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US IMMIGRATION & NATIONALITY LAW

OCTOBER 2007 IMMIGRATION UPDATE

Posted on October 1, 2007 by Cyrus Mehta

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that ICE agents unlawfully broke into and entered the homes of Latinos in the New York area without judicially issued warrants or other legal justification.

- **10.**[Video Debunks Immigration Myths, Calls for Reform] - The American Immigration Lawyers Association has produced a video on immigration reform that challenges common myths.
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Details...

1. U.S. Adds Photo Verification, Sues Illinois on Verification Ban; Towns Rethink Anti-Illegal Laws

In late September, U.S. Citizenship and Immigration Services' E-Verify (formerly Basic Pilot) work authorization verification system added access to photographs. The photo tool will be available when a new employee presents an Employment Authorization Document (EAD) or Permanent Resident Card (green card) to complete the Employment Eligibility Verification Form (I-9). It allows an employer to compare identical photos: the individual's photograph on the EAD or green card against the image stored in USCIS's databases. The tool is intended to help an employer determine whether the document presented "reasonably relates to the individual presenting it" and contains a valid photo. Employers currently participating in E-Verify will be trained on the system enhancement through a mandatory refresher tutorial that launched automatically on September 17, 2007. New employers who registered after that date are learning how to use the photo tool through an updated E-Verify manual, tutorial, and memorandum of understanding.

Meanwhile, the Bush administration has sued Illinois to block a state law, to be effective January 1, 2008, that would prevent employers from using a federal database to check the work authorization of prospective employees under the E-Verify program. In a signal that the move is part of a nationwide effort, Secretary of Homeland Security Michael Chertoff said, "We will vigorously contest any effort to impede our enforcement measures." A spokesperson for Illinois Governor Rod R. Blagojevich said he signed the bill because of concerns about delays in responding to employer inquiries and a reported 50 percent accuracy rate. More than 23,000 employers are enrolled in the system, and 2.9 million employer inquiries were handled in the most recent fiscal year.

Also, a handful of towns and cities around the nation have begun reexamining their newly passed anti-illegal immigration laws. Riverside, New Jersey, previously enacted a law to penalize anyone who employed or rented to an undocumented person. Many mostly Spanish- and Portuguese-speaking immigrants fled the town, and the local economy began to suffer. Shops and restaurants that had immigrant employees and customers began to shut down and storefronts were boarded up. The town also had mounting legal bills resulting from challenges to the law that delayed other high-priority projects. In September, Riverside rescinded the law. "I don't think people knew there would be such an economic burden," said Riverside's current Mayor George Conard, who had been in favor of the original legislation. According to reports, it is unclear whether those who left will return any time soon.

A press release and fact sheet about the new photo verification capability of E-Verify are available at http://www.uscis.gov/files/pressrelease/EVerifyRelease25Sep07.pdf and http://www.uscis.gov/files/pressrelease/EVerifyFS25Sep07.pdf .
Employers can register online for E-Verify at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD .

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2. USCIS Announces New Naturalization Test

U.S. Citizenship and Immigration Services (USCIS) has released the 100 questions and answers that comprise the civics component of the new naturalization test. USCIS will administer the new test to citizenship applicants beginning in October 2008. The revised naturalization test emphasizes fundamental concepts of American democracy, basic U.S. history, and the rights and responsibilities of citizenship, and "promote patriotism among prospective citizens," USCIS said.

Earlier this year, more than 6,000 citizenship applicants volunteered to take a pilot version of the test at 10 USCIS sites across the country during a four-month period. Volunteers achieved a 92.4 percent overall pass rate on the first try, USCIS noted. The pass rate on the current test is 84 percent, which includes the wider universe of test-takers who did not volunteer for the pilot test. The 100 new civics items on the new naturalization test were selected after USCIS, a

panel of history and government scholars, and English as a Second Language (ESL) teachers conducted a review of their responses to the 142 items on the pilot test. Following the pilot, USCIS refined the questions and answers, dropping several and adjusting others to increase clarity, and conducted a second review, eventually narrowing the list to the new 100 questions. The range of acceptable answers to questions will increase so that applicants may learn more about a topic and select from a wider range of responses.

