



The Immigration Insider

KRA IMMIGRATION LAW GROUP

H-1B's: Contact our office immediately!



H-1B MANIA

April 1st is widely known as April Fool's Day. In the Immigration world, however, it has become known as H-1B Mania Day. April 1st is exactly six months prior to the start of the new governmental fiscal year, and thus the first day that H-1B petitions under the new cap can be filed. With limited H-1B numbers available, companies are scrambling at a chance to capture an H-1B number for their employees.

dom selection was applied not only to the first 150,000 H-1B petitions, but also on the thousands of applications received on the second day, leaving many companies without work status for their employees.

Did you know that...?

Foreign workers on H-1B visas must be paid a minimum wage, set by the U.S. Department of Labor (prevailing wage)?

Foreigners married to a U.S. citizen for less than two years are only given a "conditional green card" and are subject to re-verification to prevent fraudulent marriages?

Human Resource Personnel, Plant Managers, Supervisors, Union Stewards and Intermediate and Senior Corporate Officials have been criminally charged with I-9 violations?

The annual H-1B numerical limitation, which applies to all new H-1B petitions, is 65,000. The American Competitiveness in the Twenty-First Century Act (AC21) increased this numerical limitation for several fiscal years (FYs). AC21 increased FYs 2001, 2002 and 2003 to 195,000. As of FY 2004, the cap of available H-1B petitions was reduced again to 65,000. Although there have been talks within Congress to raise the H-1B cap once again, it remained just that... talk. The current anti-immigration climate and struggling economy were no doubt factors.

It is important to note that 20,000 of the H-1B numbers are specifically assigned to those beneficiaries with a U.S. Master's Degree or higher. While this helps some companies secure H-1B status for their employees, the timing of the release of new H-1B numbers hurts others. In order to qualify for one of these Advanced Degree H-1B numbers, the U.S. Master's Degree must have been awarded. Unfortunately, many students complete their final semester in April and degrees are awarded at the end of April or beginning of May. Students may obtain 12 months of Optional Practical Training (OPT), during which they can remain and work in the United States. However, this simply defers the problem to the following year. While they qualify for an Advanced Degree H-1B number for the next fiscal year, their OPT will expire well before their H-1B start date of October 1st.

The fact remains that since the return to 65,000 available H-1B numbers, the cap has been reached sooner each year after the numbers become available on April 1st. For FY 2005, the cap was reached in October, for FY 2006 in August, and for FY 2007 at the end of May. Last year for FY 2008, a new record was set. The U.S. Citizenship and Immigration Service (USCIS) received approximately 150,000 H-1B visa petitions on the first day alone.

There are no indications the H-1B cap will be raised, especially when focus is on presidential elections and the general climate remains anti-(illegal) immigration. KRA Immigration Law Group works with its corporate clients to prepare all H-1B petitions for filing on April 1st. However, with the random selection process in place, filing early is no guarantee and many employers will be left without their highly – and often U.S. – educated professionals who have no other choice but to take their knowledge and experience back to their home country.

By Anne Dysinger

It appears as if USCIS had an inclination this could happen because regulations detail that if the H-1B cap were to be reached on the first day of filing, a random selection process will be applied to all cap-subject filings received on the first and second day. Consequently, the ran-

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CRIMINAL CONCERNS FOR NONCITIZENS

Accepting a plea of no-contest, a ninety-day suspended sentence, or a few months of probation appears the quickest and most efficient way to dispose of a criminal charge. For U.S. citizens, these options are appealing alternatives to battling a criminal case at trial. However, noncitizens should not be so quick to accept an admission of guilt, regardless of how benign the sentence appears.

A criminal conviction may have very serious immigration consequences for noncitizens. Potential consequences of the criminal offense and sentence include being subject to removal (deportation), deemed inadmissible to enter the United States, unable to meet the statutory requirements for naturalization, and even subject to mandatory detention by the U.S. Department of Homeland Security (DHS).

