

# COUNSEL

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f Paschal Nwokocho Law Offices, LLC.

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## About Counsel

*A newsletter publication of Paschal Nwokocho Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.*

*Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.*

*Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.*

## Our Mission

At Paschal Nwokocho Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

## Immigration News

### Convicted of Crime?

The Department of Homeland Security recently initiated an intensive effort to arrest and deport people with criminal records. Recently, the government announced the arrest of thousands for people with criminal record. Many have been scheduled for deportation.

At Paschal Nwokocho Law Offices, we have been able to secure relief from deportation to people with significant criminal records. It is important, therefore, that all immigrants and non-U.S. citizens with criminal records consult with knowledgeable Immigration professionals on possible consequences of the record and explore relief options before it is too late.

### Machine-Readable Passport Requirements To Take Effect at U.S. Borders on June 26, 2005

The Department of Homeland Security today announced that as of June 26, 2005, all persons traveling under the auspices of the Visa Waiver Program (VWP) must present a machine-readable passport (MRP) to travel to the United States without a visa.

The machine-readable passport requirements do not affect the separate deadline requiring Visa Waiver Program country passports issued on or after October 26, 2005, to contain biometrics in order to be used for visa-free travel to the United States.

### Beware of Sham Immigration Websites

While the Internet is a useful immigration resource, it can pose dangers as well as offer opportunities. Foreign employees and their employers often find it difficult to distinguish the accurate

and relevant websites from the sham sites or sites that have outdated or incorrect information. In an effort to help both employers and foreign nationals better navigate the web, USCIS recently posted a public service announcement on its official website [www.uscis.gov](http://www.uscis.gov). USCIS there cautions readers that, although other websites may look official, only websites ending with the ".gov" suffix are official government websites. Employers and foreign nationals also should be aware of these other important governmental websites: the Department of Labor [www.dol.gov](http://www.dol.gov), US-VISIT's official website [www.dhs.gov/us-visit](http://www.dhs.gov/us-visit) and the Department of State [www.travel.state.gov](http://www.travel.state.gov). You can connect to some of these site from [www.Paschal-law.com](http://www.Paschal-law.com).

While many other non-governmental websites, including the American Immigration Lawyer's Associations site ([www.aila.org](http://www.aila.org)), provide legitimate and useful immigration-related information and services, beware of websites that attempt to charge your foreign employees for services such as agency forms, access to another government website, or to make appointments with USCIS. (Appointments made through USCIS's InfoPass web-based appointment scheduler are free). Imposter sites also may offer to provide services for a fee but never actually provide such services. Other websites may request personal or biographical information that might be used for identity fraud/theft.



### REAL ID BECOMES LAW

This Act was passed by the House of Representatives earlier this year, and has been the focal point of considerable controversy. Many Senators were reluctant to include the Act in the appropriations bill, but in the end, the political pressure was just too

great to resist.

The Act will impose federal standards on state drivers' licenses which will make it next to impossible for undocumented workers to obtain drivers licenses. Presently, 11 states grant drivers licenses to such persons. Civil libertarians fear that this measure could lead to a National ID Card.

The Act also provides for the construction of a border fence between Tijuana, Mexico and Southern California.

Also, the Act makes it more difficult for certain persons to qualify for asylum in the U.S., and strips the Federal Courts of their authority to review discretionary immigration decisions, even those outside the removal context.

Persons who are members of, or who have made contributions to group which are later designated as a terrorist organization, will lose their ability to request asylum. So will their immediate family members.

Decisions by Immigration Judges which rely on negative credibility and demeanor determinations will be much more difficult to overturn on appeal even if the credibility/demeanor determination does not pass muster under the standards of the Board of Immigration Appeals or the Federal Appeals Courts.

Finally, the Act would eliminate both constitutional and statutory challenges to removal orders via habeas corpus. Habeas cases currently pending in the District Courts would be transferred as Petitions for Review to the Federal Appeals Courts.

The only silver lining to the REAL ID Act is that the 10,000 annual cap on asylees who apply for adjustment of status has finally been eliminated. Instead of enduring waiting times which exceed ten years, persons who have been asylees for one year or more may apply for adjustment of

status immediately. Hopefully, processing times will not exceed one to two years. The bill also removes the 1,000 per year cap on those seeking asylum from coercive family planning policies, primarily from mainland China.



### EB-3 Retrogression

On January 1, 2005, the EB-3 categories (professional and skilled workers) for persons born in India, China and the Philippines backlogged three years.

The most immediate consequence of this backlog was upon U.S. employers' ability to hire Registered Nurses and Physical Therapists, the two "Schedule A" occupations which are exempt from the labor certification requirement. The nurse shortage in the U.S. numbers between 100,000 and 200,000, and is expected to top 600,000 by the year 2020.

The bill provides for the recapture of up to 50,000 immigration visas lost from 2001 to 2004, and earmarks them for RNs and PTs and their families.



