

This Immigration Update<sup>®</sup> from FosterQuan, LLP contains important information regarding the following:

1. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) ISSUES WAVE OF REQUESTS FOR EVIDENCE (RFE) ON H-1B & L VISA PETITIONS
2. TEXAS DEPARTMENT OF PUBLIC SAFETY (DPS) ISSUES NOTICES OF DRIVER'S LICENSE CANCELLATION UPON EXPIRATION OF TEMPORARY STATUS
3. IMPORTANT ESTA REGISTRATION REMINDERS FOR VISA WAIVER TRAVELERS

## **1. USCIS ISSUES WAVE OF REQUESTS FOR EVIDENCE (RFE) ON H-1B & L VISA PETITIONS**

As reported in previous FosterQuan Immigration Updates, last month President Obama signed a new law which increases filing fees by an additional \$2,000 for H-1B petitions and \$2,250 for L-1 petitions. This increase only applies to employers with 50 or more U.S. employees when more than 50% of those employees hold H-1B or L status. Because the new fee provisions went into effect immediately on August 14th and without warning, USCIS has not yet revised the Form I-129 Petition for a Nonimmigrant Worker to include questions to determine whether the higher filing fees apply. As a result, USCIS adjudicators are issuing Requests for Evidence (RFE) on many such petitions and requiring employers to document that they are not subject to the higher fees.

In order to avoid such Requests for Evidence, petitioners must confirm that, although they employ 50 employees or more, fewer than 50% hold H-1B or L classification. In arriving at this determination, employers must count those employees working in the U.S. in H-1B, L-1A, L-1B and L-2 status (spouse of an L-1 working pursuant to an EAD).

Until the CIS forms have been revised to request the necessary additional information to for the CIS to make a determination on the applicability of the higher fees, your FosterQuan immigration attorneys will be requiring this additional statement in connection with H-1B and L-1 nonimmigrant petition filings. Should you have any questions about this new law, or its applicability to your current workforce, please contact your FosterQuan attorney. As always, FosterQuan will continue to monitor procedural changes and adjudication trends and will make such information available via future Immigration Updates<sup>®</sup> and on our firm's website at [www.fosterquan.com](http://www.fosterquan.com).

## **2. TEXAS DEPARTMENT OF PUBLIC SAFETY (DPS) ISSUES NOTICES OF DRIVER'S LICENSE CANCELLATION UPON EXPIRATION OF TEMPORARY STATUS**

Since October 2008, Texas Department of Public Safety (DPS) regulations permit issuance of Texas driver's licenses only to those individuals who are able to document their lawful status in the United States. Further, the driver's license issued to nonimmigrants will be issued for a temporary period not to exceed the duration of their documented temporary immigration status.

Before this new regulation went into effect, Texas driver's licenses were routinely issued with lengthy validity periods of several years. Foreign nationals who received driver's licenses with lengthy validity periods prior to implementation of the new regulations may find that the new regulation impacts them earlier than expected.

### **DPS to Proactively Cancel Driver's Licenses Absent Status Document Extension**

The DPS has issued letters to current driver's license holders to advise of the approaching expiration of their temporary status, and to notify them that their Texas driver's licenses will be canceled effective 45 days after their temporary status expires. To avoid cancellation, license holders are advised to appear at their local driver's license office to present proof that their lawful status has been extended by at least 6 months.

Because Texas driver's license validity is tied to lawful status in the United States, employers, employees, and dependent family members are encouraged to proceed with applications and petitions for renewal or extension of authorization documents well in advance of document expiration dates.

The earliest date Employment Authorization Document (EAD) cards and Advance Parole Travel Document renewal applications are allowed to be filed is 120 days in advance of document expiration. The earliest date extension petitions for temporary work visas, such as H-1B, L, TN and O-1 visa, can be filed is 180 days prior to the expiration.

### **DPS Also Requires Additional Documents from Dependents of H-1B & L-1 Nonimmigrants**

In addition to the proactive policy of cancelling otherwise valid driver's licenses upon expiration of immigration status documents, the DPS is reportedly requesting additional information and documentation beyond what is listed as valid status documents in DPS regulations. Dependent nonimmigrants in H-4 status (spouses and children of H-1B visa holders) have recently reported that they were required to present proof of their H-1B spouse's continued H-1B employment in the form of a recent employment verification letter and valid Form I-94 Arrival/Departure Record Card so that the DPS could confirm that the H-1B employee, and thus the H-4 dependent spouse, were properly maintaining their lawful H-1B and H-4 nonimmigrant status.

For [basic information and document requirements](#) proving lawful presence for purposes of initial Texas driver's license applications and applications to renew existing licenses, visit the Texas DPS website. As always FosterQuan will continue to monitor state and local regulations and procedures related to immigration status will provide additional information in future Immigration Updates<sup>®</sup>, and on our firm's website at [www.fosterquan.com](http://www.fosterquan.com).

## **3. IMPORTANT ESTA REGISTRATION REMINDERS FOR VISA WAIVER TRAVELERS**

Visitors to the United States who travel under the Visa Waiver Program must register with the Electronic System for Travel Authorization (ESTA) via the U.S. Customs & Border Protection (CBP) [web page](#) for visa waiver travel registration. As of September 8, 2010, a new registration fee of \$14 is required for each registration. While the resulting travel authorization is generally valid for a two-year

period, ESTA registrants should remember that certain circumstances require re-registration even prior to the two-year period.

CBP confirms that new ESTA registrations are required when any of the following occurs:

- The registrant made a mistake in responding to questions during the registration process (unless they are related to email address, telephone number, carrier, flight number, city of embarkation, and address while in the United States, which are fields that may be corrected using the “ESTA update” function as opposed to re-registration)
- The registrant obtains a new passport
- The registrant changes his or her name
- The registrant’s gender or country of citizenship changes
- Any new information arises that would change the answer to a question related to eligibility for travel under the Visa Waiver Program, such as the commission of crimes, overstaying an admission to the United States, subsequent denial of a U.S. visa, etc.

#### **Disclosing Prior Visa Denials & Section 221(g) Requests for Documentation**

One of the questions on the ESTA registration form requires the registrant to state whether he or she has ever been denied a U.S. visa. While this question might seem straightforward, CBP has confirmed that a request for additional documentation under Section 221(g) of the Immigration & Nationality Act is a “denial” of a visa and must be disclosed during the ESTA registration process, and a note regarding the consular post and the particular information/documentation required should be entered into the online form by way of explanation. Should a registrant receive an ESTA authorization based on an inaccurate response to this question, the registrant may be denied admission to the United States under the visa waiver program despite having a facially valid ESTA clearance. Further, should a registrant receive a 221(g) request after previously receiving an ESTA clearance, CBP confirms that the registrant must re-register through the ESTA system and should not attempt to travel under the previous ESTA authorization. Failure to re-register may result in refusal of admission under the Visa Waiver Program.

If you have questions regarding the appropriate answer to ESTA registration questions based on particular facts and circumstances or are unsure of whether a traveler may require early re-registration, contact your FosterQuan immigration attorney. For general information and basic inquiries regarding the ESTA program, applicants should visit the CBP website to review [Frequently Asked Questions](#) about the Visa Waiver Program and ESTA Authorization. As always FosterQuan will continue to monitor updates in CBP interpretations of Visa Waive Program and ESTA authorization requirements and will provide additional information in future Immigration Updates<sup>®</sup>, and on our firm’s website at [www.fosterquan.com](http://www.fosterquan.com).