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Law Offices of James D. Eiss

jeiss@usvisahelp.com

US VISIT Program Implemented at Major Land and Sea Ports of Entry January 5, 2004

On January 5, 2004, the U.S. Department of Homeland Security implemented the United States Visitor and Immigrant Status Indicator Technology program (US VISIT) at 115 airports and 14 sea ports across the country.

◆ *Am I subject to US VISIT?*

Only nonimmigrant visa holders will be subject to US VISIT. Canadians who are exempt the visa requirement, and people entering the U.S. pursuant to the Visa Waiver Program, will not be subject to US VISIT requirements. However, Canadians who are required to have visas (e.g. if they are in E nonimmigrant status) will be subject to US VISIT. U.S. citizens and permanent residents will not be subject. Also, nonimmigrant visa holders are only required to register for US VISIT if they intend to travel outside of the United States and return. You do not need to make a special trip in order to enroll.

◆ *How do I enroll in US VISIT?*

Aliens can enroll in US VISIT either at a participating port of entry or at a U.S. Consulate abroad. US VISIT is not currently operating at all ports of entry; it is being installed in phases. If enrolling at a participating port of entry, aliens' travel documents will be scanned and a digital photo and inkless fingerprints of both index fingers will be taken. The aliens' names will be checked against immigrant and criminal databases. Aliens entering or exiting the U.S. through non-participating ports of entry will not be required to enroll in US VISIT. However, entry and exit registration with US VISIT is considered mandatory at the participating ports. For a list of participating ports of entry, see Appendix A.

Aliens applying for nonimmigrant visas at U.S. Consulates abroad will also be required to enroll in US VISIT. Enrollment will occur during the processing of the biometric visa. Again, a digital photo and inkless fingerprints will be taken of each enrolled alien. Currently only certain consular posts are issuing biometric visas, but the State Department will be required to issue these visas at all posts by October 26, 2004.

After a visa holder is enrolled in US VISIT, he or she must still provide fingerprints and have a digital photograph taken upon each entry to the U.S.

◆ ***How do I exit the United States on US VISIT?***

Visa holders leaving the United States through a participating port of entry will be required to submit to exit requirements. A visa holder leaving the U.S. through a non participating port is not required to comply.

◆ ***How does US VISIT affect special registration?***

Aliens who are subject to special registration (NSEERS) are not exempt from the NSEERS requirements due to the implementation of US VISIT. However, the Department of Homeland Security plans to integrate the two programs once US VISIT has been fully implemented.

Plea for Help

The Law Offices of James D. Eiss maintains a pathetic website at www.usvisahelp.com. We currently have a contract with a web developer to expand our site, and we would like your input on what you would like to see on the new site. What do you want to know that other immigration websites are not already telling you? What immigration topics are of interest to you? Your suggestions are invaluable. Please send your ideas to dshaddock@usvisahelp.com.

USCIS Clarifies Some Portability Rules for Adjustment of Status Applicants

In response to questions from the American Immigration Lawyers' Association, the USCIS clarified some of the portability rules applicable to Adjustment of Status Applicants under the American Competitiveness in the 21st Century Act (AC21)¹. In short, the portability provisions in AC21 state that an alien whose adjustment of status (I-485) has been pending for over 180 days may change employers without damaging the pending I-485 application. The only stipulation is that the new job must be in the same or a similar occupational classification.

AC21 was passed prior to the implementation of the concurrent filing procedures for I-140 and I-485 applications. After concurrent filing procedures were implemented, it became unclear whether aliens with pending I-140's could use portability after 180 days. In its recent response to AILA, however, USCIS clarified that only aliens with approved I-140 petitions can invoke portability provisions. Aliens whose concurrently filed I-140 petitions are still pending after 180 days have passed cannot use portability. And not only must the I-140 be approved; the employer must have also intended to employ the alien indefinitely right up until the time of I-140 approval.

¹ We ran an article on this topic called "I-485 Portability Rules: Clear As Mud" in Volume 2, Issue 9 of Immigration Newswire.

On a final note, USCIS also clarified that AC21 does not allow aliens to use portability to engage in self-employment after 180 days have passed since the filing of an unadjudicated I-485.

IRS Announces Restrictive Changes to Rules for Issuance of ITINs

In December 2003, the Internal Revenue Service announced that it will no longer issue Individual Taxpayer Identification Numbers (ITINs) to anyone for a non-tax purpose. ITINs are individual numbers that, much like Social Security Numbers, individuals frequently use for identification purposes. For example, aliens entering the U.S. in a nonimmigrant status often obtain ITINs for their dependent family members who are not authorized to work in the U.S.

