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US IMMIGRATION & NATIONALITY LAW

DECEMBER 2007 IMMIGRATION UPDATE

Posted on December 1, 2007 by Cyrus Mehta

Headlines:

- **1.** **No-Match Letters Will Not Be Sent This Year, SSA Says** - The SSA will not send out no-match letters this year to employers, in response to a preliminary injunction.
- **2.** **USCIS Releases New Form I-9** - USCIS has revised the I-9 Employment Eligibility Verification Form as a first step toward achieving the document reduction goals.
- 3. **Basic Pilot Findings Released** - The accuracy of USCIS's database used for verification has "improved substantially" since the start of the Basic Pilot program, but further improvements are needed.
- 4. **USCIS Releases List of EB-5 Regional Centers** - USCIS recently released a list of active approved EB-5 regional centers as of October 2007 .
- **5.** **CBP Raises Fingerprint Fee** - U.S. Customs and Border Protection announced that the fee it collects for fingerprinting those applying for certain positions or requesting various identification cards will be raised.
- **6.** **USCIS Centralizes Filing for H-2A Petitions** - USCIS announced that effective December 10, 2007, it will only accept H-2A (temporary/seasonal agricultural worker) petitions mailed or delivered to its California Service Center.
- **7.** **Department of State Issues Record Number of Student Visas** - The Department of State announced that it has issued a record number of visas to students to study in the U.S.
- **8.** **ICE Nominee's Confirmation Is Uncertain in Senate** - A confirmation vote in the Senate for Julie Myers to direct U.S. Immigration and Customs Enforcement has not yet been scheduled.

- **9.** **Target and Whole Foods Market Charged with Discriminating Against Immigrant Workers** - The charges allege that the companies illegally fired and suspended two immigrant workers who had presented clear evidence of their authorization to work in the U.S.
- **10.** **State Dept. Issues Final Passport Rule** - The final rule reorganizes, restructures, and updates passport regulations.
- **11.** **China, India Second Preference Cut-Off Dates Retrogress; Other Projections** - The China-mainland born and India employment second preference cut-off dates both will retrogress in December; the Department of State also made other projections.
- **12.** **SEVIS Issues Quarterly Review** - The latest edition of the SEVIS review includes information presented in charts and graphs from SEVIS data collected on October 1, 2007.
- **13.** **DHS Releases Immigration Statistics** - Updated immigration statistics are available on the Department of Homeland Security's Web site.
- **14.** **Japan Begins Fingerprinting, Photographing Foreign Visitors** - Those refusing to comply will be denied admission into Japan and will be returned to their port of origin.

Details...

1. No-Match Letters Will Not Be Sent This Year, SSA Says

A Social Security Administration (SSA) spokesperson reportedly has stated that the SSA will not send out no-match letters this year to employers, in response to an October 10, 2007, preliminary injunction from the U.S. District Court for the Northern District of California that enjoined and restrained the Department of Homeland Security (DHS) and the SSA from implementing the final rule, "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter." The preliminary injunction did not preclude the SSA from sending out its traditional no-match letters without the final rule language. According to sources, the SSA is unlikely to send out no-match letters until spring 2008 at the earliest. SSA said it did not have sufficient time to revise the no-match letter in 2007. The SSA sends no-match letters, which detail discrepancies between SSA data and information sent in by employers, to approximately 138,000 employers each year concerning as many as nine million employees.

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2. USCIS Releases New Form I-9

U.S. Citizenship and Immigration Services (USCIS) has revised the I-9 Employment Eligibility Verification Form as a first step toward achieving the document reduction goals under the Illegal Immigration Reform and Immigrant Responsibility Act and "as a further step in its ongoing work toward reducing the number of documents used to confirm identity and work eligibility," the agency said.

The most significant change to the I-9 is the elimination of the following five documents from List A of the List of Acceptable Documents:

- Certificate of U.S. Citizenship (N-560 or N-561)
- Certificate of Naturalization (N-550 or N-570)
- Alien Registration Receipt Card (I-151)
- Unexpired Reentry Permit (I-327)
- Unexpired Refugee Travel Document (I-571)

One document was added to List A of the List of Acceptable Documents:

- Unexpired Employment Authorization Document (I-766)

All the Employment Authorization Documents with photographs that are in circulation are now included as one item on List A:

- I-688, I-688A, I-688B, I-766

Instructions for the I-9 also now state that the employee is not obliged to provide the Social Security Number in Section 1 of the I-9, unless he or she is employed by an employer who participates in E-Verify (formerly Basic Pilot). The section on Photocopying and Retaining Form I-9 now includes information about electronically signing and retaining I-9 forms.

