

# OLSEN LAW FIRM

IMMIGRATION LAW, INTERNATIONAL LAW, BUSINESS LAW

## IMMIGRATION LAW REPORT



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VOLUME ONE NUMBER TWO

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January 2004

### IMMEDIATE INFORMATIONAL RELEASES



*Immi says: The US-VISIT system is here!  
The process for non-immigrant visa holders  
entering and exiting the United States has  
greatly changed.*

**PLEASE READ THE INFORMATION  
BELOW.**

### OVERVIEW OF THE US-VISIT SYSTEM

SOURCE: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

*On January 5th, the first phase of US-VISIT became operational at 14 seaports and 115 airports across the United States. Each nonimmigrant visa holder entering at one of these ports will undergo the standard inspection process and simultaneously will be processed through the US-VISIT system, termed "visited" by Department of Homeland Security (DHS) officials.*

Expansion of the program at airports and seaports is expected to continue throughout 2004. Unless Congress acts to delay the implementation deadlines, DHS will be required by law to expand the entry/exit program to the top 50 high traffic land border ports by December 31, 2004, and the remaining ports of entry by December 31, 2005.

In conjunction with US-VISIT, all consular posts abroad will be required to issue biometric visas by October 26, 2004. Two digital index finger prints and a photo will be taken of visa applicants, and their information will be checked against the Automated Biometric Identification System (IDENT) database. Recently, in Vancouver, IDENT clearance was taking 3 days. The lengthy timeframe is due in part to database transmission lines.

### ***Who is Affected by US-VISIT?***

***Visa holders:*** According to DHS, US-VISIT will apply only to nonimmigrant visa holders. The Data Management Improvement Act of 2000 (DMIA) (P.L. 106-215) prohibits immigration authorities from introducing new entry or exit documentary requirements on any visitors to the country for the purpose of collecting data for US-VISIT. Under current law and regulations, Canadians not required to have a visa upon entering the United States and foreign nationals entering the United States pursuant to the Visa Waiver Program (VWP) will not be included in US-VISIT. **Conversely, Canadians and Visa Waiver country applicants for admission to the U.S. in a status requiring a visa will be required to enroll in US-VISIT.**

***Exempt categories:*** The following visa categories are exempt from enrollment in US-VISIT: A-1, A-2, C-3 (except for attendants, servants or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6. However, if an individual entering the U.S. in an exempt status is no longer in such status on his or her date of departure, he or she would be subject to the departure requirements.

Children under the age of 14 and persons over the age of 79 on the date of admission are exempt from US-VISIT, as are classes of aliens the Secretary of Homeland Security and the Secretary of State jointly exempt. The Secretary of Homeland Security, the Secretary of State or the Director of Central Intelligence may also exempt an individual alien.

***LPRs & Citizens:*** **At this time, Legal Permanent Residents (LPRs) and U.S. citizens are exempt from enrollment in US-VISIT.**

### **What to be Aware of When Entering and Exiting the U.S.: US-VISIT**

**1) Prepare for delays at consular posts.** Delays will occur in getting appointments at consular posts since the personal appearance waiver policy announced in 2003 that requires interviews of applicants between the ages of 16 and 60 will be subsumed by the US-VISIT fingerprint and photograph requirements. Delays will also occur between the dates of an applicant's interview and the date of visa issuance. Visa issuance could

potentially take days due to the requirement of IDENT checks. (**Note: the IDENT check applies in both the nonimmigrant and immigrant visa application process. Currently, US-VISIT only applies to nonimmigrant visa holders.**)

**2) Prepare to plan for and expect delays upon entering and exiting the U.S via major airports and seaports after January 5, 2004.**

**3) US-VISIT is a mandatory procedure.** Failure to provide the requested biometrics necessary to verify the nonimmigrant visa holder's identity and to authenticate travel documents may result in a determination that the visa holder is inadmissible to the U.S.

**4) VERY IMPORTANT:** If entering the U.S. through a Port of Entry that has US-VISIT capacity, but not leaving through a port that has the exit capacity, a copy of travel records and other documents as proof should be maintained to show that the person exited through a Port of Entry without an operational exit kiosk.



