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Immigration Attorneys

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This Month's Featured Article

Social Security Numbers for E-2 Spouses

The Social Security Administration recently announced that E-2 spouses are eligible for a Social Security Number without having an Employment Authorization Document (commonly referred to as an "EAD" or "work permit"). This guidance means that a spouse of the principal E-2 visa holder can file for a Social Security Number with the Social Security Administration ("SSA") as soon as he or she enters the United States on an E-2 visa or, if already in the United States, at such time as the change of status to E-2 is approved by USCIS. An Employment Authorization Document is required in order to work legally in the United States as an E-2 spouse but it not required in order to apply for a Social Security Number with the SSA.

What documentation does an E-2 spouse need to apply for a Social Security Number?

The documentation required to apply for a Social Security Number depends on whether or not the E-2 spouse has an EAD. All individuals must complete the Form SS-5 (Application for a Social Security Card). In addition, if the E-2 spouse has an EAD, he or she needs to produce it when applying for the Social Security Number. If the E-2 spouse does not have an EAD, then he or she needs proof of the principal E-2's status (Form I-94) and a marriage certificate (with certified English translation) to prove that he or she is indeed an E-2 spouse.

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Social Security Numbers for E-2 Spouses

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How does the new SSA policy differ from the previous policy?

This new policy allows an E-2 spouse to obtain a Social Security Number much faster than in the past. Previously, the E-2 spouse had to file for an Employment Authorization Document on Form I-765 and have the EAD issued. The process of filing the Form I-765 and receiving the EAD typically took up to 3 months. With the EAD, the E-2 spouse then had to go to the local Social Security Administration office and apply for a Social Security Number.

What is the advantage of the new SSA policy for E-2 spouses?

Obtaining a Social Security Number is often needed when applying for a driver's license or to open up a U.S. bank account. Thus, being able to file for the Social Security Number without an EAD allows E-2 spouses to obtain these critical benefits must faster than before.

Does an E-2 spouse still need an Employment Authorization Document in order to work legally in the United States?

While it is now clear that an EAD is not required in order to obtain a Social Security Number, there is likely to be some confusion in the immigrant community about whether an Employment Authorization Document is still required in order for an E-2 spouse to be able to work legally in the United States. The SSA announcement states that the E-2 spouse is "authorized to work without specific DHS authorization." That simply is not correct. Despite the SSA's recent announcement, the Department of Homeland Security has not changed its policy of requiring a valid Employment Authorization Document for the E-2 spouse before the E-2 spouse can lawfully work.

Section 214(e)(6) of the Immigration and Nationality Act ("INA") states:

> *"In the case of an alien spouse admitted under section 101(a)(15)(E), who is accompanying or following to join a principal alien admitted under such section, the attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an 'employment authorized' endorsement or other appropriate work permit."*

In addition to the statutory requirement of obtaining a work permit before being authorized to work, the USCIS previously issued a Memorandum entitled *"Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determination on the Requisite Employment Abroad for L Blanket Petitions"* which provides that, "[t]o obtain employment authorization ad a document evidencing this authorization, the E or L nonimmigrant spouse must file Form I-765, Application for Employment Authorization, and submit the required fee." As a result, E-2 spouses who enter on an E-2 visa or who obtain a change of status to E-2 status still must apply for the Employment Authorization Document before working. The only change resulting from the SSA announcement is that the E-2 spouse can apply for the Social Security Number before (rather than after) obtaining the EAD.

What happens if the E-2 spouse works without first obtaining an Employment Authorization Document or worker permit?

It is important for E-2 spouses to abide by this requirement of obtaining an Employment Authorization prior to working. Failure to do so is considered a failure to maintain status and will jeopardize the E-2 spouse's subsequent ability to extend or change status or apply for permanent residence.

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Social Security Numbers for E-2 Spouses
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Is the E-2 spouse limited to working only for the E-2 business?

No. Once the E-2 spouse obtains the Employment Authorization Document, he or she can work at any job (i.e., the E-2 spouse is not limited in working only for the E-2 enterprise."). The key is that the E-2 spouse must obtain an EAD before working in any job, and the E-2 spouse must keep the EAD current. Since EADs are issued in one-year installments and E-2 status is usually valid for multiple years, the E-2 spouse must apply to renew the EAD if he or she wants to work throughout the duration of E-2 status.