The following guidelines will determine whether naturalization applicants will take the current test or the redesigned version:

If an applicant:

- Applies for citizenship before October 1, 2008, and is scheduled for his or her naturalization interview before October 1, 2008, he or she will take the current test.
- Applies before October 1, 2008, and is scheduled for his or her naturalization interview after October 1, 2008, he or she can choose to take either the current test or the redesigned version.
- Applies after October 1, 2008, he or she will take the redesigned version.
- Is scheduled for his or her naturalization interview after October 1, 2009, regardless of when he or she applied, he or she will take the redesigned version.

USCIS has posted the 100 new question and answers, the reading and writing vocabulary lists, a side-by-side comparison of the current and new test, answers to frequently asked questions and other information about the new test online at http://www.uscis.gov/newtest .

The related press release is available at http://www.uscis.gov/files/pressrelease/NatzTest_27sep07.pdf .

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3. DV-2009 Lottery Application Period Begins

Entries for the DV-2009 diversity visa lottery must be submitted electronically between noon EDT, Wednesday, October 3, 2007, and noon EST, Sunday, December 2, 2007. Applicants must use the electronic entry form at http://www.dvlottery.state.gov during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last

week of the registration period to enter. Heavy demand may result in Web site delays. There is no fee to enter the DV lottery.

For DV-2009, natives of the following countries are not eligible to apply because they sent a total of more than 50,000 immigrants to the U.S. over the period of the previous five years: Brazil, Canada, China (mainland born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

A computer will select at random individuals from among all qualified entries. They will be notified by mail between May and July 2008 and will be provided further instructions, including information on fees connected with immigration to the U.S. Those selected in the random drawing are not notified by e-mail. Individuals not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful entrants. Spouses and unmarried children under age 21 of successful entrants may also apply for visas to accompany or follow to join the principal applicant. DV-2009 visas will be issued between October 1, 2008, and September 30, 2009.

To receive a diversity visa to immigrate to the U.S., those chosen in the random drawing must meet all eligibility requirements. Processing of entries and issuance of diversity visas to individuals and their eligible family members must occur by midnight on September 30, 2009.

Several questions and options for answers have been added to the DV-2009 program to gather additional information, including the country where the applicant lives today, the highest level of education the applicant has achieved, and the term "legally separated" instead of "separated" as an option under the marital status question. Legal separation means that a court has formally declared that the applicant and his or her spouse are legally separated, and means that the spouse would not be eligible to immigrate as the applicant's derivative.

Detailed information on how to apply, eligibility requirements, and frequently asked questions is available at http://travel.state.gov/pdf/2009DVInstructions.pdf .

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4. Passports Now Required for Travel Within Western Hemisphere

The Department of Homeland Security (DHS) has reminded air carriers and the traveling public that the temporary Western Hemisphere Travel Initiative (WHTI) accommodation allowing U.S. citizens to travel by air within the Western Hemisphere using a Department of State (DOS) official proof of passport application receipt has ended as scheduled at midnight on September 30, 2007. U.S. citizens who departed the country under this travel accommodation before October 1 with an official proof of passport application receipt and government-issued identification will be readmitted with these same documents if returning to the U.S. after September 30. Effective October 1, U.S. citizens traveling by air to Canada, Mexico, the Caribbean, and Bermuda must present a passport or other WHTI-compliant documentation to enter or depart from the U.S.

DHS and DOS announced the temporary WHTI accommodation for air travel in June because of lengthy processing times for passport applications amid record-breaking demand.

The announcement is available at http://www.dhs.gov/xnews/releases/pr_1188939218061.shtm .