***Immi, Jr. says: If you want to work in the U.S. in H-1B status, then be aware that as of October 2003 the H-1B cap is 65,000. Therefore, once the cap has been reached (for the year) a person will not be able to obtain H-1B status until October 2004.***

### **When will the H-1B Cap be Reached for this Year?**

**SOURCE: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)**

*In response to reports that the H-1B cap is near being exhausted, William R. Yates, Deputy Director of the U.S. Citizenship and Immigration Services (USCIS), stated:*

"We are not near the cap at this time. ...[W]e will release information at the end of January regarding where we stand and at that time will decide whether we need to notify customers of a projected "cap date." Of course it is theoretically possible that we could reach the cap by the end of the calendar year but we would have to receive record levels of filings.... I still believe that we will hit the cap this spring, but I won't be more specific until I see the numbers in January."

## **QUICK INFORMATIONAL BYTES:**

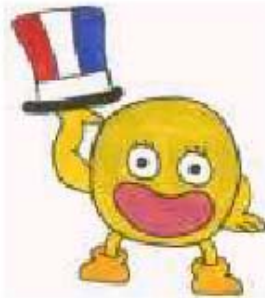
### **HHS Reopens Physician Waiver Program**

SOURCE: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

*The US Department of Health and Human Services recently reopened its J-1 waiver program for physicians working in underserved areas.*

Several additional rules were announced, such as:

- 1) Only facilities in Health Professional Shortage Areas with a score of 14 will qualify (previously, facilities in any Health Professional Shortage Area as well as Medically Underserved Areas were eligible)
- 2) The only qualifying facilities will be health centers qualified under the Public Health Service Act, rural facilities as defined by the Social Security Act and Native American/Alaskan Native tribal facility



***Citizen Immi says: During 2003, the Bureau of Diplomatic Security worked closely with the Bureau of Consular Affairs to promote and establish a proactive, zero tolerance policy toward passport and visa fraud***

### **Bureau of Diplomatic Security Criminal Program Accomplishments for Fiscal Year 2003**

SOURCE: AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

In 2003, the Bureau of Diplomatic Security embarked on new program initiatives which led to the following investigative successes:

- 1) 82% increase in total individuals arrested for passport and visa fraud.
- 2) Execution of four large-scale visa malfeasance investigative operations at the U.S. Embassy in Prague, Czech Republic, the U.S. Embassy in Colombo, Sri Lanka, and U.S. Consulates in Nuevo Laredo and Ciudad Juarez, Mexico, that resulted in the arrest of 16 individuals four Foreign or Civil Service employees, four Foreign Service National employees, and eight other associated individuals.
- 3) Arrest of 70 wanted U.S. fugitives in fiscal year 2003 as a result of the Diplomatic Security-U.S. Marshals Service partnership.
- 4) Participation on 19 domestic Joint Terrorism Task Forces to provide assistance on national and international counterterrorism investigations.

- 5) Establishment of the Vulnerability Assessment Unit within the Office of Fraud Prevention Programs in the Bureau of Consular Affairs.
- 6) Participation with Consular Affairs on overseas Consular Management Assistance Teams, established by the Bureau of Consular Affairs.
- 7) Co-location of thirteen Diplomatic Security domestic field and resident offices with Consular Affairs Passport Agencies in order to expedite the referral of suspected passport fraud incidents for investigation.
- 8) Establishment of monthly Diplomatic Security and Consular Affairs senior-level management meetings to discuss ongoing passport and visa fraud cases, problem areas, and joint initiatives.

## **QUESTIONS AND ANSWERS:**

*Explanation:* If you have questions concerning immigration related issues or concerns and are of a non-advice and pure general interest nature, please e-mail them to [tolsen@tlolaw.com](mailto:tolsen@tlolaw.com).

## **IMPORTANT IMMIGRATION RELATED WEB SITES:**

<http://www.uscis.gov/graphics/index.htm>

- US Citizenship and Immigration Services Web Link

<http://www.dol.gov/>

- Dept. of Labor Web Link

<http://www.state.gov/>

- Dept. of State Web Link

<http://www.embassy.org/>

- Embassies in Washington D.C. Web Link

<http://www.aviso.net/government/embassies/>

- Embassies Located Inside and Outside U.S. Web Link

## **CONTACT INFO**

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