

**Immigration Newswire**  
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**Passports Required for All Air Travel to the U.S. Starting  
January 23, 2007**

Starting January 23, 2007, all persons entering the U.S. by air must present a passport, including citizens of the United States, Canada, Mexico, and Bermuda. An additional rule addressing passport requirements for arrivals by land and sea will be published at a later date, pursuant to recommendations made by the 9/11 Commission and the Intelligence Reform and Terrorism Prevention Act of 2004. A [Media Note](#) with full details is available on the Department of State web site.

**PERM Denials Indicate that Any Job Requirements Exceeding  
the SVP are Not "Normal"**

Form ETA-9089, on which PERM applications are submitted electronically to the Department of Labor for adjudication by a computer, asks in question H-12: "Are the job opportunity's requirements normal for the occupation?" The employer or its attorney must answer yes or no. The question is aimed at ascertaining whether the employer is requiring more education and/or experience than is normal for the type of job. If the answer is "yes," the employer must provide documentation to prove that the above-average job requirements are required due to "business necessity" rather than due to the employer tailoring the requirements to the alien's qualifications and thereby unlawfully excluding U.S. applicants. But how does an employer determine what requirements are "normal" for the occupation?

In the first set of FAQs issued by the [Department of Labor](#) on PERM, the question was asked, "How do you know if the job description contains requirements beyond those considered normal for the occupation?" The answer? "The job summary specific to the SOC/O\*NET code and Occupation Title provided by the SWA on the prevailing wage determination is considered to identify the requirements normal to that occupation ... Additionally, if the employer has not accurately attested on the ETA Form 9089 that there are requirements not normal to the occupation, the application will be denied whether proof of business necessity is available or not."

Our office has taken a very conservative approach to answering question H-12 and has answered "no," that the job opportunity's requirements are not normal for the occupation," if indeed the employer is asking for any education or experience beyond what is listed as the Standard Vocational Preparation, or SVP, for the occupation in the Department of Labor's occupation manual, the O\*NET.

In other words, we have strictly followed the DOL's interpretation of question H-12 as DOL has set it out in the FAQs.

Nevertheless, many attorneys have justifiably taken a less conservative approach to answering question H-12. First, nothing in the wording of question H-12 suggests that in answering it, employers are required to adopt the O\*NET job requirements as the final statement on what are the normal requirements for an occupation. There are many factors that can reasonably be taken into account to determine what is a normal requirement for an occupation, including unique job duties not common throughout the industry. These are real-life considerations that cannot be taken into account in a broad, sweeping government survey of what are the average requirements for a given occupation. Second, the Department of Labor has not adopted any regulations which interpret the meaning of question H-12 and a set of Frequently Asked Questions published on a government web site is certainly less than binding authority.

Until very recently, the question of what constitutes "normal" requirements for an occupation remained a somewhat open question that was frequently debated by immigration attorneys. Recently, however, immigration attorneys have begun reporting that their clients' PERM applications were denied for the sole reason that they answered "yes" to question H-12, i.e. they stated that the job opportunity's requirements were normal for the occupation, when in fact the employer's requirements exceeded the SVP. It appears that the Department of Labor is following the guidance it established in the unofficial FAQs over a year ago, and will deny cases where an employer states that the employer's job requirements are normal for the occupation if in fact the employer's requirements exceed the SVP for the occupation, regardless of whether the employer can provide evidence of business necessity.

### **U.S. Eliminates Nonimmigrant Visa Issuance Fee for All Indian Applicants**

Effective immediately, the U.S. has abolished the \$50 "reciprocity fee" for Indian visa applicants, resulting in a 33% reduction in the cost of obtaining a visa. The Mumbai embassy issued a [Press Release](#) earlier this month.

### **Schedule A Quota Filled**

As of November 1, 2006, Schedule A visa numbers are unavailable. According to the [December Visa Bulletin](#),

the 50,000 numbers provided under Title V, Section 502 of the REAL ID Act of 2005 (Division B of Pub. L. 109-13 enacted May 11, 2005) have all been allocated. Therefore, the "Schedule A Worker" category has become "Unavailable" for December.

Because Schedule A numbers were a special legislative set aside for certain health care workers, they will be removed from the Visa Bulletin next month. There will be no more Schedule A category unless new legislation is passed, meaning that most nurses will fall in the EB3 category which is severely retrogressed.

## **Department of Homeland Security Investigations Target Religious Worker Visa Fraud**

On November 15, 2006, U.S. Immigration and Customs Enforcement (ICE) published a [News Release](#) stating that they had arrested 33 individuals in eight states and the District of Columbia as part of a religious worker visa fraud scheme. Most of the illegal aliens aided by the scheme were from Pakistan. According to ICE, petitioners in the United States would file false applications for religious worker visas on behalf of large numbers of illegal aliens, who would in turn pay large fees to file the fraudulent paperwork on their behalf. Many of those arrested were reportedly gas station attendants, truck drivers, and factory workers rather than bona fide religious workers.

These arrests followed an August 2005 "[Benefit Fraud Assessment](#)" by the USCIS Office of Fraud Detection and National Security which revealed a high incidence of fraud in religious worker visa petitions filed with USCIS. USCIS has placed new focus on the issue of fraud in all religious worker applications. We expect to see increased scrutiny of all R-1 and I-360 petitions as a result. Some members of the American Immigration Lawyers Association are reporting that their clients have received unannounced visits from ICE agents at their places of worship to investigate whether the organization is truly a religious organization and whether the alien or employer has committed any fraud in the application.

In addition, on November 28, 2006, USCIS published a [Public Notice](#) announcing a temporary suspension of the Premium Processing Service for R-1 Religious Workers. Premium Processing guarantees adjudication within 15 days of receipt of a petition in exchange for a \$1,000 fee, and has long been available on R-1 petitions. The Notice states that as a result of the Benefit Fraud Assessment conducted in August, there are additional complexities in the R-1 adjudication process which make it impossible for USCIS to ensure processing within 15 calendar days. The suspension of premium processing will last for an initial period of six months and may become permanent.

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