

Immigration Newswire

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INS Issues Field Guidance on Special Registration Procedures

Upon initial implementation of the Special Call-In Registration program, no guidance was given to local INS offices on how they should carry out registration interviews. Each office therefore developed its own set of questions and procedures. Registration experiences reported by members of the American Immigration Lawyers Association (AILA) initially indicated no uniformity in registration procedures from one INS office to the next. Some offices were telling attorneys that they could not be present for the interviews, while other offices allowed counsel to be present; some offices were placing out-of-status registrants into deportation proceedings even though their Adjustment of Status applications were pending, while others were not. These inconsistencies made the registration process frightening and unpredictable.

Fortunately, the INS has recently issued field guidance on special registration procedures. All INS offices that perform registration interviews must follow the same memo. The INS has not released this memo, so we do not know its entire contents. However, AILA has found out that the memo offers specific guidance on what checks to complete on each registrant; on how to determine appropriate action; and how to determine whether a registrant should be taken into custody. The most important provision of the memo is that if a registrant has an application pending, and approval of that application in and of itself would result in lawful status, either temporary or permanent, then the person should not be referred to investigations. This provision is extremely helpful for beneficiaries of pending petitions who have been out of status due to lengthy INS adjudication periods, but who are attempting to gain status.

Special Registration Deadlines Extended

Any aliens from Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen who were subject to call-in registration but failed to register by the deadlines, can now be registered between January 27 and February 7, 2003 without penalty for late registration. Excepting the dates of registration, all terms of the initial registration notice remain in effect. This news comes in the form of a Notice published by the Attorney General.

Nationals of Five Additional Countries Subject to Special Call-In Registration

Any male aliens over the age of 16 who are natives or citizens of **Bangladesh, Egypt, Indonesia, Jordan, or Kuwait** shall be subject to call-in registration if they were last admitted as nonimmigrants on or before September 30, 2002, and will remain in the United States after March 28, 2003. Registration dates for this group of registrants will be between February 24, 2003 and March 28, 2003, inclusive. A notice to this effect will be placed in the Federal Register and will be effective as of February 24, 2003.

Aliens subject to special registration must report to any of the designated local INS offices listed on the INS website, at the following link:

http://www.ins.gov/graphics/lawenfor/specialreg/List_Interview.pdf

Special registrants must answer questions under oath at the time of the registration interview. They must also provide proof of the following: residence (lease or title deed); employment (recent pay stubs); and lawful status (I-94's, I-797 Approval Notices, visas, passports, etc.). They should also bring driver's licenses, Social Security cards, and any other form of government issued identification. Questions asked under oath will include inquiries about any time spent out of status. Anyone who is subject to special registration and who has ever been out of status should contact our office before reporting to INS for special registration.

Aliens who engage in special registration must report back to INS annually, within 10 days of the initial registration interview. These annual registrations will be similar in content and form to the initial registration interview.

Anyone who is subject to special registration and who fails to appear for an interview may be placed in removal proceedings for violating his nonimmigrant status.

Certain Ports of Departure to be Used by Aliens Who Leave the United States After Engaging in Special Registration

Any alien who engages in Special Registration is required to leave the United States through certain designated Ports of Departure. A complete list of these ports, complete with directions, can be found on the INS website at the following link:

<http://www.ins.gov/graphics/lawenfor/specialreg/BLISTOFP.pdf>.

If a registered alien leaves the United States through a port that is not on this list, he will be considered to have violated his nonimmigrant status, and he will not be re-admitted to the United States. Detailed information about Special Registration can be found at www.ins.gov.

TN Category in the Toilet: INS Severely Restricts Admission of Scientific Technicians and Technologists under the North American Free Trade Agreement

The Immigration and Naturalization Service periodically issues memoranda to their officers, offering guidance on implementation of the law or regulations. Recently, the INS issued a memo providing new criteria on which to evaluate the admissibility of scientific technicians and technologists. The new criteria is so restrictive that very few people who would once have qualified for TN status under this category will qualify in the future.