Are E-2 children eligible for an Employment Authorization Document or a Social security Number?

Unfortunately, the E-2 children still are not authorized to work (they cannot obtain an Employment Authorization Document) or obtain a Social Security Number based on derivative E-2 status.

Our firm will continue to monitor this important issue and will post any updates on our website at www.longchangonline.com.

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H-1B Cap Already Reached for Fiscal Year 2007

The Congressionally-mandated cap of 65,000 H-1B visas for Fiscal Year 2007 (for employment dates October 1, 2006-September 1, 2007) was reached on May 26, 2006 (over 4 months before the start of the next fiscal year). This is the earliest date for reaching the cap. The H-1B cap for Fiscal Year 2006 was not reached until August 10, 2005. This means that, as of May 26, 2006, USCIS has received enough cap-subject H-1B petitions requesting an employment start date during Fiscal Year 2007 to reach the H-1B cap. USCIS will not accept any new H-1B petitions which are subject to the cap at this time. USCIS will continue to accept H-1B petitions which are filed for H-1B extensions, to change the employment terms of an existing H-1B worker, to allow current H-1B workers to change employers and to permit current H-1B workers to work at a second H-1B position.

For employers and individuals who are subject to the cap and have been blocked out because of the H-1B cap at this time, there are four possible avenues which may provide some relief:

(1) New legislation adding additional H-1B numbers for Fiscal year 2007 could be passed. The comprehensive immigration reform bill (S. 2611) passed by the U.S. Senate includes a provision which would increase the H-1B cap to 115,000, and would have a mechanism for increasing the H-1B cap in future years where the H-1B cap was reached in the preceding year. However, this Senate bill has not been passed. It still must be reconciled with an immigration bill previously passed by the U.S. House of Representatives.

(2) There are several exemptions from the H-1B cap. These exemptions cover workers who will be employed at institutions of higher education or at a non-profit institution related to or affiliated with an institution of higher education, as well as workers at nonprofit or governmental research organizations. As a result, if the employment falls under one of the exemptions from the H-1B cap, then the H-1B petition will still be accepted by USCIS.

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H-1B Cap *(Continued from previous page)*

(3) Under the H-1B Visa Reform Act of 2004, 20,000 H-1Bs (separate from the H-1B cap of 65,000) for H-1B beneficiaries who have graduated from a U.S. institution of higher education with a master's degree or higher degree. Those graduates of U.S. universities or colleges with this type of degree are exempted from the H-1B cap.

Stay tuned to www.longchangonline.com for additional updates on H-1B news and other current immigration news.

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AILA Annual Immigration Conference Provides Insights on the Prospects for Immigration Reform and the Status of Labor Certification Cases

We recently attended the annual conference of the American Immigration Lawyers Conference in San Antonio, Texas from June 21 – June 25, 2006. Highlights of the conference include the following:

Prospects for Comprehensive Immigration Reform

The most widely talked about topic at the conference seemed to be the status of the competing immigration reform proposals in Congress. As has been widely reported, the Senate and the House of Representatives each have immigration bill in Congress. The Senate bill includes enforcement provisions as well as a guest worker program and a path to citizenship for many undocumented immigrants. In contrast, the House of Representative has no such guest worker program or path to citizenship. The House bill focuses on enforcement only. In order for immigration legislation to be passed into law, these competing bills must be reconciled. That is to say, both sides of Congress must negotiate and agree on a bill that the full Congress can vote on.

It was widely reported that this compromise would hopefully be worked out in advance of the November 2006 Congressional elections. Unfortunately, the Republican leadership in the House of Representatives announced last week that Republicans in the House of Representatives would hold town hall meetings on the controversial immigration issue. The political spin is that they want to get feedback from constituents before voting on the issue. This is a huge stumbling block to any prospect of comprehensive immigration reform. First, it will take several additional weeks, if not months, to hold these planned town hall style meetings with local constituencies. Second, the longer it takes, the closer it will be to the November 2006 elections. As we get closer to these elections, the prospects for legislation being passed decrease since Congressman do not want to vote on such a controversial issue just before an election. As a result, we likely will not have a vote on this issue until after the November 2006 election. The period after the election but before the next Congress takes effect is often called a "lame duck session" of Congress. It is possible that comprehensive immigration reform could be voted on at that time since individual members of Congress might be willing to vote on this issue or take a stand without fear of being voted out of office. If legislation is not passed during that session, then it is likely that nothing will happen during this session of Congress and the issue will have to be taken up again in next year's Congress.

