

LitwinLaw Update

January 1, 2008

Headlines:

- **1. Fees Raised for Nonimmigrant, Immigrant Visa Applications; BCCs** - The Department is raising the fees in light of increased security measures and fee collection mandates on behalf of the FBI.
- **2. Rhetoric on Support for Science Doesn't Match Reality of Appropriations** - The appropriations bill signed into law in December included meager funding for advances in scientific research rather than the more substantial increases that had been expected.
- **3. Department of State To Begin Issuing Passport Cards** - The final rule provides for a card-format passport as a less expensive and more portable alternative to the passport book.
- **4. Revised I-9 Verification Forms Now Required** - Employers should have transitioned to using the revised Employment Eligibility Verification Form (I-9).
- **5. Department of State Expands Fingerprinting and Name Checks** - The Department has begun performing fingerprint and name checks on all visa applicants except those falling within a narrow range of exceptions.
- **6. Oral Declarations of Citizenship No Longer Sufficient At Land, Sea POEs** - Citizens of the United States, Canada, and Bermuda entering the U.S. at land or sea ports-of-entry will be expected to present documents proving citizenship and identity.
- **7. India Second Preference Cut-Off Date Retrogresses** - For January, it has been necessary to retrogress the India employment second preference cut-off date because of continued heavy applicant demand. The result: it will take longer for Indian nationals to become permanent residents.
- **8. 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.

Also in this issue:

[New Publications and Items of Interest](#)

[Government Agency Links](#)

Details...

1. Fees Raised for Nonimmigrant, Immigrant Visa Applications; BCCs

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

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. 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 21st 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. 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>.

3. Department of State To Begin Issuing Passport Cards

To be "responsive to the needs and concerns of the border communities and to facilitate the travel of border community residents," the Department of State has finalized a proposed rule issued in October 2006 providing for a card-format passport as a less expensive and more portable alternative to the passport book.

The final rule explains that the passport card does not need to be signed 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.

The Department said it received over 4,000 comments regarding the proposed rule. Among those submitting comments were four members of Congress; the governments of Canada and two of its provinces (Manitoba and New Brunswick); a Native American government (Haudenosaunee Confederation, New York); and dozens of city, county, and municipal governments. Also represented were the U.S. Postal Service, the Air Transport Association, over two dozen technology companies and privacy interest groups, five tourism interest groups, and three offshore drilling concerns.

All four members of Congress, as well as technology, security, and privacy groups, said they were concerned about the choice of "vicinity read" radio frequency identification (RFID) technology for the passport card. The opinion expressed by many commenters was that vicinity read technology is not as secure as the proximity read technology currently used in the U.S. e-Passport because it could result in the unauthorized reading of information that could lead to identity theft and tracking of U.S. citizens by terrorists or the government. Several commenters mentioned a 2006 Government Accountability Office review of the US-VISIT program, which reported a low read rate using this type of technology and a statement in the report that it should be used only to track goods, not to identify people. A private company that designs, manufactures, and markets both vicinity and proximity read technology chips commented that the choice of vicinity read technology could have the unexpected result of compromising the security of U.S. borders while severely affecting the personal privacy of U.S. citizens. They also questioned whether vicinity read technology would necessarily improve border crossing times.

The Department said that the vast majority of such comments "reflected an improper understanding of the business model that WHTI [the Western Hemisphere Travel Initiative] is designed to meet and how the technology selected would actually be implemented." Vicinity-read RFID technology

"should allow CBP [Customs and Border Protection] officers to quickly obtain information about the border crosser and perform terrorist watch list checks while they are still awaiting a personal inspection and to read multiple cards simultaneously." To ensure compatibility and interoperability with the Department of Homeland Security's border management system, and to secure "significant travel facilitation advantages," the Department of State said it will produce the passport card using vicinity RFID technology. "The operational concept that this rule promulgates should enable information about a border crosser to be queued while they are awaiting their interviews with the border officers, rather than waiting until they are face-to-face with the officer to provide their personal information," the Department said, adding that this approach "is designed to substantially reduce wait times at the border, which was the key driver in development of the WHTI passport card business case."

The Department explained that the vicinity RFID electronic chip contains only one item of information: a unique identifying number that has meaning only inside the secure CBP computer system. No other form of personally identifiable information, such as name, date of birth, Social Security number, or place of birth, will be stored electronically on the passport card or transmitted through RFID. All personal information will be contained in Department of Homeland Security systems and will be accessible only by authorized personnel through secure networks, the Department said. Upon receipt of the passport card number, the border crosser's personal information will be downloaded from the CBP system and provided to the CBP officer. The CBP officer will then interview the individual, verify his or her identity, and determine the appropriate action to take.