Prior to the issuance of the infamous “Sci. Tech. Memo,” the category was open to a wide range of professionals who, although they did not have degrees, worked in support of higher-level, degreed Engineers. The category was most frequently used by software and hardware technicians, and the criteria for admission were fairly straightforward and simple. Those were the days.

Under the new memo, very few people will qualify as Scientific Technicians/Technologists. The memo reiterates the long-standing rule that the Technician must work in support of degreed professionals. In addition, the memo adds the rule that the work of the Technician must be inter-related with that of the supervisory professional. In addition, the Technician must have successfully completed at least two years of training in a relevant educational system. That education must be documented by copies of the appropriate degrees, certificates, diplomas, etc.

Perhaps the most restrictive criterion laid out in the memo is that “Scientific Technicians/Technologists cannot be admitted to perform job functions that are primarily associated with other job titles.” While this sounds reasonable, in practice it means that anyone who could possibly fall under another TN category will not be granted TN status as a Technician. For example, Computer Systems Analyst is another TN category that bears some semblance to the Sci. Tech. category. The job of a Computer Systems Analyst is defined by the Dictionary of Occupational Titles, in part, as follows:

“...one who analyzes user requirements, procedures, and problems to automate processing or to improve existing computer systems; confers with personnel of organizational units involved to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, how data is to be summarized, and formats for reports. They write detailed descriptions of user needs, program functions, and steps required to develop or modify computer programs. They review computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within existing system. They study existing information processing systems to evaluate effectiveness and develops new systems to improve production or workflow as required.”

A great deal of overlap exists between the TN categories of Computer Systems Analyst and Software Engineering Technician. But under the new memo, when it is unclear whether a person would better fit as a Technician or as a Computer Systems Analyst, the Scientific Technician/Technologist category cannot be used. And the Computer Systems Analyst category, unlike the Scientific Technician/Technologist category, requires the applicant to have a Bachelor's Degree.

The last, but certainly not the least, criterion established by the Sci Tech memo is that no one engaged in the construction trades (welders, boiler makers, carpenters, electricians, etc.) is admissible as a Scientific Technician/Technologist.

As far as we know, no TN's have been revoked from current Technicians. However, unless Technicians qualify under the new regulations, they will not be issued new TN's when their current status expires. Anyone who will be affected by this change in INS policy should contact his or her attorney immediately.

INS Will Share Data with the Social Security Administration to Facilitate Issuance of Social Security Numbers to Aliens

Since September 11, 2001, the Social Security Administration (SSA) has been under pressure to verify the immigrant and nonimmigrant status of aliens before issuing Social Security Numbers to them. Historically, the SSA has relied on documents provided by alien applicants to verify lawful immigrant or nonimmigrant status. However, the prevailing problem of document fraud has led the SSA to change its method of verifying aliens' status. Instead of asking the alien for proof of status, the SSA now asks the INS for proof of an alien's status before issuing a Social Security Number. Until recently, the verification process between the SSA and the INS has been performed manually, and has taken a long time. The result was that many bona fide nonimmigrants and immigrants were kept from working for a time. According to a report published by the Office of the Inspector General, the INS is currently working on a computerized system with which they will be able to share information on aliens' status with the SSA. The data sharing system will work differently for nonimmigrants and immigrants.

Nonimmigrants

Since September 1, 2002, the SSA has been manually verifying aliens' nonimmigrant status with INS before issuing new SSN's to aliens. In order to facilitate and quicken the verification process, the INS has begun to provide the SSA with electronic access to portions of its databases. The INS is currently working to streamline the electronic verification process for the SSA.

Immigrants

In order to work in the U.S., a nonimmigrant alien must receive a Social Security card with a legend across the top stating that he/she may work only with INS authorization. After the alien becomes a Permanent Resident of the United States, the legend needs to be removed. Permanent Residents have to apply for a new Social Security card that does not have the legend.