However, IRS is now attempting to curb the practice of using ITINs for proof of identity by only issuing them to people who can show that they need an ITIN because they are ready to file federal tax returns. The dependent family members of principal nonimmigrants will still be issued ITINs, but not until the principal alien is ready to file income tax returns. The family members of aliens not required to file U.S. taxes will not be issued ITINs at all.

Applicants for ITINs must file a revised form W-7, available online at <http://www.irs.gov/pub/irs-fill/fw7sp.pdf>. The W-7 must be filed along with federal income tax returns. IRS is also reducing from 40 to 13 the number of documents it will accept as proof of identity to obtain an ITIN. The acceptable documents are listed on the new W-7.

USCIS Memo Provides Good News for Religious Workers

In the past several months, the USCIS has taken very restrictive views of immigration regulations pertaining to religious workers, in some cases creating extra-legal requirements for aliens applying for visas as religious workers.² For example, immigration regulations state that religious organizations petitioning for either nonimmigrant or immigrant religious workers are required to show eligibility for tax exemption under section 501(c)(3) of the Internal Revenue Code. However, USCIS has been requiring not only that the petitioning religious organizations show eligibility for 501(c)(3) exemption, but also that the organizations show eligibility for tax exemption as a “church.” This extra-legal requirement has been problematic because churches are not the only religious organizations permitted by regulation to hire alien religious workers.

Fortunately, on December 17, 2003, the USCIS issued a memo to all officers instructing them that religious organizations need only show that they are eligible for exemption

² For a full discussion of this issue, see our article entitled “Department of Homeland Security Policy Infringes on First Amendment Rights of U.S. Religious Organizations,” appearing in Volume 2, Issue 9 of Immigration Newswire (December 9, 2003).

from taxation under Internal Revenue Code section 501(c)(3), and nothing more. This memo is a step in the right direction for USCIS.

Advance Parole I-94s Not Renewable

The USCIS issues Advance Parole travel documents to applicants for Adjustment of Status, allowing those applicants to travel in and out of the United States during the pendency of their Adjustment applications. Advance Parole documents are valid for 1 year from the date of issuance, and aliens must reapply for Advance Parole annually. There is currently no procedure in place to extend I-94 Arrival/Departure cards issued to aliens with Advance Parole. Instead, those aliens must apply for Advance Parole all over again every year. However, USCIS may consider extending Advance Parole for aliens whose authorized period of parole is due to expire, if the alien has neither adjusted his status nor departed from the United States.

Memoranda Issued by INS Valid for USCIS

The USCIS has announced that any guidance memos issued by INS remain valid with respect to functions of USCIS unless the memos have been repealed, replaced, or otherwise superceded or rendered moot. Any references to INS officials and employees in old memoranda are assumed to refer either to USCIS or USCBP (Customs and Border Protection).

While INS/USCIS memoranda carry a great deal of weight and can ordinarily be relied upon, the memos can be overturned at any time. Furthermore, because they are not binding authority and do not absolutely have to be followed.³

Keep Up To Date on the Latest NAFTA Developments

The NAFTA Secretariat's office maintains a public website at http://www.nafta-secretaria.org/DefaultSite/home/index_e.aspx, where the post information on current developments in the North American Free Trade Agreement. The Secretariat's office is responsible to resolve international disputes arising out of the treaty. While the proceedings of NAFTA Working Group meetings are not available to the public, much public information is available online.

³ See In re Izummi, Interim Dec. #3360, stating that memoranda issued by the Office of General Counsel are "merely opinions" and do not bind adjudicators.

Social Security Administration Procedures for Verifying Individuals' Identities with USCIS

The Social Security Administration has adopted a policy of verifying the identity of all non-citizens who apply for U.S. social security numbers. Social Security offices have electronic access to immigration status information contained in the Alien Status Verification Index (ASVI) to perform primary identity verification queries using I-94 Arrival/Departure numbers or Alien Registration Numbers (A-numbers). However, it takes approximately two weeks from the date of either (1) an alien's entry to the United States in a new nonimmigrant status or (2) the approval of a change of status for USCIS to update ASVI so that Social Security can use the system to verify the alien's identity.

If ASVI is unable to confirm the applicant's immigration status, either because two weeks have not passed or because of a glitch in the system, then Social Security conducts a secondary identity verification with the Department of Homeland Security through completion of form G-845, Document Verification Request. The document is mailed to the local Department of Homeland Security Office for action. The secondary verification process takes 60-90 days.

