

# **E-Verify System Redesign • NJ Senators Introduce E-Verify Initiative • PIMS and Visa Issuance Delays • Increased Visa Application Fees**

**June 11, 2010**

## **DHS Announces E-Verify System Redesign**

The Department of Homeland Security (DHS) has announced a redesign of the E-Verify system that will become effective this Sunday, June 13th. On their first time logging in after the update becomes effective, users will be required to complete a new tutorial on the system enhancements before proceeding to use the E-Verify system. DHS estimates the process will take about 20 minutes. User log in information will not change.

Changes to the system are intended to enhance security and usability, creating an environment in which each user can confirm when she last logged in, and can easily identify any pending matters. DHS has simplified and modernized many of the terms used in the system, and has created a more streamlined interface that allows the user to easily see alerts, cases needing action, and view case status for pending matters.

DHS has included a feature in the redesigned system where E-Verify notifies a user of the expiration of any Employment Authorization Document (EAD) entered as employment authorization, since an employer must, on Form I-9, reverify the employment authorization of an employee working pursuant to an EAD card. The employer is cautioned, however, that it should not create a new E-Verify case for the employee; the alert provided by E-Verify is a one-time courtesy only.

We will continue to keep you apprised of E-Verify issues as they arise.

**State Immigration Legislation: NJ Considers E-Verify Measure, and other  
Reactions to the Arizona Law**

In the wake of Arizona's very restrictive immigration law (discussed in our last alert), reactions around the country have remained very much in conflict. While many speakers continue to support the ideas espoused by Arizona – that a state can and should take steps to enforce immigration if the Federal government does not do so – an equal number of commenters are offended by what they claim unconstitutionally interferes with an area of federal law, and is potentially discriminatory. Many private groups have either acted out in protest, or are threatening to do so. Actions include boycotts – for example, the American Immigration Lawyers Association relocated a conference scheduled to take place in Phoenix in the fall of 2010, and Major League Baseball is considering moving the All Star Game. The Phoenix Suns basketball team protested the law by changing their uniforms to show the team name in Spanish, and the Republican Party cited the law as one reason they did not choose Phoenix as the location for their 2012 National Convention, instead selecting Tampa.

Public bodies have also weighed in: In New York Governor Paterson established a commission to speed through pardons for deserving foreigners facing deportation for old crimes; New Mexico's House of Representatives passed a bill recognizing the contributions of foreigners, and Governor Richardson strongly states his opposition to the new Arizona law; and, Los Angeles City Council voted to ban travel to Arizona in protest.

In one of the latest signs of states wading into the immigration pool, a bill barring employment of unauthorized workers, and requiring all employers in the state to use the Federal government's E-Verify employment eligibility verification system, was introduced to New Jersey's Senate on May 10th, by Republican Senators Robert Singer and Steven Oroho. The bill would also require the New Jersey Department of Labor and Workforce Development to develop and implement a program to randomly audit employers for compliance with the E-Verify program. Penalties include possible fines, and suspension of the employer's business license for at least 10 days for intentional hires of unauthorized workers. The bill has been referred to the Senate Labor Committee. An identical bill was introduced into the New Jersey Assembly on May 6, 2010 by Republican Assemblyman Ronald Dancer, and has been referred to the Assembly Labor Committee.

This is not the first time New Jersey has seen a bill of this nature. The first variation of a state bill prohibiting employment of an unauthorized worker, and requiring verification under state mandate, was made in June 2009. Another variation, not requiring verification, but penalizing an employer that hires an unauthorized worker by barring it from any public contract, grant, loan or tax incentive for seven years, was introduced as early as November 2007. Bills of this nature have never before progressed very far in the New Jersey legislature. Republican Governor Chris Christie has not spoken directly on this topic, but his prior public statements indicate that he may have a more nuanced appreciation for the “immigration issue” than many of his colleagues.

While it is unclear how much traction the N.J. bill will get in the state’s legislature, and ultimately before Governor Christie, it is one more sign that immigration is a topic that will not fade away, and the federal government will be compelled to address. Despite the numbers of protests that have arisen in response to the Arizona, the balance of public opinion clearly weighs in favor of improved, if not increased, enforcement of our country’s immigration laws.

### **PIMS and Visa Issuance Delays**

In November 2007, the Department of State (DOS) issued a cable to all U.S. Consular posts around the world, introducing the Petition Information Management Service (PIMS), an electronic repository for all petition-based cases and results. DOS instructed all Consulates to verify nonimmigrant petition details, using PIMS, prior to visa issuance. The initiative is seen as a means to reduce visa fraud, and ensure that everyone who receives a petition-based nonimmigrant visa is entitled to that visa.