All cardholders will also be issued a protective sleeve for the card, which prevents transmission of the card's unique identifying number. Additionally, use of the passport card is not mandatory. Border crossers who would prefer to use traditional passports may continue to do so, the Department said.

Many commenters also discussed the technology solution in the e-passport, whose business model is different from that of the WHTI, the Department said. In the e-passport case, a different technology solution was selected that enables transfer of personal information in a secure, encrypted, manner. The technology solution for e-passports does not meet the business model for the specific WHTI application, so it was not selected, the Department noted.

The final rule is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-25422.pdf>.

4. Revised I-9 Verification Forms Now Required

U.S. Citizenship and Immigration Services (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 are 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&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>. The "Handbook for Employers, Instructions for Completing the Form I-9" is available at <http://www.uscis.gov/files/natedocuments/m-274.pdf>. The reminder is available at <http://www.uscis.gov/files/pressrelease/FormI9Reminder112307.pdf>.

5. Department of State Expands Fingerprinting and Name Checks

The Department of State has issued a final rule on documentation of non-immigrants entering the U.S. Specifically, the Department has begun performing fingerprint and name checks on all visa applicants except those falling within a narrow range of exceptions. Fingerprints are now required of all visa applicants except those under the age of 14 or over the age of 79 and certain diplomats and officials. Beginning on January 1, 2008, the cost of such checks is included in visa fees, including the fees for nonimmigrant visas.

The final rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-25417.pdf>.

6. Oral Declarations of Citizenship No Longer Sufficient At Land, Sea POEs

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 must 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.

7. India Second Preference Cut-Off Date Retrogresses

The Department of State 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 Department 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.

The January 2008 Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3897.html.

8. 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' E-Verify (employment authorization verification) system. According to the DHS, the statute was to become effective on January 1, 2008. In papers filed with the court on December 13, 2007, however, the state agreed not to enforce the new law until the DHS' 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 said 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.

Arizona. The *Washington Post* termed Arizona the "new ground zero" in the debate over undocumented immigration. Arizona passed a law, effective January 1, 2008, that 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." In an editorial published on December 26, 2007, 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. The law is being challenged by business associations and others 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 non-citizens). 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 non-citizens). 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.

WHTI/REAL ID update. 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 will 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 to access a federal facility, board federally-regulated commercial aircraft, and 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 that 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.

New Publications and Items of Interest

[DOL releases new, updated FAQs](#). On December 17, 2007, the Department of Labor released Round 8 of its Backlog Elimination FAQs. The new FAQ is

available at http://www.foreignlaborcert.doleta.gov/pdf/backlog_faqs_12-17-07.pdf.

On December 12, 2007, the DOL also updated its extensive FAQ on labor certification. The FAQ is available at <http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm>. Related links are available on the Web page.

Also on December 12, 2007, the DOL released Round 2 of its H-2B FAQ, at http://www.foreignlaborcert.doleta.gov/pdf/h2b_faqs_round2.pdf.

Links to these and other recent FAQs are available at <http://www.foreignlaborcert.doleta.gov/>.

USCIS updates guide for new immigrants. U.S. Citizenship and Immigration Services (USCIS) has released an updated version of *Welcome to the United States: A Guide for New Immigrants*. The new *Guide* includes links to new online tools for USCIS services and information from the Department of Health and Human Services and other federal, state, and community organizations. In addition to settlement and integration information, the *Guide* contains an introduction to the U.S. system of government, a section on rights and responsibilities, and information on how to obtain citizenship. It also has information about finding a place to live, getting a Social Security number, getting a job, registering children for school, finding health care, locating English language and adult education classes, preparing for emergencies, and finding community organizations that assist immigrants.

USCIS has added Polish and Urdu translations of the *Guide*, making it available in English and 12 foreign languages, including Arabic, Chinese, French, Haitian Creole, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.

All translations of the *Guide* and other resources for new immigrants are available at <http://www.uscis.gov/newimmigrants>. The announcement is available at <http://www.uscis.gov/files/pressrelease/NewGuide121107.pdf>.

'American Dream' DVD series. The American Dream DVD series tells the history of immigration to the United States and the stories of prominent immigrant citizens and their contributions to America. The series is used in over 1,200 high school classrooms nationwide. The newest DVD in the series, "The Mexican Immigration Experience," has just been released. The series, which has won several awards, is available at http://www.meragefoundations.com/mfad_DVD_series.html.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:

<https://egov.uscis.gov/cris/jsps/ptimes.jsp>

Department of Labor processing times and information on backlogs:

<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html
