



Immigration Update

FALL 2008

Leete, Kosto & Wizner, LLP

Leete, Kosto & Wizner, LLP is pleased to provide clients and friends information about recent changes in immigration law.

We have been practicing immigration law since 1981.

Please feel free to contact one of our attorneys with any related questions or to schedule a consultation.

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Treaty NAFTA Work Status Now Available for Three Years!

United States Citizenship and Immigration Service published a final rule on October 16, 2008 that renders Treaty NAFTA (TN) temporary workers eligible to enter and remain in the United States for a period of three years rather than just one. Under the old rule, TN status was approved for only one year at a time, and the worker had to obtain a new approval to extend for each additional year. TN workers must still have the intention to return home rather than to remain in the United States indefinitely, but Mexican citizens will be eligible for three-year TN visas and Canadians, who are visa-exempt, for admission for a continuous period of three years.

Expedited Processing for Some Permanent Visa Petitions

The USCIS has partially restored Premium Processing for some employment-based immigrant visa petitions. For a fee of \$1,000, the agency will process the case within 15 calendar days. To establish eligibility the beneficiary must be within 60 days of losing H-1B status eligibility, and must need approval of the immigrant petition to obtain further extensions.

ESTA Is Coming!

Beginning January 12, 2009, visitors from visa waiver countries will need to participate in the new Electronic System for Travel authorization ("ESTA") to verify their eligibility to travel to the United States without visa stamps. The system is now up and running at <https://esta.cbp.dhs.gov>. Citizens of participating countries do not need to obtain visa stamps for short business or pleasure visits to the United States provided they otherwise meet admission requirements - these visitors may apply for admission showing a round trip ticket. Applicants will provide information via an online application prior to traveling to the United States by air or sea. ESTA will check the information against security and law enforcement databases, determine whether the applicant is admissible, and is thus eligible to travel to the United States without a visa for the next two years. If the applicant is not cleared for travel, the applicant will receive a "not authorized to travel" notification and will be directed to the United States Department of State web site to obtain information on how to apply for a visa at a U.S. consulate or embassy.

Use of E-Verify Mandated For Employers Signing Future Federal Contracts

President George W. Bush has amended Executive Order 12989 to direct all federal departments and agencies to require contractors and subcontractors, as a condition of each future federal contract, to agree to use a system designated by the Department Homeland Security (DHS) as the E-Verify system.

Employers entering into these contracts will need to sign on to E-Verify and submit data online on all new employees (but not on current or prospective employees). The system will determine whether the individuals are authorized to be employed in the United States. If the system does not confirm the person as work-authorized, then the employer must take certain other steps to determine whether the person is work-authorized, and terminate the employment if the steps are not successful.

Employers should consider carefully before deciding to participate. To do so, the employer must waive certain constitutional rights and agree to permit DHS and Social Security Administration officials to enter their work sites to review E-Verify records and other employment records. If the employer has obtained confirmation through E-Verify that a new employee is work-authorized, it is presumed not to have violated the employer sanctions rules with respect to the hiring of that employee, but is not protected from worksite enforcement actions.

Increasing the Pool of Foreign Au Pairs

The Department of State has announced that qualified au pairs from foreign countries may be accepted beyond the prior age range of 18-26, up to age 30. The new rule also allows au pairs to participate in the program for a second period after spending two years abroad. The au pair program is one of five work-based exchange visa opportunities available through the J-1 Exchange Visitor Program.

Extended Work Authorization Cards

Applicants seeking "green cards" (permanent status) based on applications filed with the USCIS are allowed to apply for employment authorization cards that permit them to work while their applications are pending. Recognizing that many green card applications are backlogged for years, USCIS has begun issuing those applicants employment cards valid for a two-year period.

Visa Lottery Open

The 2010 Diversity Visa Lottery Program is now open. Entries may only be submitted online at www.dvlottery.state.gov/ before 12 p.m. on December 1, 2008. Instructions are available in 11 languages. It is essential that all dependents be listed and photos provided of all family members. People born in countries that sent 50,000 or more immigrants to the U.S. in the previous five years are not eligible to apply.

Work Authorization for Students Extended

In response to the shortage of H-1B visas due to annual numerical limitations, USCIS will now grant extensions of the normal one-year of work authorization available for foreign students who graduate from U.S. colleges and universities. The extensions are available in two situations.

The first situation is where the graduate's employer has filed an H-1B petition which, if approved, will accord the graduate H-1B status only on October 1 of the year of the filing. The extension would bridge the gap between the expiration of any current work authorization and the October 1st H-1B start date.