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AILA Insights *(Continued from Previous Page)*

Update on Labor Certification Issues

Another hot topic at this year's immigration conference was the labor certification system. Officials from the Department of Labor indicated spoke on both the pre-PERM labor certification systems and the current PERM process.

Regarding the pre-PERM system, the DOL indicated that by the end of July all 45-day letters should have been sent out. 45-day letters are letters that the DOL sends to the employer asking whether the employer wants to continue the case or not. In addition, the DOL explained that it will soon have an e-mail system in place for attorneys to inquire about cases improperly closed. Many pre-PERM cases have been mistakenly closed by the DOL for failure to respond to a 45-day letter when in fact no such letter was ever sent out or the letter was properly responded to within the 45-day period. Thus, if your case has been improperly closed, there should soon be a system in place for getting the case re-opened. The DOL confirmed that it has a target date of completing all per-PERM cases at the Backlog Reduction Centers by September 2007!

Regarding PERM cases, the general consensus is that the PERM computer system still has numerous glitches or problems and that DOL is working to correct these issues as they arise. DOL officials stressed that, if at all possible, the PERM application should be submitted online instead of by mail. A mailed-in application will take approximately 3 months to be inputted into the system. Despite repeated inquiries as to what types of issues would trigger an audit by DOL, the DOL officials refused to specify any particular items, but confirmed that there are certain "red flags" which will usually trigger an audit. DOL did, however, state that, once a response to an audit is filed, they should wait at least 120 days before following up with DOL to check on case status.

Finally, DOL provided an update on the status of the first PERM case to be appealed to the Board of Alien Labor Certification Appeals (BALCA). That case involves an automatic rejection by the DOL PERM system because the attorney mis-typed the date that a Sunday advertisement was published in the newspaper. The PERM application was filled in using a Monday date instead of the previous day's Sunday date. The PERM computer recognized that the listed date was not a Sunday date, and the case was automatically rejected. Even though the employer had a copy of the Sunday ad and stated that it was just "harmless error" the DOL disagreed and denied the case. BALCA will now decide whether such "harmless errors" can be corrected in the future. In the meantime, one thing is clear – the PERM system demands exactness!

* * * * * * * * * * * *

Another Bump in the Road for Comprehensive Immigration Reform

Recent reports indicate that Rep. Mike Pence (R-Indiana) plans on introducing yet another immigration reform bill in this year's Congress. As Rep. Pence puts it, his bill is a "no amnesty" approach to fixing the immigration problem. To say the least, his proposed bill leaves a lot to be desired. Its planned introduction is problematic in three major ways:

1. It will add yet another immigration bill to the already troubled immigration debate in the Senate. The House of Representatives and the Senate have each already passed their own separate immigration bills. Rather than trying to work out a compromise version of the two existing bills, the House (led by its Republican base) has launched a series of field hearings to take place at

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Another Bump *(Continued from previous page)*

various places throughout the United States this summer. The Republicans say that the rationale for the field hearings is to gain the pulse of the American people on immigration reform. In reality, the field hearings are a delay tactic (the hearings will take place over the next several months, thus not leaving enough time before the November mid-term Congressional elections to work out a compromise immigration bill) and an attempt to sidetrack the movement for comprehensive immigration reform (many believe that the House Republicans are seeking to secure enough anti-immigrant sentiment through its field hearings to sidetrack the immigration reform process entirely). With the waters already muddied at this point, yet another immigration bill such as the one proposed by Rep. Pence will only add to the confusion.

2. Rep. Pence's plan seeks to incorporate most of the House bill (H.R. 4437) with only minor changes. If you recall, H.R. 4437 (passed in December 2005) provides for enforcement-only immigration reform and would make felons out of any immigrant here illegally, even as a result of technical or minor status violations.

3. Rep. Pence's plan calls for an extremely limited guest worker program which would require immigrants to "self-deport" before becoming eligible for any guest worker program. This "guest worker" program would not take place, however, until the borders are secured (when that near-impossible goal is accomplished is anybody's guess).