Aliens who have just obtained a change of status or who have just entered the U.S. in a new nonimmigrant status should wait approximately two weeks before going to the Social Security office to apply for a Social Security Number. Aliens who go to Social Security before those two weeks pass will not be in the ASVI system yet, and Social Security will have to conduct a secondary identification check with USCIS, and it will take 2-3 months. On the other hand, aliens who wait the two weeks to apply will usually get their Social Security numbers the day after they make the application.

The Social Security Administration is currently developing an online program called Systematic Alien Verification for Entitlements (SAVE) which will go into effect during fall 2004. The SAVE Program is a web-services access method that will allow Social Security to perform the complete identity verification process via electronic means, thus eliminating the paperwork involved in manual and secondary verification processes. The SAVE program will also allow for quicker processing and issuance of Social Security cards to aliens.

PERM Update

For several years, the Department of Labor has been promising to publish new regulations to govern the Labor Certification process. The new regulations will be called PERM. While PERM has been talked about for years, and a proposed rule was published in the Federal Register last year, the final regulations have been long in coming. Immigration practitioners and aliens alike must continue to abide by existing labor certification guidelines. Meanwhile, the Department of Labor conducted a meeting on December 16, 2003 during which they stated that the PERM regulation will not be released until after a budget is in place for 2004, since the 2004 budget will be required for PERM implementation. Once the regulation is published, it will not go into effect for 120 days, during which time the DOL will train its officers in PERM rules. In other

words, it will be at least 7 or 8 months before PERM takes effect, and could be longer if Congress delays the budget for the Department of Labor.

~ Disclaimer ~

The information contained in this newsletter is for informational purposes only. It does not constitute legal advice.

APPENDIX A

Ports Equipped with US VISIT *Entry* Capability as of 1/5/2004

Airports

Agana, Guam (Agana International Airport)
Aguadilla, Puerto Rico (Rafael Hernandez Airport)
Albuquerque, New Mexico (Albuquerque International Airport)
Anchorage, Alaska (Anchorage International Airport)
Aruba (Pre-Flight Inspection)
Atlanta, Georgia (William B. Hartsfield International Airport)
Austin, Texas (Austin Bergstrom International Airport)
Baltimore, Maryland (Baltimore/Washington International Airport)
Bangor, Maine (Bangor International Airport)
Bellingham, Washington (Bellingham International Airport)
Boston, Massachusetts (General Edward Lawrence Logan International Airport)
Brownsville, Texas (Brownsville/South Padre Island Airport)
Buffalo, New York (Greater Buffalo International Airport)
Calgary, Canada (Pre-Flight Inspection)
Chantilly, Virginia (Washington Dulles International Airport)
Charleston, South Carolina (Charleston International Airport)
Charlotte, North Carolina (Charlotte/Douglas International Airport)
Chicago, Illinois (Chicago Midway Airport)
Chicago, Illinois (Chicago O'Hare International Airport)
Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
Cleveland, Ohio (Cleveland Hopkins International Airport)
Columbus, Ohio (Rickenbacker International Airport)
Columbus, Ohio (Port Columbus International Airport)
Dallas/Fort Worth, Texas (Dallas/Fort Worth International Airport)
Del Rio, Texas (Del Rio International Airport)
Denver, Colorado (Denver International Airport)
Detroit, Michigan (Detroit Metropolitan Wayne County Airport)
Dover/Cheswold, Delaware (Delaware Airpark)
Dublin, Ireland (Pre-Flight Inspection)
Edmonton, Canada (Pre-Flight Inspection)
El Paso, Texas (El Paso International Airport)
Erie, Pennsylvania (Erie International Airport)
Fairbanks, Alaska (Fairbanks International Airport)
Fajardo, Puerto Rico (Diego Jimenez Torres Airport)
Fort Lauderdale, Florida (Fort Lauderdale Executive Airport)
Fort Lauderdale, Florida (Fort Lauderdale/Hollywood International Airport)
Fort Myers, Florida (Fort Myers International Airport)
Freeport, Bahamas (Pre-Flight Inspection)
Greenville, South Carolina (Donaldson Center Airport)
Hamilton, Bermuda (Pre-Flight Inspection)
Hartford/Springfield, Connecticut (Bradley International Airport)
Honolulu, Hawaii (Honolulu International Airport)

