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## Immigration Legal Update

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### **Final rule: federal contractors will be required to use E-Verify**

As of January 15, 2009, many federal contractors and subcontractors will be required to use the E-Verify system, [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify), administered by the Department of Homeland Security, as a means of verifying that their employees are eligible to work in the United States.

The final rule applies to solicitations issued and contracts awarded after January 15, 2009. All employers, including federal contractors, may voluntarily enroll in E-Verify at any time before January 15, 2009, but there are specific rules regarding when enrollment and verification must occur for federal contractors and their subcontractors, as of January 15, 2009, described below.

Under the final rule, employers are required to enroll in E-Verify if and when, after January 15, 2009, they are awarded a federal contract or subcontract that requires participation in E-Verify as a term of the contract. The same clause will also be required in subcontracts over \$3,000 for services or construction.

The final rule also requires the insertion of the E-Verify clause within existing prime federal contracts with a period of performance longer than 120 days and a value above the simplified acquisition threshold (\$100,000), except in these circumstances:

- With contracts that include only commercially available off-the-shelf (COTS) items (or minor modifications to a COTS item) and related services
- With contracts where all work is performed outside the United States

In the past, employment verification through E-Verify was limited to new hires only; under the new final rule, qualified federal contractors and subcontractors are required to use E-Verify for both new hires and existing employees who work on a federal contract.

When a contractor is awarded a federal contract containing the E-Verify clause, the contractor and any covered subcontractors on the project must enroll in the E-Verify program within 30 calendar days of the contract or subcontract award date. These contractors or subcontractors must also initiate verifications for existing employees who will be working on the contract and use the system to verify newly hired employees within 90 calendar days of enrollment. After the 90-day phase-in period, federal contractor and subcontractor employers are required to conduct E-Verify verification of all newly hired employees within 3 business days after their start date. To meet this three-day requirement, employers may initiate verification of newly hired employees before their start date if the employees have accepted job offers and filled

out the Form I-9 (prescreening of job applicants is not allowed). Importantly, federal contractor employers must continue to use E-Verify for the life of the contract for all new hires, whether or not they are employees assigned to the contract, unless certain exceptions apply.

The USCIS has issued releases discussing the new final rule and its requirements, available at the USCIS's Web site at [http://www.uscis.gov/files/article/FAR\\_13Nov08.pdf](http://www.uscis.gov/files/article/FAR_13Nov08.pdf) (new rule announcement) and [http://www.uscis.gov/files/article/FAR\\_FAQ\\_13nov08.pdf](http://www.uscis.gov/files/article/FAR_FAQ_13nov08.pdf) (Frequently Asked Questions).

### **Visa Waiver Program to be expanded to seven more countries**

Effective November 17, 2008, seven more countries were added to the Visa Waiver Program - the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, and Slovakia. Citizens of Visa Waiver Program countries can travel to the United States for tourism or business visits without a visa.

On October 17, 2008, President Bush announced that these seven countries met the necessary security and information-sharing requirements to be admitted to the United States Visa Waiver Program. After meeting these requirements, these countries are now officially added to the list of the Visa Waiver Program countries that, as a result, has expanded from 27 to 34 eligible countries.

Citizens of the following 34 countries are now able to travel to the U.S. without a visa: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

### **Travelers under Visa Waiver Program must use the new ESTA system ; Visa Waiver Program passport requirements**

Beginning January 12, 2009, eligible citizens or nationals from all Visa Waiver Program (VWP) countries must obtain approval through the Electronic System for Travel Authorization (ESTA), an online registration system, prior to traveling to the United States under the VWP. ESTA approval must be obtained before leaving for the United States or travelers risk being denied entry in the United States.

ESTA is a new electronic system for screening passengers prior to their travel to the United States under the VWP. Nationals eligible to use the VWP are described in the update above. While the use of ESTA is required by all nationals who are traveling to the U.S. under the VWP, other travelers may also use ESTA on a voluntary basis to facilitate their travel. To register for travel with ESTA, travelers can visit [www.cbp.gov/esta](http://www.cbp.gov/esta).

In addition, to be eligible to travel to the U.S. under the VWP, citizens of qualifying VWP countries must be in possession of a valid passport that meets the VWP requirements, as follows:

Passports issued on or after October 26, 2006, by a VWP country must be an e-Passport for VWP travelers to be eligible to enter the United States without a visa. Such e-Passports include an integrated computer chip that contains biographic information from the data page, as well as other biometric information, such as the required digital photograph of the holder. e-Passports are marked by a special symbol on their cover.

Older passports issued between October 26, 2005, and October 25, 2006, must include a digital photo printed on the data page, or the traveler will be required to obtain a visa. A digital photo is one that is printed on the page, not a photo that is glued or laminated into the passport.

