

IMMIGRATION LAW ALERT™¹by *Larry J. Stringer, Esq.*

A number of current immigration matters deserve your attention and consideration:

1. USCBP Announces the Advent of the Paperless Form I-94 for Air and Sea Arrivals, Effective April 26, 2013.
2. Immigration Reform – Proposed.
3. USCIS Revises Form I-9 – Use New Form by May 7, 2013.
4. USCIS Announces H-1B Caps Reached – Lottery Completed.
5. Sequestration – the Elephant in the Corner No One is Talking About.

USCBP Announces the Advent of the Paperless Form I-94 Effective April 26, 2013²

The U.S. Customs and Border Protection (“USCBP”) has announced in an interim final rule published in the Federal Register that effective April 26, 2013, it will initiate the automation of the Form I-94, Arrival/Departure Record, for nonimmigrant foreign nationals, arriving in the U.S. by air or sea. In place of the paper Form I-94, the foreign traveler’s passport will be stamped by the USCBP Officer, showing the date of admission, visa classification and the date on which the foreign traveler’s authorized stay will expire.

The new rule does not apply to nonimmigrants applying for admission to the U.S. at land border crossings.

Upon entry, the USCBP will create an electronic Record of Admission for the arriving nonimmigrant. If the foreign traveler wishes to verify his or her Record of Admission, or he or she otherwise needs a printed copy of his or her Record of Admission, e.g., for verification of registration and immigration status, proof of Form I-9 employment authorization, entrance to schools and universities, applications for a Social Security number and driver’s license, and the like, the Record of Admission can be obtained from:

www.cbp.gov/I94

According to the USCBP, the electronic Record of Admission should be uploaded and accessible by the foreign traveler within 24 hours.

Form I-94 automation at air and seaports will be rolled out through April and May, 2013. The current rollout schedule, beginning April 30, 2013, is listed as follows:

Week 1 - 04/30/2013

Charlotte Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O’Hare International Airport and Miami International Airport;

Week 2 - 05/7/2013

Major Air and Sea Ports within the following Field Office areas: New

York, Boston, Buffalo, Baltimore, Detroit, Atlanta, Tampa, Puerto Rico, Miami, Chicago, New Orleans and Houston areas;

Week 3 - 05/14/2013

Major Air and Sea ports within the following Field Office areas: Pre-Clearance, San Francisco (includes Hawaii and Guam), Tucson, El Paso, Seattle, Portland (includes Alaska), Los Angeles, San Diego and Laredo; and

Week 4 - 05/21/2013

All remaining airports and seaports.

Upon departure, foreign nationals exiting the United States who hold a paper Form I-94 should surrender it to the air carrier, or USCBP, in traditional fashion.

Many questions remain unanswered, e.g., how will “automatic visa revalidation” work for short-term visits to Mexico or Canada, or, how will a timely departure be documented if a nonimmigrant arrives by air and departs by car to Canada or Mexico? USCBP continues to develop new protocols.

We recommend that foreign travelers pay careful attention to the legibility of their Record of Admission stamped in their passport to assure that it reflects proper information in terms of date of arrival, visa classification, and expiration date of authorized stay. In the event the foreign traveler believes that the USCBP officer made a mistake when stamping his or her passport, or believes that the information is not legible, he or she should respectfully ask the USCBP officer to correct and/or restamp his or her passport. Moreover, we anticipate that there will be difficulties during the “learning curve” for both USCBP officers and foreign travelers. Until otherwise notified, we understand that later discovered port of entry errors may be corrected through the USCBP Deferred Inspection Site program.

We also recommend that as soon as practical after arrival, the foreign traveler should access the above-listed website and secure a printout of his or her Record of Admission (Form I-94) and place a copy of the Record of Admission in his or her passport. We understand that a copy of the Record of Admission may be used to verify employment authorization (Form I-9), as well as to apply for a Driver’s License and/or a U.S. Social Security Card, and other benefits requiring a Form I-94.

Immigration Reform - Proposed

Legislation to provide for comprehensive immigration reform was introduced by the bipartisan “Gang of Eight” Senators on April 16, 2013. The 844 page Senate Bill 744 is titled, “Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.” We hear that debate may begin in May 2013.

Upon passage and implementation, U.S. employers should expect significant changes, e.g.:

- All U.S. employers will be required to use the E-Verify System (phase in will take 5 years).
- For I-9/E-Verify purposes, new employees will be subjected to

“photo matching,” certified by the employer.

