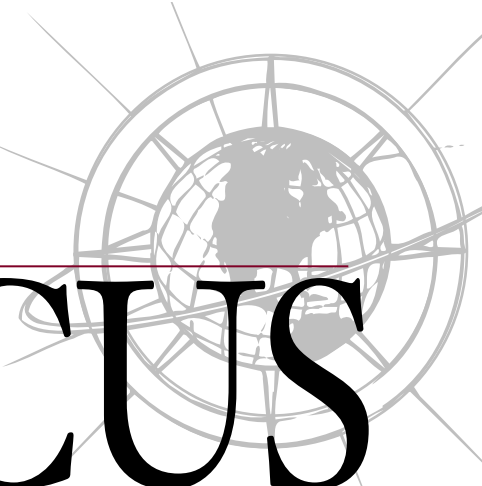


Immigration FOCUS



APRIL 2002

Bush Signs Legislation to Improve the L&E Visa Programs

In January, President Bush signed legislation to permit the spouses of L and E visa holders to obtain work authorization while they are in the United States. The same legislation also reduced the period of qualifying employment for L applicants under the Blanket L program from one year to six months.

L visas are issued to multinational executives and managers and their immediate families when the manager or executive has been transferred from a foreign office to the US office of a multinational company. E visas are issued to traders or investors who are coming to the United States to open, manage, or staff companies engaging in international trade.

Authorized to Work

Prior to the enactment of the legislation, only the principal applicant was permitted to work. Spouses were permitted to reside and attend school here, but not work. This change will be extremely beneficial to these families, where often it is difficult to make ends meet on a single salary in the United States. It will also allow spouses with their own careers to pursue them without interruption while accompanying the principal visa holder to the United States.

Procedures

Application procedures for this new benefit have not been made official, however INS Service Centers have been accepting applications from eligible individuals. These applications may be filed individually or with an L or E visa extension application. No offer of employment is necessary for the dependent spouse. They must, however show that they are in valid E or L status.

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Navigating the World of Immigration Law

Social Security Administration Institutes New Mismatch Letter Policy

Recently, the Social Security Administration (SSA) announced that it will be issuing mismatch letters to employers for each and every instance where the agency is unable to match an employee's reported earnings with a number in the social security database. Prior policy dictated that mismatch letters be sent to employers only when 10% or more of their employee's social security numbers did not match the database. Immigration issues often arise when employers attempt to rectify the discrepancies found by the SSA.

Employers receiving these letters must be careful to address the issues raised in the letter while at the same time avoiding employment discrimination toward the affected employees. Extreme responses such as ignoring the letter or suspending or terminating employment of the affected employee are not advisable, as they may lead to claims of discrimination or violation of laws against the hiring of undocumented workers. Upon receipt of the SSA letter, employers should try to resolve the discrepancy in a reasonable and prompt manner.

After receiving the SSA letter, employers should first check their records to be sure the information submitted on their W-2 form matches employment records. Corrections can be made using IRS form W-2c. If the employment and W-2 records coincide, employers should ask the

affected employee to check their social security card and advise whether there are any discrepancies between the name and number on the card and the employer's records. Discrepancies should be corrected and reported to the SSA or IRS if required.

If the steps above do not rectify the mismatched information, the employee should be given a short reasonable time period in which to visit the closest SSA office, straighten out the problem and report back to the employer on the resolution. If the employee does not follow through in the allotted time frame, additional periods of time may be granted or employment suspended until the situation is resolved.

If the employee is unable to resolve the discrepancy, employers must look at all of the facts and decide whether to terminate employment. INS policy indicates that an employer cannot ignore the results of its investigation into the social security mismatch problem, as these results may indicate that the employee is an unauthorized worker. However, on the other hand, employers may face a charge of discrimination if they terminate legal workers because they are unable to resolve a social security discrepancy. Consulting with the company's immigration or employment law attorney will help employers make the right decision.

Immigration issues often arise when employers attempt to rectify discrepancies found by the SSA.

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Changes to Blanket L Requirements

Also contained in the legislation enacted on January 16, 2002 was a provision affecting only the Blanket L program. The provision reduces the amount of qualifying employment abroad from one year to 6 months. Prior to this new legislation L visa holders were required to demonstrate one year of employment with the sponsoring company, its subsidiaries or affiliates, outside of the United States. Now 6 months with sponsoring company abroad will suffice.

Blanket L Petitions are utilized by multinational companies that have at least 10 international offices and

process numerous L visas on a yearly basis. A Blanket L is beneficial because it allows applicants to go straight to the consulate in their home countries and apply for the visa. They no longer have to submit an L visa petition in the US, wait for the INS to approve it and then obtain the visa abroad. The Blanket L is done once with the INS in the US and covers all subsidiaries and prospective transferees of the company.

Caution: One huge note of caution should be taken into account by those who qualify. The corresponding provision, allowing multinational managers and executives to obtain permanent residence based upon their status as an L-1 multinational manager or executive was not changed. Therefore, persons who

enter after only six months of qualifying employment in the foreign country will not be eligible to adjust their status to permanent residence based upon this category. In order to obtain permanent residence, they must have spent at least one year with the foreign office prior to entering the US on an L visa. Advocates are working to have this discrepancy in the law eliminated.

If you have questions about L visas or whether your company may be eligible for a Blanket L, please give us a call. ■

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SSA Institutes New Mismatch Letter Policy. . .continued

If during the course of an investigation an employee admits that he or she is not authorized to work, employment should be terminated immediately. Sometimes, an employee will come back to the employer with a completely new social security number. This situation arises when the employee was unauthorized to work at the time of hire and later obtained work authorization from the INS and a valid social security number from the SSA. In this circumstance the employer must decide whether termination of the employee is warranted, keeping in mind however, that the time the employee was employed prior to receiving INS work authorization will be considered unlawful by the INS. To avoid termination issues, it is a good idea for all companies to have a policy stating that providing false information on the company's employment application is a ground for termination.

When dealing with the SSA mismatch letters and subsequent attempts to rectify problems, employers must be careful to treat all employees equally, regardless of nationality, rank in the company, citizenship status or length of employment. This will help to ensure the employer against claims of employment discrimination. ■

Company policy should state that providing false information on an employment application is grounds for termination.

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