, Managing Director of the Department of State and other senior Visa Office staff as part of AILA's national liaison efforts.

On the home front, 2007 was certainly a memorable year for our families. Baby Anna was born to Attorney Rita Sostrin and her husband in April. Attorney Cliff Rosenthal and his wife welcomed baby Chana Shira in April also. Attorney Avi Friedman and his wife followed the joy with baby Ava in May. Attorney Tien-Li Loke Walsh and her husband then welcomed Juliette in August. And, closing out the year with new additions was Attorney Frieda Wong Dittmar and her husband with baby Luc Matthias. There will be lots of diaper changing and late night feedings into 2008!

Keeping with the theme of starting families, congratulations to John Vincent P. Ocampo and Katherine Darnell Cortas who each tied the knot with their significant others in 2007!

Looking ahead, Wolfsdorf Immigration Law Group is participating in and sponsoring a number of immigration law conferences and workshops in early 2008:

January 18, 2008-Mr. Wolfsdorf will be speaking at AILA national's Midyear Conference in Hawaii on Trends and Forecasts in Visa Issuance, which will include a presentation on E investor visas.

January 19, 2008- Attorneys Rita Sostrin, Naveen Rahman Bhora and Avi Friedman will be conducting the Immigration Seminar for Physicians in New York City. Location: Roosevelt

Hospital, Conference Room C, 1000 10<sup>th</sup> Avenue, New York, NY 10019. RSVP with Megan Weisberger at [meganw@wolfsdorf.com](mailto:meganw@wolfsdorf.com).

February 4, 2008-Mr. Wolfsdorf will be conducting a workshop for the West Coast Masters of Law Program career Workshop hosted at UCLA School of Law from 12:15pm to 1:15pm

February 9, 2008-Mr. Wolfsdorf will be speaking to the Los Angeles County Bar (LACBA) Immigration Law Section on the H-1B Specialty Occupation Visas and Alternatives.

February 21, 2008-Mr. Wolfsdorf will be speaking to the Southern California Chapter of AILA on Investor Visas.

TBA- Spring 2008-Stay tuned for more information regarding an essential conference on worksite enforcement and compliance planned for some time in May 2008...

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The Wolfsdorf Immigration Law Group is one of the largest immigration boutique firms in the United States. With offices on both the east and west coasts, the firm serves an extensive and diverse client base, ranging from Fortune 500 corporations to entertainers and leading academic institutions. Our large and dedicated staff of 50 employees ensures

prompt and expert attention to your immigration law matters. For more information about any of the above-mentioned issues, or any immigration-related questions or concerns, please contact our team of professionals or your assigned Wolfsdorf professional at (310) 570-4088 or contact us via email at [visalaw@wolfsdorf.com](mailto:visalaw@wolfsdorf.com)

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