Employers should begin using the amended I-9 "(Rev. 06/05/07)N" immediately for all individuals hired on or after November 7, 2007. The Department of Homeland Security (DHS) said it "recognizes that employers should be afforded a period of time to transition to the amended Form I-9." The DHS therefore will not seek penalties against an employer for using a previous version of the I-9 during a transition period ending on December 26, 2007. After the transition period, employers who fail to use the revised I-9 may be subject to penalties.

Employers only need to complete the new I-9 for new employees. Employers do

not need to complete new forms for existing employees, but employers must use the revised I-9 when their employees require reverification.

The new I-9 form is available at http://www.uscis.gov/files/form/i-9.pdf . The updated Handbook for Employers (M-274) is available at http://www.uscis.gov/files/nativedocuments/m-274.pdf . Details about the revised I-9 are available at http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf . A reminder with the deadline is available at http://www.uscis.gov/files/pressrelease/FormI9Reminder112307.pdf . Copies of the documents that are acceptable under the new I-9 requirements may be obtained in a brochure, "Guide to Selected U.S. Travel and Identity Documents" (M-396), which may be ordered in bulk from U.S. Customs and Border Protection, National Distribution Center, P.O. Box 68912, Indianapolis, IN 46268; fax: (317) 290-3046.

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3. Basic Pilot Findings Released

Recent findings about the Web-based Basic Pilot program, now called E-Verify, have been released. Among other things, the report notes that employers are satisfied with many aspects of the new online version of the Basic Pilot program. Also, the accuracy of the U.S. Citizenship and Immigration Services (USCIS) database used for verification has "improved substantially" since the start of the Basic Pilot program. Further improvements are needed, however, the report notes, especially if the program is mandated nationally.

Most importantly, the report states, the database used for verification "is still not sufficiently up to date to meet the requirement for accurate verification, especially for naturalized citizens." The report notes that USCIS and the Social Security Administration accommodate this problem by providing for a manual review of these cases, which is "time-consuming and can result in discrimination against work-authorized foreign-born persons during the period that the verification is ongoing, if employers do not follow procedures designed to protect employee rights."

The report, which includes recommendations, is available at http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf . Related materials are available at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD .

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4. USCIS Releases List of EB-5 Regional Centers

U.S. Citizenship and Immigration Services recently released an updated list of active approved EB-5 "Regional Centers," which are public or private entities approved to participate in the EB-5 immigrant investor program. The list, current as of October 2007, is available at http://www.globallawcenters.com/pdfs/23812.pdf . For more on the role of Regional Centers in the EB-5 program, see http://www.greencardinvestor.com/regional.html .

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5. CBP Raises Fingerprint Fee

U.S. Customs and Border Protection announced on November 20, 2007, that the fee it collects for the submission of fingerprints for those applying for certain positions or requesting various identification cards that necessitate a fingerprint records check will be raised to $32.49 to offset the fee being charged the agency by the Federal Bureau of Investigation. The announcement was published in the Federal Register and is available at http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22646.pdf .

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6. USCIS Centralizes Filing for H-2A Petitions

In a Federal Register notice published on November 9, 2007, U.S. Citizenship and Immigration Services (USCIS) announced that effective December 10, 2007, it will only accept H-2A (temporary/seasonal agricultural worker) petitions mailed or delivered to its California Service Center. The following addresses should be used:

Direct mail :

U.S. Citizenship and Immigration Services California Service Center
Attn: H-2A Processing Unit
P.O. Box 10140

Laguna Niguel, CA 92607-1040

Non-U.S. Postal Service deliveries (e.g., private couriers) :

U.S. Citizenship and Immigration Services California Service Center
Attn: H-2A Processing Unit
24000 Avila Road, Room 2312
Laguna Niguel, CA 92677

The notice also states that USCIS will return to the petitioner any H-2A petition received on or after December 10, 2007, at a different Service Center, and will instruct the petitioner to file at the correct location. Previously, H-2A petitioners could file with either the USCIS California or Vermont Service Center. USCIS's press release announcing the change is available at http://www.uscis.gov/files/pressrelease/H2A_filing_9nov07.pdf .

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7. Department of State Issues Record Number of Student Visas

The Department of State announced on November 16, 2007, that it has issued a record number of visas to students coming to study in the U.S., exceeding pre-9/11 levels. During fiscal year 2007, the Department issued more than 651,000 student and exchange visitor visas, which was 10 percent more than last year and 90,000 more than were issued in fiscal year 2001.

The notice is available at http://www.state.gov/r/pa/prs/ps/2007/nov/95290.htm .

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8. ICE Nominee's Confirmation Is Uncertain in Senate

A confirmation vote in the Senate for Julie Myers to direct U.S. Immigration and Customs Enforcement has not yet been scheduled. Concerns about her inexperience reportedly have subsided, but the outcome remains uncertain. Majority Leader Harry Reid (D-Nev.) continues to have concerns and is consulting with members before deciding how to proceed, according to a spokesperson.