Under the immigration law, the term “conviction” is defined as a formal judgment of guilt entered by a court, or if adjudication of guilt has been withheld, where:

- o A judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- o The judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The definition of “conviction” has been interpreted broadly and includes offenses that have been expunged under state law or a federal rehabilitative statute, such as the Federal First Offender Act. Moreover, a “conviction” still exists where a noncitizen has accepted a suspended sentence, deferred adjudication, withholding of adjudication, or deferred judgment. Additionally, a “conviction” that has been vacated solely for immigration purposes rather than for substantive or procedural defects, is still considered a conviction under the immigration law.

The Immigration and Nationality Act (“Act”) delineates criminal offenses as either inadmissible offenses under section 212(a)(2), or removable offenses under 237(a). Inadmissible offenses affect nonimmigrants who seek entry into the United States, or who seek to change, extend or adjust status in the United States. Under 212(a)(2) of the Act, inadmissible criminal offenses include crimes involving moral turpitude (CIMT), which is a broad classification of intent crimes; multiple criminal convictions; controlled substance offenses; prostitution and commercialized vice; trafficking; and money laundering. A conviction for any of these offenses

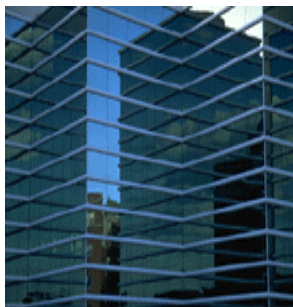
may render a noncitizen inadmissible to the United States and ineligible to obtain immigration status. Notably, waivers of inadmissibility are available to qualified noncitizens for certain criminal convictions.

Section 237(a)(2) of the Act defines removable criminal offenses, which affect noncitizens holding lawful permanent resident (immigrant) status in the United States. Removable criminal offenses include CIMTs; multiple criminal convictions; aggravated felonies; high speed flight; failure to register as a sex offender; controlled substance offenses; certain firearm offenses; domestic violence; stalking; violation of protection order; and crimes against children. Lawful permanent residents who are convicted of a removable offense risk losing their immigrant status in the United States and may be subject to removal (deportation). Although waivers and other forms of relief from removal are available for certain criminal offenses listed under section 237(a)(2), a criminal offense defined as an “aggravated felony” precludes an immigrant from many forms of relief under the Act.

Offenses defined as aggravated felonies include serious violent crimes including murder, rape, and sexual abuse of a minor. However, less serious crimes, such as theft or burglary offenses with a term of imprisonment of at least one year, or fraud or deceit offenses in which the loss to the victim(s) exceeds \$10,000, are also classified as aggravated felonies. Moreover, criminal acts defined under state law as a misdemeanor may be classified as an aggravated felony under the immigration law.

Noncitizens with criminal convictions have few options to remedy the effect of a criminal conviction. Therefore, it is critical for noncitizens to know the repercussions of a criminal conviction before accepting any admission of guilt, regardless of how minor the offense or plea agreement appears. Noncitizens charged with criminal offenses should immediately consult with criminal defense and immigration counsel to determine what effect, if any, a possible conviction, plea agreement, or reduced sentence would have on their immigration status. Defense counsel should be apprised of the immigration consequences of the conviction, and develop a strategy which would reduce or eliminate any adverse effect on the noncitizens immigration status.

By: Lisa Tehlirian



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Western Hemisphere Travel Initiative Update

I. Passport Requirements under the Western Hemisphere Travel Initiative (WHTI)

Background: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires the Department of Homeland Security (DHS) and the Department of State (DOS) to develop and implement a plan to require all travelers, including U.S. citizens, to present a passport or other document, or a combination of documents, that denote identity and citizenship when entering the United States. WHTI is a result of the IRTPA and is the Administration's proposed plan to implement the passport and identity mandate. WHTI proposes to establish documentation requirements for travelers entering the United States who were previously exempt, including citizens of the United States, Canada, and Bermuda.

