

Newsletter

Immigration Monthly - August 2013

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DEPARTMENT OF HOMELAND SECURITY (DHS) UPDATE:

United States Citizenship and Immigration Services (USCIS) has made another change to E-Verify, which is the federal employment eligibility verification database the government encourages U.S. employers to subscribe to. The latest E-Verify improvement provides for direct notification of employees when there is an information mismatch between the Form I-9 Employment Eligibility Verification Form data and the government databases. Previously, the E-Verify subscribing employer was the sole recipient of the Tentative Nonconfirmation (TNC) notice, and the employer had to follow up with the affected employee accordingly. Per the new practice, an employee who voluntarily provides his/her e-mail address on Form I-9, would receive TNC simultaneously with the employer. While E-Verify employers would still be required to notify employees of a TNC receipt, the government will now send e-mail reminders to employees if they do not take any action to address the TNC within four (4) days of a decision to contest, and to advise them of the need to update a Social Security and/or DHS record.

NEWS FROM THE COURTS:

A recent decision by the 8th Circuit Court of Appeals (Elmer Lucas et al v. Jerusalem Café, LLC) has reaffirmed the long-standing government policy and practice of applying federal laws and regulations protecting employees' rights equally to legal and illegal workers employed by U.S. companies. In the case above, the Circuit Court upheld the lower court's decision that the Fair Labor Standards Act of 1938 (FLSA) applies when undocumented workers are employed for less than minimum wage and without receiving overtime wages. The Court disagreed with the employer's contention that unauthorized workers lack standing to sue.

CUSTOMERS AND BORDER PROTECTION (CBP) NEWS:

CBP has now fully implemented its program to automate the Form I-94 at all air and sea ports pursuant to the agency's interim final regulation. These records are available for viewing at the CBP's portal at www.cbp.gov/I94. It is very important to print out the I-94 each time an employee is admitted to the U.S. after foreign travel to verify admission class and validity period to make sure it coincides with the passport stamp received at the time of U.S. entry. As your employees may have already experienced, the transition to a paperless I-94 system has not been without problems. On occasion, I-94 records cannot be located because the data was entered by CBP with slight variations such as a middle and first name being combined in the "First Name" field. These seemingly small data entry errors can create difficulties when employees try to apply for social security numbers or a driver's license or during Employment Eligibility Verification via Form I-9 completion and/or E-Verify. Discuss your employees' travel with and provide their U.S. entry data to your immigration counsel to ensure that no I-94 data issues go unresolved.

Department of State (DOS) News:

- DOS has recently made an announcement on visa issuance changes for same-sex couples. Per the DOS confirmation, the U.S. consular offices around the world will now consider visa applications from same-sex married couples using the same adjudication criteria they have been using when reviewing applications by heterosexual couples. Importantly, this applies to situations of visa applications filed with U.S. consular offices in countries that do not recognize same-sex marriage, so long as the marriage has been entered into in a jurisdiction that recognizes it.

- The DOS Visa Bulletin for September 2013 indicates significant progress with regard to the visa cut-off date for the Employment-Based 3rd (EB-3) preference for nationals of most countries, except for those born in India and the Philippines. The severely retrogressed cut-off date has jumped forward 1 ½ years to July 1, 2010. Please also note that the severely retrogressed cut-off date for nationals of India under the Employment-Based 2nd (EB-2) preference for advanced degree professionals has jumped forward to June 15, 2008. There is an expectation of a significant increase in Adjustment of Status filings under both the EB-2 and EB-3 categories in September. Discuss your or your employees' eligibility for an Adjustment of Status filing with your immigration counsel, to take advantage of the newly available immigrant visas.

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