### 20,000 New H-1B Visas Released by Government

On May 2, 2005, the CIS issued regulations implementing the "H-1B Visa Reform Act of 2004" and allowing U.S. employers to petition for an additional 20,000 H-1B workers starting on May 10, 2005.

Since the law became effective on March 8, 2005, employers have wondered how to petition for new H-1B employees in the absence of regulations. After some contradictory memos issued by the CIS, the new regulations provide that only persons with Masters or higher degrees from U.S. universities may qualify for H-1B status under the new law.

However, it is apparent that the jobs they fill need not require more

than Bachelors degrees as minimum entry requirements.

The regulations suspend e-filing of H-1B petitions, but permit premium processing. We recommend that anyone serious about obtaining H-1B status under this program use premium processing as it is expected that the 20,000 numbers will not last long.



### **New Development in U.S. Visit**

What do highly educated foreign professionals, short-term temporary workers, critical personnel of an international company, and foreign investors have in common? If they are dealing with businesses in the U.S., the answer is easy: each must enter our country through a port of entry and, in most cases, that means enrolling in the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program. This rapidly expanding program, operated by the Department of Homeland Security (DHS), is designed to record foreign nationals' biometric information as they enter and exit the country. Continue to read Counsel for reports on the latest US-VISIT developments so that you can properly prepare your business' international travelers.

Enrollment in US-VISIT occurs at ports of entry where the program has been implemented. Currently the entry portion of US-VISIT is operational at 115 airports and 14 seaports, and, as of December 29, 2004, at the 50 busiest land ports. Statutory deadlines require US-VISIT to be operational at all U.S. ports of entry by the end of 2005. It is still unclear whether DHS will be able to meet that deadline.

Currently, US-VISIT applies only to nonimmigrant visa holders and, as of September 30, 2004, visa waiver program participants. Canadians entering without visas and those Mexican nationals who do not require an I-94 arrival/departure record and enter with a laser visa will remain exempt from US-VISIT.

In addition to the traditional admission procedure, the traveler's documents are scanned, and the US-VISIT program uses digital fingerprints and a digital photograph to confirm a foreign national's identity. The traveler's data are then checked against DHS databases and law enforcement watch lists. Information is also collected on immigration and citizenship status, nationality, country of residence, and residence while in the U.S.

At a limited number of test sites, the US-VISIT program also tracks departures from the country. If a foreign national departs the U.S. from an airport with US-VISIT departure capability, the individual must input his or her departure information, visa data and fingerprints into the US-VISIT system through an automated self-service kiosk (similar to an ATM machine). In some cases, the foreign national also may have to register his departure with an US-VISIT official equipped with a portable US-VISIT device. By summer 2005, DHS is expecting to launch a new pilot program to test US-VISIT exit procedures at three land ports: Nogales, Arizona, Alexandria Bay, New York, and Pacific Highway and Peace Arch, Washington. This pilot program will utilize radio frequency (RF) technology as a means to implement the exits at land ports. Conceptually, RF technology could transmit biographical information to the inspections officer, in order to speed processing of automobile traffic. This technology would presumably also link to the US-VISIT databases and watch lists. Even if such a technology is made available, it is unclear how efficiently the US-VISIT exit function will operate at the land borders given infrastructure constraints.

It is important for businesses to note that the US-VISIT information is used to screen individuals and to ensure that foreign nationals do not remain in the country beyond their period of authorized admission. Failure to comply with



### ***Did you know?..***

- Failure to notify the Immigration Service promptly of a change of address may land one in Removal Proceeding. Using a 50-year old law, the Immigration Service is insistent that all aliens notify it of the change of address within 10 days of moving. Use **Form AR-11** from the Immigration Service to effect the address change.

### ***Reader's Corner***

Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices.

To subscribe to or unsubscribe from Counsel, or to receive copies of Counsel for your business, please send your request to:

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www.Paschal-Law.com***

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### Free 24-hour information on immigration law

Topic	Description
1313	Eligibility for Citizenship
1314	Applying for citizenship
1315	Dual Citizenship
1316	About student visas
1317	Maintaining your student visa
1318	About Political Asylum
1319	Applying for political asylum
1322	Employer responsibilities
1323	Labor certification
1324	Labor Certification Process
1325	Work permits
1326	Applying for a green card
1327	Employment-based green cards
1328	Family-based green cards
1329	Marriage-based green cards
1336	Immigration Status Categories
1337	About deportation & exclusion
1338	Deportation Proceedings
1334	Questions to ask about legal issues

**Step 1:** Dial 763.586.5700

**Step 2:** Enter the 4-digit code from the table above corresponding to the topic of interest.

*If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...*

**Call us for an appointment**

**651.917.0020**

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*Visit us on the Web:*

**[www.Paschal-Law.com](http://www.Paschal-Law.com)**

***We solve Immigration  
Problems!***

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