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5. New York Considers Proposal to Allow Driver's Licenses Without Social Security Cards

New York's Governor Eliot Spitzer has proposed allowing immigrants who reside in New York, regardless of status, to obtain driver's licenses using foreign identity documents, such as passports and birth certificates, without having to present Social Security cards. The idea is to reduce the number of unlicensed, uninsured drivers while aiding law enforcement efforts by increasing the number of license records that could be used in conducting investigations. But the proposal has drawn criticism from New York City Mayor Michael Bloomberg and others. Mayor Bloomberg said the proposal would conflict with identity document requirements. "People would need other government ID, generally a passport, and that would be a very big problem. The state's going to have to work with the federal government in terms of having to fix that problem." New York Senate Homeland Security Chairman Vincent Leibell (R-Brewster) said the new licensing proposal would not fly. "Just because you change a regulation

doesn't mean you change our statute," Leibell said, referring to a 1995 law that requires New York's driver's license applicants to present a valid Social Security number. In most cases, New York also allows people to drive using valid foreign driver's licenses.

Additional details on the proposal and the reaction are available at http://www.ny.gov/governor/press/0921071.html . For more information on current New York driver's license requirements for foreign nationals, see http://www.nydmv.state.ny.us/license.htm#driversfromothernations .

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6. U.S. Passport Services Back to Standard Processing Time, State Dept. Says

The Department of State announced that it has restored passport service to the standard six- to eight-week processing time for routine passport applications, and to no more than three weeks for expedited service.

To date, over 16 million passports have been issued in fiscal year (FY) 2007, compared with 12.1 million issued in FY 2006. The Department said it plans to expand passport facilities and to hire more passport specialists to increase production capacity and meet rising demand expected in the coming years, as passport requirements are extended to land and sea borders. By January 2008, production capacity at the National Passport Center in New Hampshire, the largest passport facility, is expected to have doubled. Longer-term expansion plans include new passport facilities around the country.

The Department's notice is available at http://www.state.gov/r/pa/prs/ps/2007/sep/91868.htm .

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7. DED Extended for Liberians

Effective October 1, 2007, U.S. Citizenship and Immigration Services has announced an 18-month automatic extension of employment authorization for Liberians (and persons without nationality who last habitually resided in Liberia) who have been provided deferred enforced departure (DED) under a memorandum sent on September 12, 2007, from President Bush to Secretary of Homeland Security Michael Chertoff. A copy of USCIS's notice in conjunction with an employment authorization document (EAD) expiring on September 30,

2007, that was issued previously to the person as a beneficiary of temporary protected status may be accepted as evidence of a covered individual's continued work authorization through March 31, 2009. The notice provides information on how Liberians and their employers may determine which EADs are automatically extended. The notice also provides instructions for Liberians who have DED and would like to apply for permission to travel outside the U.S. during the 18-month DED extension period, which expires on March 31, 2009.

The notice is available at http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/07-4645.htm . A fact sheet is available at http://www.uscis.gov/files/pressrelease/LiberiaFS_19Sep07.pdf .

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8. IJs, Border Agents Google Applicants' Names, Attorneys Warn

Immigration attorneys have reported that immigration judges, adjudicators, and border agents sometimes google (perform an Internet search) applicants' names, even printing out items from sites like MySpace, published articles, or letters to the editor and questioning petitioners about them. Some have been detained at the border or denied entry as a result.

In one incident, a Canadian psychologist attempting to enter the U.S. was reportedly detained at the border in Blaine. He was barred from entering the U.S. and told he could apply to the Department of Homeland Security for a waiver. The border guard had conducted a random Internet search and found an article published in 2001 in which the psychologist discussed his LSD use some 40 years earlier. "Admitted drug use is admitted drug use," a spokesman for the Border Patrol based in Seattle said. He noted that "nyone who is determined to be a drug abuser or user is inadmissible. A crime involving moral turpitude is inadmissible and one of those areas is a violation of controlled substances." He complained to the U.S. Consulate in Vancouver, which sent this reply via e-mail: "Both our countries have very similar regulations regarding issuance of visas for citizens who have violated the law. The issue here is not the writing of an article, but the taking of controlled substances. I hear from American citizens all the time who have decades-old DUI convictions who are barred from entry into Canada and who must apply for waivers. Same thing here. Waiver is the only way."