- For I-9/E-Verify purposes, non U.S. citizens will be required to present a “biometric work authorization card” or “biometric green card.”
- H-1B Reforms –
 - Cap raised from 65,000 to 110,000 for regular H-1B’s, and
 - Cap raised from 20,000 to 25,000 for U.S. advanced degrees in science, technology, engineering and mathematics.
 - Formula for H-1B cap increases/decreases could increase the H-1B cap to 180,000/year with increases/decreases limited to 10,000/year.
 - Increase in H-1B wage level requirements (exceeding the prevailing wage).
 - American worker recruitment by H-1B job offer advertisements for 30 days before processing an H-1B.
 - 60 day grace period for all H-1B workers changing employers.
 - Spouses of H-1B workers will receive work authorization, if the worker’s home country reciprocates for American workers’ spouses.
- Elimination of backlogs for Family and Employment-Based immigrants under the Green Card quota system.
- Reforms reducing to two, the number of Family based preferences, including eliminating immigrant visas for siblings of U.S. citizens, expanding the definition of “immediate relative” to cover spouses and children of green card holders, and limiting immigrant visas for married adult children of U.S. citizens to age 31.
- Repeal of the Diversity Visa Lottery Program.
- For employment-based green cards, unlimited visa numbers for
 - Aliens of extraordinary ability,
 - Outstanding professors and researchers,
 - Multinational executives and managers,
 - Doctoral degree holders in any field, and
 - Certain physicians.
- Increased numbers for employment-based visas for
 - Advanced degrees,
 - U.S. masters or bachelor degree in science, technology, engineering or mathematics earned within 5 years of filing the immigrant petition.
- New Merit Based Immigrant Visa (i.e., green card) for other workers where points will be awarded based on many criteria, e.g., education level and employment experience.
- New W Visa for Lower-Skilled Temporary Workers requiring the employer to register itself and to register the position; spouses and children of W workers will be allowed to accompany or join the W worker, and the spouses will be allowed to work.

With 844 pages of legislation, Congressional hearings and debates, and the certain introduction of riders/amendments, we will have a never ending array of questions and need for detail. You should watch closely as this legislation progresses through Congress.

USCIS Revises Form I-9 – Use New Form by May 7, 2013

The U.S. Citizenship and Immigration Services (“USCIS”) has released in the Federal Register its new Form I-9, Employment Eligibility

Verification, document. The revision date of this form is March 8, 2013, and should be used immediately. The USCIS recognizes that it may take some time for employers to convert their internal record-keeping systems to the new Form I-9, so the last day you can use the current, now “old,” Form I-9 is May 6, 2013.

The Lists of Acceptable Documents remain the same for verifying an employee’s employment authorization, except as above-noted, the electronic Record of Admission may be used in place of a paper Form I-94.

The new Form I-9 is two pages instead of one page, and adds requests for email address and telephone number for all employees, and for foreign national employees, it requests foreign passport information. The USCIS explains that the new, longer format, will help avoid errors when completing the form. We hope so! The USCIS publication in the Federal Register clarifies that U.S. employers do not need to complete the newly revised Form I-9 for current employees for whom they already have a completed Form I-9 on file. Going forward, however, for reverifications or revised I-9 reasons, the new form must be used.

USCIS Announces H-1B Caps Reached – Lottery Completed

On Friday, April 5, 2013, the USCIS issued a press release confirming earlier expectations that the USCIS had in fact received sufficient new, i.e., H-1B cap subject, Regular and Advanced Degree H-1B Petitions to close the quotas that day. The USCIS will not accept any more H-1B cap subject petitions for regular or U.S. advanced degreed professionals this year. The next time a new H-1B petition can be filed for a cap subject professional is April 1, 2014, marked for a start of employment on October 1, 2014.

The USCIS has conducted its random number lottery to select the new H-1B cases to be processed this year. Based on previous announcements, the USCIS delayed the start of the Premium Processing Service (15-day expedite) (“PPS”) clock for new H-1B Petitions until Monday, April 15, 2013. We are beginning to receive PPS confirmation of lottery winners. The USCIS will not “data enter” regular, i.e., non-PPS, case lottery winners until after completing PPS cases (probably mid-May) and formal rejection notices for lottery losers will be sent out after that.

Sequestration- the Elephant in the Corner No One is Talking About

We anticipate that the Federal Budget Sequester (“Sequestration”) will adversely affect immigration processing. At this time, it is difficult to predict how the adverse consequences of sequestration will play out in the many different government agencies involved in immigration cases. The U.S. Departments of Homeland Security, State and Labor are addressing the issue internally and have not yet made public any detailed information. Nevertheless, we expect to see delays in petition and application processing, border inspections, and visa processing.

There is some good news, however. In recent years, the USCIS has increased filing fees to “cover the costs” of processing petitions and

applications. Presumably, Sequestration will have a lesser impact on USCIS processing of benefit petitions and applications. On the other hand, ports of entry, visa, and labor certifications (PERM and H-1B Labor Condition Applications) processing are not covered by the same level of filing fee funding and may suffer more delays because of Sequestration.

It should go without saying that the Government will continue playing with stop-gap funding measures, all of which will enhance the uncertainty of the adverse effect of Sequestration.

Planning ahead for the travel and employment of foreign nationals continues to be the best advice.

If you wish further information on this subject and on how it applies to your circumstances, please contact any of the following attorneys in our Immigration Law Practice Group (for our Japanese clients and friends, please contact Yukiko Sato at 248-433-7546):

¹*Immigration Law Alert™, a periodical newsletter featuring information on immigration related matters, is provided as a service of the Immigration Law Practice Group of Dickinson Wright PLLC. The newsletter is intended to provide general information on the subjects presented; it is not legal advice. Readers should consult with immigration counsel to determine specific application of the information presented.*

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² Unless delayed by the USCBP.

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