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Immigration Update – March 30, 2007

DHS Proposes to Relax Land/Sea Passport Rules for Children

As part of an upcoming notice of proposed rulemaking on the Western Hemisphere Travel Initiative (WHTI), the Department of Homeland Security (DHS) plans to provide significant flexibility on requirements for travel documents for U.S. and Canadian children entering the U.S. via land or sea ports. The proposal would allow U.S. and Canadian citizen children 15 and under, with parental consent, to cross the border at land and sea ports with a certified copy of their birth certificate as an alternative to a passport or other WHTI-compliant identity document. Also, U.S. and Canadian citizen children, ages 16 through 18, traveling with public or private school groups, religious groups, social or cultural organizations or teams associated with youth athletics organizations would be able to enter at land or sea ports under adult supervision with a certified copy of their birth certificate.

The initial phase of WHTI travel document requirements went into effect in January, requiring all air travelers regardless of age to present a passport for entry into the U.S. The DHS proposal does not affect the requirements for air travel.

The DHS said that a proposed rule addressing land and sea travel will be published at a later date and will include additional details on requirements for travelers entering the U.S. through land and sea border crossing. The DHS plans to continue to issue WHTI-compliant border crossing documents for frequent border crossers under its trusted traveler programs. In related news, the Department of State has announced that it will soon allow U.S. citizens to obtain a Passport Card as a lower-cost alternative to a passport.

The DHS announcement is posted at http://www.dhs.gov/xnews/releases/pr_1172167923684.shtm.

Immigrant Visa Backlogs Continue to Increase

Immigrant visa backlogs for employment-based applicants continue to increase, with no forward movement since December 2006 in the worldwide Third Preference (EB-3) category, or in the Second Preference (EB-2) category for China or India. During this same time the EB-2 category has moved forward only 2 weeks for India, 1 week for Mexico, and not at all for China and the Philippines.

The Department of State (DOS) has said that little if any forward movement in the EB-3 category is expected in the near future, and there could even be retrogression (backward movement) in EB-3 cut-off dates during the spring and summer months. The DOS has also announced that the Other Worker (EW) category for low-skilled workers will become “unavailable” during May.

The DOS’s monthly Visa Bulletin is posted at http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

DHS Launches Traveler Redress Inquiry Program

The Department of Homeland Security (DHS) has launched the DHS Traveler Redress Inquiry Program (DHS TRIP) to enable travelers to resolve watch list misidentification issues. DHS TRIP provides a way for travelers to address situations where they have been incorrectly delayed, denied boarding, identified for additional screening, or have otherwise experienced difficulties when seeking to enter the U.S. The program also "facilitates redress information sharing" among the DHS's agencies and creates internal performance measures to monitor progress.

DHS said that DHS TRIP enables travelers to outline their concerns in a single request via a secure Web site. The information received will be shared with appropriate DHS component agencies, such as the Transportation Security Administration and the Department of State.

For more information on DHS TRIP or to use the system, see http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm.

CBP Establishes Traveler Complaint Website

U.S. Customs and Border Protection (CBP) has launched a website for handling traveler complaints. CBP has four primary programs to address customer complaints and feedback: the Comment Card Program, the Customer Service Center, Passenger Service Representatives and a telephone/verbal complaint response system.

An outline of the CBP's response programs and information on how to file a complaint are available at http://www.cbp.gov/xp/cgov/travel/customerservice/handle_complaints.xml.

BIA Says Child Status Protection Act Applies to Person Who Filed for Adjustment After Effective Date

The Board of Immigration Appeals (BIA) sustained the appeal and remanded the case of a person whose visa petition was approved before the August 6, 2002, effective date of the Child Status Protection Act (CSPA) but who filed an adjustment of status application after that date. The BIA said the respondent retained his status as a child and did not “age out” of the immediate

relative category as an unmarried child of a U.S. citizen because he was under the age of 21 when the visa petition was filed on his behalf.

Among other things, the BIA found no indication that Congress intended to exclude from coverage of the CSPA those whose visa petitions were approved before its effective date but who waited until after that date to file an adjustment application. The BIA noted that the CSPA was created to remedy the problem of minor children of U.S. citizens losing their immediate relative status and being "demoted" to the family first preference category as a result of the backlog in adjudicating visa petitions and applications for adjustment of status.

The full text of the case is posted at <http://www.usdoj.gov/eoir/vll/intdec/vol24/3551.pdf>.

Questions

If you have any questions about the information in this newsletter, please contact one of the Trow & Rahal attorneys listed below.

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