Goal: The goal of the WHTI is to strengthen border security and facilitate entry into the United States for U.S. citizens and legitimate foreign visitors by providing standardized, secure, and reliable documentation, which will allow DHS to quickly, reliably, and accurately identify a traveler.

Timeline:

- **January 23, 2007-** All persons traveling by air between the United States, Canada, Mexico, Bermuda, and the Caribbean region are required to present a passport or other valid travel document to enter or re-enter the United States. Thus, a U.S. citizen is now required to have a valid passport for air travel to Mexico.
- **January 31, 2008-** All adult travelers will be required to present proof of citizenship, such as a birth certificate, **and** proof of identity, such as a driver's license, when entering the United States through land and sea ports of entry. Oral declarations of citizenship alone will no longer be accepted.
- **Summer 2008-** DHS and DOS estimate that by this time the WHTI land and sea requirements will be fully implemented. This will require U.S. citizens entering the United States at sea or land ports of entry to have a valid U.S. passport, a U.S. passport card, NEXUS, FAST, SENTRI, or a Merchant Mariner document.

Travel Documents under the WHTI: The document of choice for U.S. citizens entering the United States will be a valid U.S. passport when traveling between the United States and Canada, Mexico, Bermuda and the Caribbean region. The Passport Card or PASS card, currently in development, is another document anticipated to be acceptable under the WHTI and is a limited-use, wallet size passport card.

Note, the passport requirement does **not** apply to U.S. citizens traveling to or returning directly from a **U.S. territory**.

II. Machine-Readable Passports for Visa Waiver Visitors

The Visa Waiver Program: The Visa Waiver Program (VWP) allows nationals of certain countries to travel to the United States for tourism or business for a stay of ninety (90) days or less without obtaining a visa. The twenty-seven countries participating in the VWP include: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Requirements for Machine-Readable Passports: Foreign travelers from the twenty-seven VWP countries must have a machine-readable passport to enter the United States without a visa. A congressionally mandated deadline requires that machine-readable passports issued, renewed, or extended on or after October 26, 2006, have an integrated chip with information from the data page (e-Passport). The chip in the e-Passport is capable of storing biographic information from the data page, a digitized photograph, and other biometric information. If you were issued a passport on or after October 26, 2006, and it is not an e-Passport, you will need to obtain a visa for travel to the United States.

The congressional mandate further requires that machine-readable passports issued, renewed, or extended between October 26, 2005 and October 25, 2006, have a digital photograph printed on the data page or integrated chip with information on the data page. There are no further requirements for machine-readable passports issued, renewed, or extended before October 26, 2005.

These new passport requirements will ensure that U.S. Customs and Border Protection (CBP) officers can easily swipe the passport and confirm the passport holder's identity quickly and obtain other information about the holder typically found on a passport's inside cover. VWP travelers arriving in the United States without a machine-readable passport will **not** be granted a one-time entry into the country.

Anyone from the twenty-seven VWP countries thinking of traveling to the U.S. is encouraged to check with their passport issuing authority to ensure they comply with the machine-readable passport requirements.

Please contact KRA Immigration Law Group at 734-762-7260 for more information or for assistance with U.S. or Foreign Passport Applications.

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Contact Us

KRA Immigration Law Group - the law offices of Kennedy Riordan & Associates P.C. - is solely dedicated to the practice of Immigration and Nationality Law. We represent businesses and individuals in all areas of immigration law including: temporary and permanent residence based on employment, business investment, international trade, family based permanent residence, international consular processing, naturalization, Form I-9 audits, employer sanctions, political asylum, exclusion and deportation proceedings, administrative appeals and litigation.

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The Immigration Insider is published solely for educational purposes. Please note that this publication only provides you with basic information on immigration law, and does not replace attorney advice. Every immigration case is different. We strongly urge you to consult a licensed Immigration Attorney with your individual case, because it is easier to plan your immigration strategy ahead than it is to go back to try and fix mistakes. If you wish for us to be your immigration attorney, please refer to the bottom of the front page for our contact information.

