

JANUARY 5, 2016 BULLETIN TO ALL IMMIGRATION CLIENTS

## Immigration Law Updates

Following are recent and/or anticipated changes to United States immigration laws, which may impact our clients:

### **Proposed Changes to the Visa Waiver Program Following Terror Concerns**

In the aftermath of the Paris and San Bernardino terror attacks, the Visa Waiver Program (VWP) has been heavily scrutinized. On December 18, 2015, the House passed Bill H.R. 158 to amend the Immigration and Nationality Act (INA) to provide enhanced security measures for the VWP and to include terrorism risk as a factor the Department of Homeland Security (DHS) shall consider under the electronic system for travel authorization (ESTA) in determining an alien's eligibility to travel to the United States. The Bill would require all VWP travelers to present an e-passport with a biometric-enabled chip by April 1, 2016. It would also require all VWP countries to employ mechanisms to validate these e-passports by October 1, 2016. In addition, it would prevent those who have traveled, since March 2011, to Iraq, Syria, or any other country designated by the Secretary of State as a state sponsor of terrorism, or designated as a country or area of concern by the Secretary of Homeland Security, from VWP travel. Finally, DHS could now suspend a country from the VWP without prior notice if the country fails to comply with an agreement to share information regarding whether its citizens and nationals traveling to the United States pose a U.S. security threat.

### **President Obama Orders Increased Scrutiny for the K-1 Fiancé Visa Program**

The Obama administration is also reviewing procedures for vetting K-1 visa applicants. DHS consular officers use the Consular Consolidated Database (CCD), a database of more than 100 million visa and passport case records and 75 million photographs from 25 different DOS systems, to screen visa applicants. Background checks, including checks on the applicant's personal details using international criminal databases, are carried out at this stage. One specific proposed security measure increase includes the U.S. Department of Homeland Security's plan to scrutinize social media posts as part of the K-1 visa application process prior to admitting applicants into the country. The scrutiny of the policy comes after U.S. officials learned that one of the shooters in San Bernardino posted a message on Facebook declaring allegiance to the Islamic State in Iraq and Syria before carrying out the attacks (and before issuance of her K-1 visa).

### **Law Requiring Additional Fees for H and L Visa Employers**

An additional fee that employers were required to pay for certain H-1B and L-1 visa petitions expired as of Oct. 1, 2015. However, on December 18, 2015, a new law was signed reauthorizing and increasing the fees that certain high-volume H-1B and L-1 employers must pay. Employers with 50 or more employees in the United States, and more than 50 percent of whom are in H-1B or L-1 status, are

affected by this new law. Specifically, the new law has doubled the H-1B visa fee, including initial petitions and extensions, from \$2,000 to \$4,000, and has doubled the L-1 visa fee, including petitions, extensions, and blanket L applications, from \$2,250 to \$4,500. The new fee increase took effect immediately and will remain in place until September 30, 2025.

### **Proposed Increased STEM Extensions**

In October 2015, the U.S. Department of Homeland Security published a new proposed regulation on F-1 STEM OPT. The new proposal includes many provisions favorable to international students and indicates that DHS is actively taking steps to continue STEM OPT benefits. DHS's proposition is in response to a recent federal district court order vacating the previous STEM OPT extension rule that had been in place since 2008. Though the federal court vacated the existing STEM OPT rule, its provisions remain in effect until February 12, 2016 so that DHS may promulgate a new rule. New proposed STEM provisions include a 24-month extension that would effectively replace the 17-month extension currently available to certain STEM students. The rule also improves and increases oversight over STEM OPT extensions by, among other things, requiring the implementation of formal mentoring and training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers, and allowing extensions only to students with degrees from accredited schools. Other proposed changes include enabling Immigration and Customs Enforcement ("ICE") to conduct on-site reviews of employers to ensure compliance with the program, increasing the number of days an F-1 student can be unemployed during the 24-month STEM OPT period from 30 days to 60 days, and permitting students to use a previously issued STEM degree from an accredited school to request the 24-month STEM OPT extension, even if they are currently engaging in OPT that has been authorized based on their study towards a different degree.

### **Increasing DUI and Visa Repercussion Scenarios at Worldwide U.S. Consulates**

Reports show that it has become increasingly common for non-immigrant visa holders to experience a visa revocation upon a Consulate's discovery of a DUI conviction, or even simply a DUI arrest. The Department of State (DOS) has commented that it does not determine inadmissibility or deportability grounds prior to visa revocation. These revocations simply reflect that, after visa issuance, information surfaced that called into question the subject's continued eligibility for a visa. A consular officer would then address any admissibility issues at the time of reapplication. Visa holders are then notified of the revocation and instructed that they are free to reapply in order to reestablish eligibility.

### **USCIS Launches Virtual Assistant**

USCIS has launched a virtual assistant named Emma that allows users to quickly find information. Emma answers questions in plain English and navigates users to relevant USCIS web pages. She is named after Emma Lazarus, whose famous words are inscribed at the base of the Statue of Liberty. Emma was developed in response to a growing interest in self-help tools and to enhance USCIS' customer service. USCIS call centers currently receive many questions concerning general information requests that can be provided through the Web that Emma will now try to answer. Emma will soon expand to mobile devices and her Spanish language capabilities will arrive early next year.

## **Revised E-Verify Employee Rights Toolkit**

USCIS released a revised E-Verify Employee Rights Toolkit, which is useful for workers, job seekers, employers, and workforce employers. It helps employees learn about their Form I -9 and E-Verify rights, assists employers with onboarding, and provides relaxed tools to workforce organizations.

Please contact any member of the Cohen & Grigsby Immigration Department at 412.297.4900 if you have any questions regarding this information. To receive future bulletins by e-mail, please send an e-mail to [info@cohenlaw.com](mailto:info@cohenlaw.com).

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