

**IMMIGRATION NEWS: THE REAL ID ACT AND ITS EFFECTS ON
IMMIGRANTS, PERM UPDATE, EFFORTS TO REDUCE FRAUD IN LABOR
CERTIFICATION SUBSTITUTIONS, AND H-1B UPDATE**

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by

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The last month has brought many changes on the immigration front. Outlined below are brief overviews of several of the recent changes of interest:

- **THE REAL ID ACT AND ITS EFFECTS ON IMMIGRANTS:** On May 11, 2005, President Bush signed into law the “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005”. While dealing primarily with what the title of the law describes (increasing funding for the war on terror in Afghanistan and Iraq and providing additional funds for the tsunami relief effort), numerous immigration provisions were attached to the Bill and thus signed into law on May 11 as well. The most controversial immigration provision is the Real ID Act, which will become effective on May 11, 2008. Most immigrants will feel the effect of this Act when they attempt to obtain or renew their driver’s license, as this Act requires federal agencies to accept for official purposes only those driver’s licenses or state-issued ID cards which meet certain minimum document requirements and issuance standards. These official purposes would include, but are not limited to, granting access to federal facilities, boarding federally regulated aircraft (such as commercial airliners), entering nuclear power plants and other such purposes.

Critics of the Real ID Act point out that the federal government has not passed any bill to fund this mandate. Individual states, meanwhile, are concerned about how they will pay to make the changes necessary to comply with the mandate. States are required to enter into an agreement with the Department of Homeland Security by September 11, 2005, indicating that they will comply with this mandate. If states choose to continue issuing driver’s licenses or ID cards that are not in compliance with this mandate, they will be required to use a unique design or color and clearly indicate that the cards may not be accepted by any federal agency.

In addition, some immigration groups have contended that the ultimate result of this Act will be more uninsured drivers on the road. If a person cannot obtain a driver’s license, he or she will be unable to obtain insurance on their motor vehicle as well, resulting in higher rates of uninsured drivers. Immigration

groups also feel that this Act will push illegal immigrants further into the shadows and increase the black market for fraudulent documents, such as driver's license and birth certificates.

Proponents of the Real ID Act surmise that it will compel immigrants to return to their home country if they are not able to obtain a driver's license, board a federally regulated aircraft, and the like.

In order to comply with the Real ID Act, a person will have to prove their lawful immigration status, whether a U.S. Citizen, Lawful Permanent Resident, or an immigrant in other lawful status. In addition, not all lawful immigrants will be able to obtain a driver's license or state-issued ID card under this Act.

Stay tuned to www.longchangonline.com for further news and updates regarding the Real ID Act.

- **PERM UPDATE:** The Department of Labor continues to publish updates on the PERM situation. To date, the DOL has issued three lists of Frequently Asked Questions (FAQs). To read these, please visit -----

To date, there have been no reported PERM approvals. As of April 28, 2005 (one month after the effective start date of PERM), DOL reports that 700 PERM cases have been filed (including 100 cases that were re-filed from the previous Labor Certification System), and over 1000 applications have been saved as incomplete on the online PERM system (as employers are either waiting until their advertisements are complete or are waiting on more information as to the specifics of new law). These figures indicate an average of only 14 completed applications per state.

Stay tuned to www.longchangonline.com for further PERM developments and updates.

- **EFFORTS TO REDUCE FRAUD IN LABOR CERTIFICATION SUBSTITUTIONS:** The American Immigration Lawyers Association recently announced that the Department of Labor recently proposed a rule entitled "Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse". The Office of Management and Budget review now has up to 90 days to review the regulation, which is believed to seek to curtail or eliminate the substitution of beneficiaries on Labor Certification applications, and decide whether to withdraw, revise or approve the proposed regulation.
- **H-1B UPDATE:** On May 5, 2005, a new H-1B law was published in the Federal Register creating 20,000 new H-1B visas. The new law clarifies that the 20,000 visas are only available to graduates of U.S. colleges or universities who have a Masters Degree (or higher). These visas are expected to be used quickly.

As readers of www.longchangonline.com know, the H-1B cap of 65,000 was reached on October 1, 2004, the first day of the new fiscal year (which runs until October 1, 2005). Therefore, if an individual is in need of an H-1B visa, does not have a Masters Degree or higher from a U.S. college or university, and does not qualify for exemption from cap, then the earliest possible date that

individual may start working is October 1, 2005. Employers may file petitions for individuals who wish to start working on October 1, 2005, as early as April 1, 2005 (six months prior to the start date).

Stay tuned to www.longchangonline.com for further H-1B developments and updates.

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