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9. Target and Whole Foods Market Charged with Discriminating Against Immigrant Workers

The Legal Aid Society - Employment Law Center (LAS-ELC) recently filed two employment discrimination charges with the Department of Justice against the Target Corporation and Whole Foods Market, alleging that the companies illegally fired and suspended, respectively, two immigrant workers, even though they had presented clear evidence of their authorization to work in the U.S.Target allegedly terminated an employee who is authorized to work under Temporary Protected Status (TPS), and Whole Foods allegedly suspended for 30 days without pay an employee who is a naturalized U.S. citizen.

"The facts could not show more clearly that both Target and Whole Foods Market engaged in classic document abuse, and our clients have suffered the harsh consequences of such illegality," said Carole Vigne, a Skadden Fellow with the LAS-ELC.

The LAS-ELC's announcement is available at http://www.las-elc.org/whatsnew.html .

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10. State Dept. Issues Final Passport Rule

The Department of State has issued a final rule that reorganizes, restructures, and updates passport regulations. The Department said it issued the rule "to make easier for users to access information, to better reflect current practice and changes in statutory authority, and to remove outdated provisions." In general, the Department said, the revisions do not mark a departure from current policy. Rather, the Department's intent is "to bring greater clarity to current passport policy and practice and to present it in a less cumbersome way."

The final rule, which includes comments and responses, is available at http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22461.pdf . Because issues regarding passport fees and the passport card are addressed in a separate rulemaking, the Department said it will respond to comments on those issues at a later time.

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11. China, India Second Preference Cut-Off Dates Retrogress; Other Projections

The Department of State's Visa Office announced in the latest Visa Bulletin that

the China-mainland born and India employment second preference cut-off dates both will retrogress in December. The Department said the retrogression is a direct result of extraordinarily heavy applicant demand for numbers, primarily by U.S. Citizenship and Immigration Services offices for adjustment-of-status cases. Additional retrogressions cannot be ruled out during the second quarter of the fiscal year, the Department noted.

The Department also made the following projections based on current demand patterns, which could change. "Under no circumstances should they be used as a basis for making any formal plans prior to the announcement of the monthly cut-off dates," the Department warned.

- Employment Preferences - Worldwide and Philippines **:**

First and second preferences: Will remain Current.

Third: Slow forward movement should be possible while demand patterns are established.

Third "Other Workers" category (all countries): Little if any forward movement is expected at this time. If the current demand pattern continues, it may be necessary to retrogress the cut-off date at some point later in the fiscal year.

- Employment Preferences - China-mainland born and India :

First: Continued heavy demand may require the establishment of a cut-off date at some point during the fiscal year.

Second: Demand during October and the first week of November has already used over 38 percent of the annual limit. It is hoped that the December retrogressions will return monthly number use within the target range. If not, further retrogressions cannot be ruled out.

The Visa Bulletin for December 2007 is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3841.html .

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12. SEVIS Issues Quarterly Review

The Student and Exchange Visitor Information System (SEVIS) "General Data Quarterly Review" provides a snapshot of information intended for a variety of SEVIS stakeholders. The latest edition of the review includes information

presented in charts and graphs from SEVIS data collected on October 1, 2007.

As of October 1, 2007, there were 1,045,918 active nonimmigrant students, exchange visitors, and their dependents in SEVIS. Data on schools, exchange visitor programs, and more than 4.7 million F, J, and M nonimmigrant visa international students and their dependents can be found in SEVIS.

The latest quarterly report is available at: http://www.ice.gov/doclib/sevis/pdf/quarterly_report_sept07.pdf .

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13. DHS Releases Immigration Statistics

Updated immigration statistics are available on the Department of Homeland Security's Web site. Available reports include information on temporary admissions of nonimmigrants to the U.S., data on naturalizations and legal permanent residents, the *2006 Yearbook of Immigration Statistics*, and other topics.

The statistical reports are available at http://www.dhs.gov/ximgtn/statistics/ .

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14. Japan Begins Fingerprinting, Photographing Foreign Visitors

Japan has begun fingerprinting and photographing foreign visitors under new anti-terror legislation approved by Japan's upper house of parliament. Those refusing to comply will be denied admission into Japan and will be returned to their port of origin. The European Business Council in Japan and the Australian and New Zealand Chamber of Commerce in Japan sent a letter in October to the Justice Ministry expressing concerns about the new requirement. The letter is available at http://www.ebc-jp.com/news/2007Oct%20Letter%20to%20Immigration%20Bureau%20E.pdf .

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