In another case, a Muslim American firefighter from Toledo, Ohio, was born in the U.S. and converted to Islam, changing his name from Edward Eugene Reed, Jr., to Zakariya Muhammad Reed. He had also spent 20 years serving in the National Guard. After visiting his wife's family in Ontario, he has been detained at the U.S. border a number of times. He says he has been asked why he changed his name and what his faith is, and alleges that one guard muttered, "You know, we're really too good to these detainees. We should treat them like we do in the desert. We should put a bag over their heads and zip tie their hands together." Another agent asked him about a letter to the editor he had written in 2006, which was critical of Israel's actions toward Lebanon and the Palestinians, as well as the U.S. invasion of Iraq. The agents would not tell him why he had been detained, Mr. Reed said, although one border agent said there was a "problem with his name." He contacted his representative in Congress, Marcy Kaptur, whose aide, Daniel Foote, suggested the trouble may have resulted from his changing his name to a Muslim one. Rep. Kaptur wrote on his behalf to the congressional liaison at U.S. Citizenship and Immigration Services, but despite assurances that his record has been corrected, he continues to be detained and questioned at the border.

Ron Smith, a Customs and Border Protection public affairs officer based in Detroit, Michigan, said that "Customs does not practice condone any kind of profiling. It's completely against our policies. If an individual is found doing so, they would be subject to discipline, up to and including dismissal. Regarding the alleged hooding and zip-tying comment, Smith said: "That would be something we would definitely take action on. It's not allowed. It's not something we allow our officers to say."

An article detailing Mr. Reed's experience is available at http://www.commondreams.org/archive/2007/05/10/1088/ .

For more on the incident involving the Canadian psychologist, see http://thetyee.ca/News/2007/04/23/Feldmar/ .

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9. Lawsuit Challenges Constitutionality of ICE Raids

Several Latino families and individuals, represented by the Puerto Rican Legal Defense and Education Fund and an international law firm, filed a class action suit on September 20, 2007, against the Immigration and Customs Enforcement

(ICE) division of the Department of Homeland Security, charging that its agents unlawfully broke into and entered the homes of Latinos in the New York area without judicially issued warrants or other legal justification. The complaint describes armed ICE agents breaking down doors or forcing their way into Latino households in the pre-dawn hours without court warrants, terrifying children and adults, and looking for individuals who often do not even reside in the homes.

A press release announcing the suit is available at http://www.prldef.org/Press/Press%20Releases/ICE/Press%20Release%20-%20Latinos%20Challenge%20Constitutionality%20of%20Home%20Raids%20Conducted%20by%20ICE.pdf .
A related article is at http://jurist.law.pitt.edu:80/paperchase/2007/09/ice-sued-over-immigration-raids.php .

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10. Video Debunks Immigration Myths, Calls for Reform

The American Immigration Lawyers Association has produced a video on immigration reform. The video debunks common myths, such as that immigrants are a drain on the economy, that Americans do not support comprehensive immigration reform, that legalizing the undocumented is unfair to those who are waiting in line, that immigration reform is really an "amnesty" program for those in the U.S. illegally, and that enforcement of existing laws is sufficient to fix the system. The video is critical of enforcement-only efforts, which the narrator and commentators say tend to drive the undocumented further underground and contribute to smuggling and fraud.

The video is available at:
mms://a1791.v167312.c16731.g.vm.akamaistream.net/7/1791/16731/1189998/stream-1.onstreammedia.com/cdn_stream/multivu/14574/29806_300k.wmv .

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11. Bill Would Exempt Returning H-2B Workers From Counting Against Cap

The "Save Our Small and Seasonal Businesses Act of 2007" (H.R. 1843/S. 988) would ensure that returning seasonal workers continue to be exempt from an annual cap of 66,000. The exemption expired on September 30, 2007. The U.S.

Chamber of Commerce and other business organizations support the legislation. Sens. Barbara Mikulski (D-Md.) and John Warner (R-Va.) introduced the bill. Sen. Mikulski vowed to continue to fight for the provision despite the expiration. "Without these seasonal workers, many businesses would not survive - forced to limit services, lay off permanent U.S. workers or, worse yet, close their doors," she said. "I will use every option available to move this as a stand alone bill or to attach it to another piece of legislation." Details are available in Sen. Mikulski's announcement at http://mikulski.senate.gov/record.cfm?id=284315 .

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