Houston, Texas (Houston International Airport)
Indianapolis, Indiana (Indianapolis International Airport)
International Falls, Minnesota (Falls International Airport)
Isla Grande, Puerto Rico (Isla Grande Airport)
Jacksonville, Florida (Jacksonville International Airport)
Juneau, Alaska (Juneau International Airport)
Kansas City, Kansas (Kansas City International Airport)
Kenmore, Washington (Kenmore Air Harbor)
Key West, Florida (Key West International Airport)
King County, Washington (King County International Airport)
Kona, Hawaii (Kona International Airport)
Laredo, Texas (Laredo International Airport and Laredo Private Airport)
Las Vegas, Nevada (McCarran International Airport)
Los Angeles, California (Los Angeles International Airport)
Manchester, New Hampshire (Manchester Airport)
Mayaguez, Puerto Rico (Eugenio Maria de Hostos Airport)
McAllen, Texas (McAllen Miller International Airport)
Memphis, Tennessee (Memphis International Airport)
Miami, Florida (Kendall/Tamiami Executive Airport)
Miami, Florida (Miami International Airport)
Milwaukee, Wisconsin (General Mitchell International Airport)
Minneapolis/St. Paul, Minnesota (Montreal, Canada (Pre-Flight Inspection))
Nashville, Tennessee (Nashville International Airport)
Nassau, Bahamas (Pre-Flight Inspection)
New Orleans, Louisiana (New Orleans International Airport)
New York, New York (John F. Kennedy International Airport)
Newark, New Jersey (Newark International Airport)
Norfolk, Virginia (Norfolk International Airport and Norfolk Naval Air Station)
Oakland, California (Metropolitan Oakland International Airport)
Ontario, California (Ontario International Airport)
Opa Locka/Miami, Florida (Opa Locka Airport)
Orlando, Florida (Orlando International Airport)
Orlando/Sanford, Florida (Orlando/Sanford Airport)
Ottawa, Canada (Pre-Flight Inspection)
Philadelphia, Pennsylvania (Philadelphia International Airport)
Phoenix, Arizona (Phoenix Sky Harbor International Airport)
Pittsburgh, Pennsylvania (Pittsburgh International Airport)
Ponce, Puerto Rico (Mercedita Airport)
Portland, Maine (Portland International Jetport Airport)
Portland, Oregon (Portland International Airport)
Portsmouth, New Hampshire (Pease International Tradeport Airport)
Providence, Rhode Island (Theodore Francis Green State Airport)
Raleigh/Durham, North Carolina (Raleigh/Durham International Airport)
Reno, Arizona (Reno/Tahoe International Airport)
Richmond, Virginia (Richmond International Airport)
Sacramento, California (Sacramento International Airport)
Salt Lake City, Utah (Salt Lake City International Airport)
San Antonio, Texas (San Antonio International Airport)

San Diego, California (San Diego International Airport)
San Francisco, California (San Francisco International Airport)
San Jose, California (San Jose International Airport)
San Juan, Puerto Rico (Luis Mu[ntilde]oz Marin International Airport)
Sandusky, Ohio (Griffing Sandusky Airport)
Sarasota/Bradenton, Florida (Sarasota-Bradenton International Airport)
Seattle, Washington (Seattle/Tacoma International Airport)
Shannon, Ireland (Pre-Flight Inspection)
Spokane, Washington (Spokane International Airport)
St. Croix, Virgin Island (Alexander Hamilton International Airport)
St. Louis, Missouri (St. Louis International Airport)
St. Lucie, Florida (St. Lucie County International Airport)
St. Petersburg, Florida (Albert Whitted Airport)
St. Thomas, Virgin Island (Cyril E. King International Airport)
Tampa, Florida (Tampa International Airport)
Teterboro, New Jersey (Teleboro Airport)
Toronto, Canada (Pre-Flight Inspection)
Tucson, Arizona (Tucson International Airport)
Vancouver, Canada (Pre-Flight Inspection)
Victoria, Canada (Pre-Flight Inspection)
West Palm Beach, Florida (Palm Beach International Airport)
Wilmington, North Carolina (Wilmington International Airport)
Winnipeg, Canada (Pre-Flight Inspection)
Yuma, Arizona (Yuma International Airport)

Seaports

Galveston, Texas
Jacksonville, Florida
Long Beach, California
Miami, Florida
Port Canaveral, Florida
San Juan, Puerto Rico
San Pedro, California
Seattle, Washington (Cruise Terminal)
Seattle, Washington
Tampa, Florida (Terminal 3)
Tampa, Florida (Terminal 7)
Vancouver, Canada (Ballantyne Pier)
Vancouver, Canada (Canada Place)
Victoria, Canada (Pre Inspection)
West Palm Beach, Florida

Ports Equipped with US VISIT *Exit* Capability as of 1/5/2004

Airports

Baltimore, Maryland (automated kiosks)

Seaports

Miami, Florida (automated kiosks)