With that in mind, I personally e-mailed Rep. Pence to express my displeasure with his proposal. Following is the text of my e-mail correspondence:

> *Rep. Pence, I am (to say the least) disturbed and upset by your planned action of introducing the self-proclaimed Pence Plan in Congress rather than encouraging debate and conference action on Comprehensive Immigration Reform.*
>
> *As you know, the House and Senate have each passed their own versions of an immigration reform plan. Unfortunately, rather than addressing the issue "head on" and trying to reach a middle ground that the entire Senate can agree upon, you and many other Republicans refuse to acknowledge what the overwhelming majority of American people want -- COMPREHENSIVE reform. Launching your own bill (the Pence Plan) when the House and Senate have already passed their own bills is a needless waste of time and money. The American people deserve better -- we deserve an "up or down" vote on COMPREHENSIVE immigration reform, not the introduction of unrealistic bills to cater to your right-wing, narrow-minded constituency. If this Congress cannot agree on a comprehensive solution to the broken immigration system, then I would understand if you introduced your bill in the NEXT Congress. For the time being, however, I strongly encourage you to let this Congress have its debate on the immigration bills already passed by the House and the Senate.*
>
> *Your approach of enforcement-only then a limited guest worker program is not realistic, will not solve the immigration problem and has already been rejected by the Senate when it passed its version (if you followed the Senate debate leading up to passage of its bill, an amendment to the Senate bill requiring an enforcement-only approach before a guest worker program could be introduced was flatly rejected by the Senate Judiciary Committee chaired by Sen.*

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Another Bump *(Continued from previous page)*

> *Specter. Why then would you waste the Congress's time by introducing your bill after the Senate already rejected that approach?*
>
> *I urge you to reconsider your flawed plan before you further waste this Congress's valuable time yet again.*

Stay tuned to www.longchangonline.com for further updates on the movement for comprehensive immigration reform!

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President Bush Calls for Comprehensive Immigration Reform as New Legislation is Introduced in Congress

In a speech delivered on July 24, President Bush again reiterated his support of comprehensive immigration reform by stating:

> *I support a comprehensive immigration reform that will accomplish five clear objectives. First, we'll secure our borders. Second, we must create a temporary worker program that provides foreign workers a legal and orderly way to come into the country and do jobs Americans aren't doing. We must hold employers to account for the workers they hire. In other words, it's against the law to hire an illegal immigrant, and we're going to hold employers to account.*
>
> *We must resolve the status of millions of illegal immigrants who are here already. We shouldn't be granting people automatic citizenship, nor is it possible to kick people out of the country. There's got to be a rational way, and I proposed a way forward. And, finally, we've got to honor the great American tradition of the melting pot by helping newcomers assimilate into our society.*
>
> *Congress is now considering legislation on immigration reform; that legislation must be comprehensive. All elements of the problem must be addressed together, or none of them will be solved at all.*

It is clear from his remarks what the President means by "comprehensive" immigration reform – any immigration legislation must have both benefits (a temporary or guest worker program whereby the undocumented population has a path to permanent resident status) and enforcement measures (strengthening border security and ensuring that employers comply with the laws against hiring undocumented workers).

The President made his remarks at a time when yet another immigration bill (known as the "Good Neighbor SAFE Visa Program") is set to be introduced in Congress which would break immigration reform up into two distinct phases – enforcement first, then (once it is determined that the border is secure) a guest worker program. It is beginning to look like that may be the only way for immigration reform to get passed at this point in time. The obvious question then becomes – if we do enforcement first, when will the temporary worker program come? The answer to that questions is far from clear. According to Rep. Pence (one of the architects of this new plan), the Good Neighbor SAFE Visa Program requires that certain border security measures take place for the first 2 years after enactment. He further states that "After two years, if completed, and if certified as complete by the President to Congress, a no amnesty temporary worker program can begin." It is difficult to see

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Bush Speech *(Continued from previous page)*

how the border can be secured in two years without a temporary worker program that will ease the pressure on the border. Thus, the benefits portion of this plan likely would be delayed beyond the anticipate two–year period. Stay tuned to www.longchangonline.com for continuing updates on this immigration legislation.

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.

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Kristen Aekyung Chang *is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.*

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.

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David J. Long *founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.*

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.

Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy.Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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