

# **BUSINESS IMMIGRATION ALERT**

*A complimentary service of the McCandlish Holton Immigration Practice Group*

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### **1. Executive Order Requires All Companies with Federal Contracts to Use E-Verify**

President Bush [issued an Executive Order](#) directing all federal departments and agencies to require contractors and subcontractors to use the E-Verify system as a condition of every new contract.

E-Verify is an internet-based system that requires participating employers to electronically verify the employment eligibility of all new hires. In exchange for the additional administrative burden of verifying every new hire and complying with other program requirements, companies benefit from a presumption that they did not knowingly employ an unauthorized worker in the event of a government enforcement action. In addition, participation in E-Verify should effectively eliminate the receipt of "No Match Letters" for new hires. However, E-Verify is known to generate a significant percentage of errors (e.g., incorrectly stating that a new hire is not authorized to work), and employers that properly perform the I-9 process already benefit from a favorable presumption. As a result, the business community has been slow to embrace the E-Verify system unless compelled by state or federal law.

New proposed Federal Acquisition Regulations (FARs) are being published in the Federal Register to incorporate the mandates of the Executive Order. As currently written, the proposed regulations require companies with federal contracts of over \$3,000 to use E-Verify for all new hires and, contrary to current procedure, also verify *existing* employees working on the contract. The proposed regulation gives companies 30 days to enroll in E-Verify after signing a federal contract. The proposed regulation also requires contractors to "flow down" the E-Verify requirement to subcontractors.

Final FARs are expected to be published shortly after the close of the 60-day comment period, at which time the E-Verify requirement will be included in all new federal contracts. The exact implementation date is not known at this time.

## **2. Visa Waiver Program Visitors Must Register Online Prior to U.S. Travel in 2009**

Visa Waiver Program (VWP) visitors are citizens of certain countries who are permitted to enter the U.S. for up to 90 days for business or tourism without a visa in their passport. There are more than 15 million VWP visits to the U.S. each year.

Starting in January 2009, all VWP visitors traveling to the U.S. must be pre-cleared for travel by a U.S. Customs and Border Protection (CBP) website at least 72 hours prior to the intended travel. This new [Electronic System of Travel Authorization](#) (ESTA) will be operational starting August 1, 2008 for use on a voluntary basis until it becomes mandatory in January 2009.

The ESTA website will ask the traveler to provide information which will be checked against government databases. The website will immediately provide the traveler with one of three messages: *authorization approved*; *travel is not authorized*; or *authorization pending* (if more time is needed to make a final determination). ESTA approval will remain valid for two years or until the traveler's current passport expires, whichever is first. Travel authorization will be obtainable well before any specific U.S. trip is planned.

## **3. DOL Auditing Every PERM Application Filed by a Major Immigration Law Firm**

The Department of Labor (DOL) issued a [press release on June 2, 2008](#) stating that it is auditing all PERM applications filed by the Fragomen law firm, an international immigration law boutique and the largest filer of PERM cases in the country. The stated basis of this unprecedented action is that Fragomen attorneys allegedly involved themselves inappropriately in the PERM Labor Certification recruitment process.

By targeting the nation's largest immigration firm, the DOL is sending yet another hostile message to immigration lawyers under the guise of U.S. worker protection and fraud prevention.

This DOL action means that the long waits for the final adjudication of PERM applications currently under audit will continue. There has been little movement on audited PERM cases for several months, and this DOL action will only worsen the delays suffered by U.S. employers and their foreign national workers.

## **4. I-140 Premium Processing Available for Persons Approaching the Six Year Limit on H-1B Status**

USCIS Premium Processing service offers a 15-day turnaround on petitions and applications for an additional \$1,000 fee. USCIS previously permitted Premium Processing for most types of I-140 Immigrant Petitions. However, on July 2, 2007, USCIS suspended all I-140 Premium Processing.

USCIS [announced yesterday](#) that it will resume Premium Processing for I-140 Immigrant Petitions filed on behalf of workers who are within 60 days of the end of their sixth year of H-1B status and are unable to adjust status due to immigrant visa retrogression. This is currently the only basis to expedite an I-140 Immigrant Petition.

## **5. EAD Validity Period to Increase to Two Years for Adjustment Applicants**

Homeland Security Secretary Chertoff announced that USCIS will soon begin issuing Employment Authorization Documents (EADs) valid for two years to persons with pending I-485 Adjustment of Status Applications. EADs were previously issued in one year increments, requiring foreign nationals and their employers to incur the additional expense of reapplying for new EADs while Adjustment Applications languished for years.

## **6. CBP Implements New Program to Facilitate Entry of U.S. Citizens and Permanent Residents**

CBP has [introduced the Global Entry Program](#), a pilot program which allows pre-approved U.S. citizens and permanent residents expedited immigration and customs clearance upon arrival into the U.S. Travelers who are registered in the program will be able to enter the U.S. utilizing automated kiosks. The kiosks are currently only located at the John F. Kennedy (New York), Washington-Dulles, and George Bush (Houston) airports. Program participants present their U.S. passport or "green card", submit their fingerprints for biometric verification, and make a customs declaration at the kiosk's touch-screen.

Registration for the Global Entry Program can be completed and submitted on-line through the Global On-line Enrollment System (GOES) at <https://goes-app.cbp.dhs.gov>. A \$100 processing fee must be paid online at the time of application.