

BUSINESS IMMIGRATION ALERT

A complimentary service of the McCandlish Holton Immigration Practice Group

IN THIS ISSUE:

- **Final E-Verify Rule Issued: Federal Contracts Awarded After January 15, 2009 Will Require Contractors and Subcontractors to Use E-Verify**
- **USCIS Amends I-9 Employment Eligibility Verification Process**
- **Visa Waiver Program Visitors Must Obtain Online Travel Pre-Clearance Starting January 12, 2009**
- **Issuance of TN Status Increased from One Year to Three Year Increments**
- **Department of State Rolling Out New Online Nonimmigrant Visa Application Form**
- **USCIS Introduces New Naturalization Test**
- **Seven New Countries Added to the Visa Waiver Program**

Federal Contracts Awarded After January 15, 2009 Will Require Contractors and Subcontractors to Use E-Verify

After January 15, 2009, new federal contracts must contain a provision requiring contractors and subcontractors to use the government's E-Verify system to verify their employees' eligibility to work in the United States. The new federal contracts will require companies to use E-Verify to confirm the employment eligibility of all new hires as well as the employment eligibility of existing employees directly performing work under the contracts. Companies will be required to enroll in E-Verify within 30 days of the contract award date and must begin using E-Verify within 90 days of E-Verify enrollment. Contractors will also be responsible for requiring subcontractors to use E-Verify.

The E-Verify requirement will be included in all new federal contracts with a period of performance longer than 120 days and a value above \$100,000, and in subcontracts with a value above \$3,000. In addition, existing contracts with a remaining period of performance extending beyond July 15, 2009 will be modified to include the E-Verify requirement.

Grants, cooperative agreements and contracts for commercially available off-the-shelf items are excluded from the E-Verify requirement.

Federal contractors and subcontractors should contact immigration counsel to determine whether they will be subject to the E-Verify requirement and to understand the legal and administrative issues associated with participation in E-Verify.

In January 2009, the McCandlish Holton IPG will be presenting a workshop on E-Verify, I-9 compliance and Social Security "No Match" issues in Richmond, Virginia. For more details, please contact Mark Rhoads at 804.775.3824 or mrhoads@lawmh.com.

USCIS Amends I-9 Employment Eligibility Verification Process

USCIS has issued a final rule that reduces the number of acceptable identity documents and prohibits the use of expired identity documents for the I-9 Employment Eligibility Verification Process.

Employers must complete a Form I-9 for all newly hired employees to verify their identity and work authorization. The list of approved documents that employees can present to verify their identity and employment authorization is divided into three sections: List A documents verify both identity and employment authorization; List B documents only verify identity; and List C documents only verify employment authorization.

The new rule eliminates old documents from List A that USCIS no longer issues and makes technical updates the list of acceptable documents. The new Form I-9 that is being issued with this rule also contains a revised employee attestation section and the addition of the new U.S. Passport Card as an acceptable List A document.

Employers will have to use the revised Form I-9 for all new hires (and reverify any employee with expiring employment authorization) beginning 45 days after the publication of the new rule in the Federal Register. The final rule was submitted to the Federal Register on December 11, 2008 and will be published imminently.

Visa Waiver Program Visitors Must Obtain Online Travel Pre-Clearance Starting January 12, 2009

Visa Waiver Program (VWP) visitors are citizens of designated countries who are permitted to enter the U.S. for business or tourism without obtaining a visa stamp in their passport. Starting January 12 2009, all VWP visitors must apply online for travel pre-clearance at least 72 hours prior to the intended travel. This new security requirement, named [Electronic System of Travel Authorization](#) (ESTA), is already operational for use on a voluntary basis.

ESTA requires all intending VWP visitors to enter their biographic details (name, birth date and passport information) and answer questions related to their eligibility to enter the U.S. as a business visitor or tourist. The information will be checked against government databases and watch lists. ESTA will immediately provide the intending visitor with one of three messages: *authorization approved*; *travel is not authorized*; or *authorization pending* (if more time is needed to make a final determination). In the event that ESTA does not authorize travel, the applicant must apply for a visa to travel to the United States.

A specific travel date is not required to obtain travel pre-clearance using ESTA. ESTA approval will remain valid for two years or until the traveler's current passport expires, whichever is first.

VWP travelers who fail to obtain an ESTA travel authorization after ESTA becomes mandatory may be denied boarding, experience delayed processing, or be denied admission at a U.S. port of entry.

Frequent VWP visitors are encouraged to obtain travel pre-clearance well in advance to avoid any potential travel delays.

Issuance of TN Status Increased from One Year to Three Years

USCIS has increased the maximum issuance period that a Trade NAFTA (TN) professional worker may remain in the U.S. before requiring an extension of stay. The period of admission for TN workers has been extended from one to three years, making it equal to the initial period of admission given to H-1B professional workers.

The TN visa category is available to Mexicans and Canadians with at least a bachelor's degree or appropriate professional credentials who work in specific professions listed in the NAFTA, such as accountants, engineers, post-secondary teachers and computer systems analysts.

Department of State Rolling Out New Online Nonimmigrant Visa Application Form

The Department of State is gradually introducing a new online form for nonimmigrant visa applications. The new Form DS-160 Nonimmigrant Visa Electronic Application will eventually replace all current nonimmigrant visa application forms such as DS-156, 157, 158, 156E, 156K and 156V.

At this time only the following U.S. Embassies and Consulates are using the form: Vancouver, Montreal, Nuevo Laredo, Monterrey and Hong Kong.

The DS-160 is an online application form that will collect information from nonimmigrant visa applicants and transmit it electronically to the Department of State. Consular Officers will use the information entered on the DS-160 to process the visa application, and, combined with a personal interview, will determine an applicant's eligibility for a nonimmigrant visa.

USCIS Introduces New Naturalization Test

USCIS recently introduced a new naturalization test for persons applying for U.S. citizenship. The test contains new history and government questions, and revises the English reading and writing sections. Information about the new test, including sample questions, is available [here](#). The new test is slightly more difficult than the old test.

According to USCIS, the aim of the revised test is to ensure that naturalization applicants have consistent testing nationwide, and that the civics test effectively assesses whether applicants have a meaningful understanding of U.S. government and history. The new test is designed to better emphasize fundamental concepts of American democracy and the rights and responsibilities of citizenship.

Seven New Countries Added to Visa Waiver Program

The Department of Homeland Security recently added the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Republic of Korea and the Slovak Republic to the Visa Waiver Program. Citizens of these countries are now eligible to travel to the U.S. for business or tourism for up to 90 days without first obtaining visas.

This Alert is a summary of important developments in business immigration law for clients and friends of McCandlish Holton's Immigration Practice Group. This publication does not constitute legal advice. Please consult with an attorney before acting on any information in this Alert. Information about the Immigration Practice Group and additional immigration-related information is located on our website at: www.lawmh.com/practice_areas/immigration.htm

To unsubscribe, reply to this email with "Unsubscribe" in the subject line. If you wish to be added to our distribution list, please email dpringle@lawmh.com with "Add" in the subject line.

This email was sent to you by:
Daniel M. Pringle
McCandlish Holton, P.C.
1111 East Main Street, Suite 1500
Richmond, VA 23219
804.775.3823
804.775.7235 (facsimile)
dpringle@lawmh.com
Practice Limited to Federal Immigration Law