The second situation involves F-1 graduates who have completed a science, technology, engineering, or mathematics (STEM) degree in the U.S. after a full year of study and accept employment with employers enrolled in the E-Verify employment verification program. The extension would allow an additional seventeen months of employment.

Employers of F-1 graduates with such extended work authorization must report to the graduate's Designated School Official (DSO) within 48 hours after the graduate has been terminated from, or otherwise leaves, his or her employment with that employer prior to end of the extended authorized period of employment.

Immigration Enforcement is in Full Swing

After years of limited enforcement of the bars that were enacted in 1986 against hiring aliens not authorized to work in the United States, the Immigration and Customs Enforcement (“ICE”) agency of the Department of Homeland Security is making sweeping arrests throughout the United States. ICE has arrested not only unauthorized workers, but also members of management who had knowledge that the workers were unauthorized.

In these enforcement actions, ICE has chosen in some cases to bypass the civil penalties and immigration court removal proceedings, and seek criminal convictions, both of the aliens and of the companies and their management. Penalties include imprisonment, fines and seizure of personal assets acquired through the illegal activity.

ICE recently reported that in the last fiscal year ending September 30, 2008, it secured increased penalties, fines and judgments of more than \$30 million while making 863 criminal arrests and 4,077 administrative arrests. Of those, 121 involved owners, managers, supervisors or human resources employees accused of violations ranging from alien harboring to knowingly hiring illegal aliens. The remaining criminal defendants were workers arrested on charges including aggravated identity theft and Social Security fraud.

Hole in the Donut

A Connecticut businessman, Jose Calhelha, was sentenced in December 2007 to pay a \$1,000,000 fine and spend ten months in prison for recruiting unauthorized Portuguese workers to staff his Dunkin' Donuts stores in Old Saybrook, Westbrook, Branford, East Haven, and Derby. His daughter received one month home confinement and 250 hours of community service for her role in the scheme.

Hands Across the Sea

The United States and Ireland soon will begin to implement a Twelve-Month Intern Work and Travel Pilot Program for post-secondary students or young people within twelve months of graduation.

The new program is an innovative exchange program that will allow thousands of young people from Ireland to enter the United States for a period of twelve months on a J-1 exchange visitor visa.

There also will be reciprocal opportunities for young people from the United States to travel to Ireland. This will allow students from both countries to participate in a variety of internships, and to travel independently within the United States and Ireland.

Seven New Countries Added to the Visa Waiver Program

Citizens of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea may now use the visa waiver program to enter the United States for business or pleasure without first obtaining a visa stamp at a U.S. consulate. They will be required to use the ESTA Program, which is described on the first page of the newsletter.

Compliance Quiz

If an agent of Immigration and Customs Enforcement (ICE) showed up at your business tomorrow, would your receptionist know what to do?

Is your compliance policy in writing, endorsed by your CEO, and are other employees periodically trained to follow it?

Do you know the line between “obstruction of justice” and asserting your rights?

Does your business conduct regular audits of its I-9 forms, to determine whether they have been properly completed?

Do you know the proper way to correct mistakes on I-9 forms?

Does your company have a reasonable and uniformly-applied policy on responding to Social Security Administration no-match letters?

Do you know when a company attorney may also represent an employee of the company?

Leete, Kosto & Wizner, LLP provides a wide range of immigration legal services to businesses and individuals throughout the United States and around the globe.

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Partners Listed Again in “Best Lawyers” Survey

The editors of *The Best Lawyers in America* have again included all three partners of the firm of Leete, Kosto & Wizner LLP in the 2009 edition.

Elizabeth Leete, Andrew Wizner, and Eric Fleischmann have all been selected by their peers as outstanding practitioners of immigration law.

The November 2008 edition of *New England Super Lawyers* also includes Andrew Wizner on its list of 2008 *Super Lawyers* and Virginia Carstens on the list of *Rising Stars* in the field of immigration law.

Litigation Victories

People who apply for permanent visas (“green cards”) and naturalization have sometimes been subjected to delays of two to six years or more due to FBI delay in completing “name checks” or prolonged USCIS background checks. Attorney Virginia Carstens has brought more than a dozen of these cases to successful conclusions through mandamus actions in federal court.

Asylum Granted

Attorney Elizabeth Leete recently won asylum grants for teen-age twins from Zimbabwe and a Russian professor from Uzbekistan.

Passport Cards

Passport cards are now available for U.S. Citizens and are cheaper than passports. First-time adult applicants pay \$45; children pay \$35. Details are at: http://travel.state.gov/passport/ppt_card/ppt_card_3926.html
The cards can be used for entry by land or sea, but not air travel.