The system has been imperfect since its introduction. Although the electronic database was originally intended to make it unnecessary for a visa applicant to present a hard copy of either the original approval notice or a photocopy of the petition filed with United States Citizenship and Immigration Service (USCIS), that has not occurred in practice. In fact, creation of the PIMS system has even increased the filing burden on petitioners, by requiring them to submit a duplicate copy of all signed petition forms, support letter, and Labor Condition Application (where applicable) with every petition. Previously, duplicate petition copies were only required when the petitioner requested consular notification, and were not needed if an extension or change of nonimmigrant status was sought.

Finally, and most critically for today's visa applicants, there are times that a Consular official cannot locate the applicant's relevant PIMS record, and visa issuance is delayed while the DOS contacts the PIMS administrative center in the U.S. to seek appropriate verification from USCIS. It is impossible to predict in advance if a particular applicant will be subject to this delay, and the additional processing may add anywhere from several days to several weeks to the visa application process. Most frustrating for visa applicants and their lawyers is the fact that the PIMS system is entirely intra-governmental: the provision of information and the entry of data occurs only between the relevant government agencies, and does not allow for formal participation by outside parties, such as lawyers, petitioning employers, or the foreign workers. Although its exact impact is unclear, as immigration counsel, we try to foster communication between DOS and USCIS, to seek resolution to the issue in individual cases.

## **Conclusion**

PIMS is now the sole source by which a Consular Officer may confirm petition approval details before issuing a nonimmigrant visa. Unfortunately, missing or incomplete data in PIMS may result in visa issuance delays. As always, we recommend that foreign nationals plan well in advance for any international travel and allow ample time to apply for a visa before travel to the U.S.

Some consulates – like the U.S. Consulate in Hong Kong – request that visa applicants provide them with the petition receipt number in advance of the visa application so that they can conduct a preliminary search of the PIMS system to forestall any delays. We hope that this practice becomes more widespread, as it seems like the most effective way to reduce processing delays resulting from routine administrative practice rather than substantive criminal, security, or technology-based questions, which objectively warrant more time and attention.

Unfortunately, there is no guaranteed method to avoid a PIMS delay, and a visa applicant may be subject to processing delays even if all of these steps are followed. If a foreign worker is subject to any visa processing delay, we strongly encourage that she, or her employer, contact immigration counsel for assistance in communicating with proper DOS and USCIS channels.

CBP Announces the End of the Paper Departure Card for Certain Visitors

On May 20th, the Department of Homeland Security (DHS) announced that it was eliminating the paper arrival/departure record (Form I-94W) that is issued to temporary visitors to the U.S. participating in the Visa Waiver Program (VWP). This step is feasible due to the fact that pre-screening measures aimed at gathering critical information about visa-free travelers to the U.S. prior to their trip to the U.S. allow the government to evaluate and track visitors more effectively than the paper card issued at a U.S.-based airport. Because of these tools – including Electronic System for Travel Authorization (ESTA) and early notification of passenger lists by airlines – DHS has determined that the paper I-94W card no longer serves its original purpose of determining whether a visitor poses a particular threat. Use of the paper I-94W card will be eliminated for VWP visitors arriving in the U.S. with ESTA clearance by the end of the summer.

#### State Department Increases Nonimmigrant Visa Application Fees; Establishes Tiered System

On May 20th, the U.S. Department of State (DOS) issued an interim final regulation implementing a fee increase for most nonimmigrant visa applications, and applications for border crossing cards. The fee increase became effective on June 4th, and applies to any nonimmigrant visa or border crossing card applications going forward.

The rule raises the basic Machine Readable Visa (MRV) application fee from \$131 per visa to \$140 per visa, but also institutes a tiered system of fees, with higher MRV fees charged for applications the DOS has determined take greater resources.

For all petition-based nonimmigrant visa applications, for individuals applying for a visa in the H, L, O, P, Q and R nonimmigrant visa categories, the MRV fee is \$150 per visa. E visa applicants are required to pay a MRV fee of \$390 per visa, and K visa applicants a per-visa fee of \$350. All other nonimmigrant visa applicants – including those applying for a visitor visa (B), student visa (F, M), or exchange visitor visa (J), among others – are subject to the basic \$140 fee.

Please contact an attorney in the Proskauer Immigration Group if you have questions about these or any other topics in immigration.