Older passports issued by the VWP countries before October 26, 2005, must have a machine-readable zone. A machine-readable passport has two lines of text as letters, numbers, and chevrons (<<<) at the bottom of the personal information page, along with the bearer's picture. If the passport does not have this feature, the bearer must either get a new qualifying passport to travel under the VWP, or get a visa.

### **Reminder: deadline to register for the 2010 Diversity Visa Lottery is December 1, 2008**

The diversity immigrant visa lottery under the Immigration and Nationality Act of 1997 provides 50,000 immigrant visas each fiscal year to natives of countries from which immigration has been low over the preceding five years. Anyone who is selected under this lottery will be given the opportunity to apply for permanent residence. Registration for the 2010 Visa Lottery, which began on October 2, 2008, is scheduled to end on December 1, 2008. The registration is done electronically at the U.S. Department of State's Web site at <http://www.dvlottery.state.gov/>.

The 2010 Visa Lottery is open to natives of most countries, except the following "high admission" countries that are excluded this year: BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PHILIPPINES, PERU, POLAND, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

Complete instructions for applying for the 2010 Diversity Visa Lottery may be found on the U.S. Department of State's Web site at [http://travel.state.gov/visa/immigrants/types/types\\_1318.html](http://travel.state.gov/visa/immigrants/types/types_1318.html).

#### **DHS announces new private aircraft requirements**

U.S. Customs and Border Protection (CBP) has enacted new rules changing the procedure for private aircraft to provide advance notice of their intended arrival or departure and to submit manifests of the persons on board. Private aircraft are defined as any aircraft, other than government or military, that are not engaged in carrying passengers or cargo for compensation. The new process is similar to the one currently in use by commercial aircraft and will standardize advance notice procedures for all CBP airports of entry.

Previously, pilots were required to provide at least 60 minutes, advance notice of their arrival, either directly to CBP at the place of intended arrival or by requesting in the remarks section of their flight plan that the Federal Aviation Administration Flight Services advise CBP. Some, but not all, CBP locations also request that pilots fax CBP detailed information about the passengers, crew, and aircraft in advance.

Under the new rule, pilots (or their designees) will be required to submit advance notice and passenger/crew manifest information to CBP via an approved electronic data interchange system no later than 60 minutes prior to departure. CBP will require that the pilot compare the manifest data to the information on a Department of Homeland Security-approved travel document presented by each individual seeking travel aboard the aircraft. Departure clearance has been required for commercial aircraft for some time, and the new rule will make such reporting consistent for all general aviation aircraft through the same Web portal.

More information on the new rule is available on the DHS' website at [http://www.dhs.gov/xnews/releases/pr\\_1226943273725.shtm](http://www.dhs.gov/xnews/releases/pr_1226943273725.shtm).

#### **New privacy and security regulations in Massachusetts**

The Massachusetts Office of Consumer Affairs and Business Regulation (OCABR) recently issued standards for the protection of personal information of residents under the state's identity theft prevention law of 2007. Originally effective January 1, 2009, OCABR delayed the date for compliance to May 1, 2009 to give businesses additional time to comply with these standards to protect the personal information of Massachusetts residents.

According to the standards, any entity who "owns, licenses, stores or maintains personal information" about a Massachusetts resident has a duty to "develop, implement, maintain and monitor a comprehensive, written information security program" that identifies the risks involved and steps to protect such personal information. Personal information is defined as a combination of the person's name plus one other data element such as a Social Security number or a financial, credit, or debit account number. The standards apply to personal information in any form, including electronic, visual, audio and most particularly, paper. Also, the standards apply to any entity (regardless of the entity's location) that owns, licenses, stores, or maintains a Massachusetts resident's personal information. The standards specify 12 elements that must be included in any written security program, as well as particular minimally required security measures for a company that electronically stores or transmits personal information, including firewalls and password protection for portable devices.

Many employers, especially their human resources departments, are in possession of such personal data and must take the necessary steps to protect Massachusetts residents, in compliance with the new law.

#### **Visa Bulletin for December 2008**

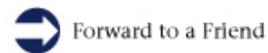
The Immigration and Nationality Act sets an annual minimum for both family-based and employment-based immigrant visas (green cards), prescribed by categories and per-country limits. A prospective immigrant can apply to become a permanent resident only when a visa number is available in his/her respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers, listing the cut-off priority. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

The complete Visa Bulletin is available at the Department of State's Web site at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4384.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4384.html). Below is an excerpt from the December 2008 Visa Bulletin pertaining to the employment-based categories.

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01JUN04	01JUN03	C	C
3rd	01MAY05	01FEB02	01OCT01	01SEP02	01MAY05
Other Workers	15JAN03	15JAN03	15JAN03	15JAN03	15JAN03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
"C" - current "U" - unavailable					

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