

SPECIAL REGISTRATION

Note: On March 1, 2003, the Immigration and Naturalization Service (INS) ceased to exist, and all of the service and enforcement functions of the INS were rolled into the new Department of Homeland Security (DHS).

The functions of the INS were split into three agencies within the DHS:

- (1) U.S. Citizenship and Immigration Services (**USCIS**),*
- (2) U.S. Customs and Border Protection (**CBP**), and*
- (3) U.S. Immigration and Customs Enforcement (**ICE**).*

USCIS includes most of the service functions of the former INS, including adjudication of immigration and citizenship petitions and applications.

In the remainder of this memo, we have substituted the name of the agency currently responsible for each provision of the regulations.

The INS published regulations in the *Federal Register* on August 12, 2002 creating a special registration system, which involved the following procedures for affected nonimmigrants (those of which have since been eliminated by a subsequent regulation on December 2, 2003 are indicated in italics).

- More detailed “secondary inspection,” which involves interviewed, fingerprinted, and photographed upon applying for admission to the U.S.
- Notifying the USCIS by a special form “Form AR-11SR” within 10 days of change of address, employment or school
- Final registration in person with CBP upon leaving the U.S. This requirement is effective October 1, 2002, and currently applies only to those nonimmigrants who were admitted under special registration.

The following procedures have been eliminated:

- Re-registering in person with ICE if remaining in the U.S. for 30 days or longer, and within 10 days of the 30-day mark. (Note: re-registration includes providing proof of identity and maintenance of status, including but not limited to proof of residence, employment, or school registration or graduation, and currently applies only to those nonimmigrants who were admitted under special registration);
- Re-registering in person with the former INS annually, on the anniversary of original admission into the U.S., within 10 days of the one-year anniversary .

The INS developed a webpage in 2002 to assist affected nonimmigrants in complying with the numerous special registration requirements. Current information on special registration has moved to the ICE website, and can be found at <http://www.ice.gov/graphics/specialregistration/index.htm>. According to the regulations, affected nonimmigrants are:

- nationals or citizens of a country designated by a notice in the Federal Register after consultation between the Attorney General and Secretary of State;
- nonimmigrants who a U.S. consular officer or CBP inspecting officer have “reason to believe” is a national or citizen of a country designated in the Federal Register (e.g. dual nationals);
- nonimmigrants who meet “pre-existing criteria” indicating their presence in the U.S. warrants monitoring in the national security or law enforcement interests of the U.S.; or
- nonimmigrants who a consular or inspecting officer have “reason to believe” meet “pre-existing criteria” indicating their presence in the U.S. warrants monitoring in the national security or law enforcement interests of the U.S.

The regulations do not define “pre-existing criteria”, as this category is vague and subject to DOS or CBP officer interpretation. Therefore, potentially any nonimmigrant is subject to special registration.

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Nonimmigrants may apply for relief from the special registration requirements with the CBP Port Director, whose decision is final and not subject to appeal.

The consequence of failing to register or re-register while in the U.S. is removability (deportability) on the basis of failing to maintain lawful nonimmigrant status. The consequence of failing to undergo final registration upon leaving the U.S. is a presumption of future inadmissibility on the basis that CBP will then have “reason to believe” that the nonimmigrant seeks to enter the U.S. to engage in “unlawful activity”

The former INS also published a notice in the Federal Register on September 6, 2002, effective September 11, 2002, designating the following classes of nonimmigrants to special registration:

- nationals or citizens of **Iran, Iraq, Libya, Sudan and Syria** applying for admission in any nonimmigrant visa category except A or G;
- any nonimmigrants who a consular or inspecting officer has “reason to believe” is a national or citizen of one of the five designated countries.

By means of a September 5, 2002 policy memorandum intended for “limited official use only” and not to be shared with the media or public, the former INS added two additional methods by which a nonimmigrant can be identified as subject to special registration:

- notification through the Interagency Border Inspection System (IBIS); and
- officer discretion.

The memo indicated that the Attorney General established pre-existing criteria identifying male nonimmigrants (other than those applying for A or G status) between ages 16 and 45, who are citizens or nationals, (or who an officer has reason to believe are citizens or nationals) of **Pakistan, Saudi Arabia, and Yemen**. Notably, there was no notice published in the Federal Register to this effect; therefore, it appears that ICE or CBP may add or delete nationalities without notice and at will using “pre-existing criteria”.

In addition, the memo further defines “pre-existing criteria” the officer can use in deciding whether special registration should apply to **any** nonimmigrant:

- who has made trips to **Iran, Iraq, Libya, Sudan, Syria, North Korea, Cuba, Saudi Arabia, Afghanistan, Yemen, Egypt, Somalia, Pakistan, Indonesia, or Malaysia**, that are either “unexplained” or whose explanation “lacks credibility”;
- who has engaged in other travel “not well explained” by job or other legitimate circumstances;
- who has overstayed a nonimmigrant visa whose monitoring is “appropriate in the interest of national security”;
- who “meets characteristics established by current intelligence updates and advisories”;
- who is identified by law enforcement as requiring monitoring in the interest of national security;
- whose “behavior, demeanor, or answers” indicate that s/he should be monitored in the interest of national security; and
- who provides information that causes an officer to “reasonably determine” that s/he requires monitoring in the interest of national security.

The consular or inspecting officer must obtain concurrence of a supervisor before making a nonimmigrant subject to special registration. To our knowledge, this memo remains in effect. Again, as the criteria for making a nonimmigrant subject to special registration are broad, vague, and based on officer discretion, potentially any nonimmigrant may become subject to special registration. If you believe you may have been subjected to special registration, you may wish to contact our office for a consultation with an attorney.