Under the current system, immigrants report to Social Security offices to complete forms SS-5 in order to get new cards. The immigrants must present proof of age, identity, and proof of Permanent Resident status. The SSA then manually verifies the alien's immigrant status with INS within 10-20 days.

A plan is in the works that would radically improve the process of issuing social security numbers to immigrants. The INS and the Department of State have been sharing a database called Interagency Border Inspection System (IBIS) since 1995. IBIS is a tool that the INS uses to verify an alien's status. When an alien travels to a U.S. Consulate abroad to apply for an immigrant visa and the immigrant visa is granted, the Department of State updates IBIS to indicate show that the alien has received an immigrant visa. The alien then enters the U.S. through a Port of Entry, at which time an INS officer inspects the alien. In the process of inspection, the officer checks IBIS to see whether it has been updated by the Department of State, and whether an immigrant visa has been issued to the alien.

Since the IBIS database contains a limited amount of information about the alien, but does contain verification of immigrant status, it is a valuable tool for sharing information with the Social Security Administration. The INS is currently working with the SSA to coordinate databases. If the everything works according to plan, aliens who travel abroad to apply for immigrant visas will be asked to sign a statement granting the SSA access to his or her IBIS entry. If the immigrant signs this authorizing statement, then the SSA will automatically issue a new Social Security card to the alien. The alien will not have to appear in person at a Social Security office in order to apply; the card will be mailed to his or her U.S. residence automatically. The Inspector General has not offered a time frame for implementation of this new policy. It is in the works.

U.S. Embassy in London, England Changes Procedures for Issuance of Nonimmigrant Visas

As of January 6, 2003, any nonimmigrant applying for a visa at the U.S. Embassy in London, England will be required to attend an interview with a consular officer. These interviews will be conducted by appointment only. Walk-ins will not be permitted. The change in procedure was announced on the Embassy's website: www.usembassy.org.uk. The only people exempt from interviews are applicants under 16 years of age; applicants over 60 years of age who were not born in, and are not passport holders of one of the 7 state sponsors of terrorism; and those who are applying for O, P, or I Visas or are airline crewmembers applying for C-1 or D visas.

Applicants who wish to schedule nonimmigrant visa interview appointments must call 09055-444-546 from within the U.K. If the applicant cannot be present in the U.K. to make the phone call, then someone else can make the appointment for him/her from within the U.K. However, every applicant who is not exempt the interview must be physically present at the Embassy at the time of the actual interview.

Anyone who arrives more than 30 minutes late for the scheduled interview will not be accommodated. Applicants should expect to spend at least 4 hours at the Embassy on the day of the interview. They should bring the following documents to the Embassy:

1. Stamped, self-addressed Special Delivery envelope
2. Completed form DS-156 and, if necessary, DS-157;
3. Completed fee documentation;
4. Passport; and
5. Any other required documents.

Visas for routine visa applicants will be mailed back to the applicant in the U.K. within 2 work days in the Special Delivery envelope.

It is important that anyone subject to the nonimmigrant visa interview leaves him/herself sufficient time in the U.K. before planning to return to the U.S. This particularly applies where anyone checks "yes" to any of the questions in box 33 of the form DS-156 relating to potential grounds of ineligibility.

The nonimmigrant visa issuance procedures implemented at the Embassy in London are indicative of changes to come at other consular posts in the not so distant future.

INS to Require Advance Submission of Passenger Data

According to a News Release issued by the Department of Justice on December 31, 2002, the INS has begun to require all commercial carries to submit passenger manifests to INS electronically before an aircraft arrives or departs from the U.S. This policy was published in the Federal Register on January 3, 2003 and is scheduled to go into effect after a 30-day comment period. The goal of the policy is, of course, to enforce U.S. immigration laws.

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