New Immigration Policies May Affect Foreign Nationals' Summer Travel Plans

By Robert F. Loughran

For three categories of non-citizens, U.S. government agencies have modified or begun more strictly enforcing several of the policies and procedures regarding the ability to return to the United States. Applicants for Adjustment of Status, Venezuelan citizens, and Lawful Permanent Residents all face new developments in enforcement procedures that affect their capability to enter and exit the United States. Consequently, foreign employees who intend to travel this summer and return to the United States should take additional precautions to preserve their ability to reenter after their trip, or may need to forego or postpone travel arrangements until government agencies issue the relevant documentation or suspend the current enforcement standards.

Advance Parole Travel Documents for Pending Adjustment of Status Applicants

U.S. Citizenship & Immigration Services (CIS) and U.S. Customs and Border Protection (CBP) have begun stricter enforcement of certain requirements regarding the validity of Advance Parole Travel Documents for reentry into the United States when the entering traveler has a pending application for Adjustment of Status (AOS).

The CIS and CBP are now more consistently enforcing an ambiguous regulatory provision which has been interpreted to require that Applicants for Advance Parole Travel Documents must be in possession of the Advance Parole prior to departure in order to use the Advance Parole for reentry without abandoning the pending application for Adjustment of Status (AOS). Consequently, applicants must now depart and return while in the possession of the same Advance Parole Travel Document.

While it has always been the case that an Applicant for Adjustment of Status must have an Advance Parole travel documents at the time of departure to prevent abandoning his or her application, the CIS now stresses that the Advance Parole used to reenter the United States must be the very same document in possession of the intending immigrant prior to departure. Based on recent CIS announcements affirming this interpretation, the CBP may no longer admit an individual who held a valid Advance Parole when departing, received a new or "extended/renewed" Advance Parole document while abroad, and seeks reentry into the United States using the new or "renewed" Advance Parole document.

In order to avoid difficulty or potential exclusion when reentering the United States, all AOS Applicants who are required to have an Advance Parole Travel Document for return to the United States must have their Advance Parole Travel Document in their possession prior to departure and must use that same Advance Parole Travel Document in order to return. Individuals who have departed while in possession of one Advance Parole Travel Document must return prior to the expiration date on that same document, even if they subsequently have filed for a new Advance Parole Travel Document and receive the new document while they are abroad.

Venezuelan Passport Policy

U.S. Immigration Inspectors at several major ports-of-entry into the United States have been instructed to refuse entry to Venezuelan citizens holding passports that have been expired for more than five (5) years, even if the passport has been officially extended. Extended Venezuelan passport will only be accepted if the original passport expiration date is less than five years prior to the date the passport holder arrives in the United States. This new policy appears to have been fully implemented at the international airports in Houston, Miami and New York. The policy is in the early stages of implementation at other major ports-of-entry, and implementation can be expected at all ports-of-entry in the near future.

Apparently, due to the formal name change of "The Republic of Venezuela" to "The Bolivarian Republic of Venezuela", the government of Venezuela does not appear to be issuing new passports at this time while updated stock is being created by the official printers and distributed to Venezuelan Consulates. Rather, "provisional" passports are being issued as temporary travel documents in the form of a sheet of paper with a photograph attached. These "provisional" passports will not be accepted at U.S. ports-of-entry.

The discontinuance of passport issuance has left some Venezuelan nationals without a secure travel document acceptable for entry into the United States. Individuals with Venezuelan passports which expired in 1999 or earlier will likely have difficulty reentering the United States after traveling abroad, even if their passports have been extended. Additionally, individuals with passports which expired less than five years ago and have been extended may expect to be subject to "secondary inspection" at the port-of-entry, which can take several hours.

Maintaining Permanent Resident Status

Like other non-U.S. citizens, U.S. Lawful Permanent Residents must take steps to maintain their lawful status in the United States in accordance with regulatory requirements. During the past two years, the Citizenship & Immigration Services, Customs & Border Protection (successors to the former Immigration & Naturalization Service, or INS), and the U.S. Department of State have begun to enforce various regulatory provisions more strictly. Lawful Permanent Residents, therefore, should be aware that regulations regarding maintenance of Permanent Resident Status during lengthy trips abroad are now being strictly enforced.

Lawful Permanent Residents who depart the United States and remain outside the United States for a period greater than six months, such as overseas assignments on behalf of their employers, will bear the burden of demonstrating that they did not in fact abandon their Lawful Permanent Resident Status. Lawful Permanent Residents who remain abroad for a continuous period of one year or more will be deemed to have abandoned their Lawful Permanent Resident Status in the United States. Such Residents stand a significant risk of being denied admission to the United States upon their return unless they are in possession of a Returning Resident document from the U.S. Consulate abroad. The odds that a consular officer will issue such a document are, at best, uncertain, and the application may in and of itself trigger the loss of Lawful Permanent Resident Status.

In many cases, Lawful Permanent Residents may best rebut the presumption of abandonment of their Status after prolonged absences from the United States by making a timely filing for a Reentry Permit and, under some circumstances, an Application to Preserve Residence for Naturalization Purposes. However, before departing the U.S. for longer than a four-month period, Lawful Permanent Residents should develop a sound legal strategy for avoiding the loss of Permanent Resident Status while abroad.

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