



Blanket 30-day and Annual Re-Registration Suspended

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 asylum processing, and adjudication of immigration and citizenship applications.

On December 2, 2003, the Department of Homeland Security (DHS) issued a notice in the Federal Register suspending future **blanket** application of 30-day and annual re-registration requirements. The port of exit special registration requirement continues unchanged. Further, port of entry special registration is now expanded to include a discretionary case-by-case periodic re-registration requirement. Further, this modification of future special registration requirements does not excuse any prior failures to comply with special registration requirements.

IMPORTANT DISCLAIMER: *Jackson & Hertogs is providing this information about special registration as a courtesy. In so doing, we are not creating an attorney/client relationship with the reader. Nothing in this memorandum is intended to be, nor should it be construed as being, legal advice for your particular circumstances. For background information on past and current special registration obligations, please refer to our web site: <http://www.jackson-hertogs.com/process/specreq.shtml> "special registration" page, as well as the ICE website, <http://www.ice.gov/graphics/news/media/index.htm> and the American Civil Liberties Union (ACLU) website, <http://www.aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=14185&c=22>. If you wish to retain Jackson & Hertogs to evaluate special registration requirements in light of your individual situation, please contact our office for a legal consultation.*

*If you are subject or become subject to special registration, you should make and retain copies of all Forms I-94 or other immigration documents that are annotated to show your compliance with special registration. **You will be required to demonstrate your compliance with special registration by submitting these Forms I-94 with all petitions and applications, and should make them available to your attorney.** You should be assigned a FIN (fingerprint ID number) each time you special register. If you appear for special registration and you are advised you are not required to register, obtain a determination in writing and/or ensure that your I-94 is annotated to indicate this determination.*

It is your responsibility to make sure that you report timely to register and that you comply with the departure procedures. Our firm, your employer and your school will not be able to track your reporting compliance or to remind you of your port of exit registration, or ICE re-registration (if applicable). We urge you to keep copies of all Forms I-94 with annotations showing your special registration for every exit, entry, and periodic re-registration (if applicable), as well as any AR-11SR change of address, school, or employer forms submitted, and any other correspondence/information received by or submitted to the U.S. government relating to special registration.

Special registrants have the right to have an interpreter and/or an attorney with them. However, government officers can detain nonimmigrants and place them in removal (deportation) proceedings, for reasons such as being out of status, or finding a law enforcement "hit" based on a fingerprint security check.

Special registration, or the National Security Entry-Exit Registration System (NSEERS) consists of several procedures involving increased scrutiny and tracking of certain nonimmigrants. Special registration was instituted by the U.S. Department of Justice (DOJ) beginning in September 2002. Upon elimination of the INS as a government agency in March 2003, special registration was continued by the Department of Homeland Security (DHS), and its three new agencies: the USCIS (Citizenship & Immigration Services), CBP (Citizenship & Border Protection), and ICE (Immigration & Customs Enforcement). The stated rationale behind the special registration system is the improvement of U.S. national security post 9/11. Selection for special registration is based on various criteria, including country of birth, "nationality," or citizenship, or travel patterns, behavior, demeanor, or responses to questioning. There are two types of special registration: "**call in**" and **port of entry** special registration. A nonimmigrant's obligations vary depending on whether s/he is subject to one or both types of special registration.

Beginning in September 2002, DOJ (the former INS) published notices in the Federal Register establishing four groups of nonimmigrants, overwhelmingly males of Middle Eastern descent, as subject to "**call in**" special registration. In the same month, through regulations and memos which were initially not released to the public, DOJ outlined a much larger group of nonimmigrants who either must or may become subject to special registration, by their selection at a U.S. **port of entry**. Whether subject to special registration based on "**call in**" or **port of entry**, a nonimmigrant is subsequently required to comply with **port of exit special registration**. On **December 2, 2003**, ICE issued regulations suspending future **blanket** application of 30-day and annual re-registration requirements. The port of exit special registration requirement continues unchanged; also port of entry special registration is now expanded to include a discretionary periodic re-registration requirement which may be applied by ICE on a case-by-case basis.

"Call in" special registration continues on a case-by-case discretionary basis

"Call in" special registration involves reporting to a local ICE field office within a certain window of time, to be photographed, fingerprinted, and interviewed, and to show immigration, residence, employment, school and other related documents.

The December 2003 ICE notice makes "call in" special registration more targeted. A nonimmigrant is notified that he or she is subject to call-in special registration either at a port of entry, or may be notified by publication of a notice in the Federal Register, an individual notice sent by regular mail, an individual notice sent by e-mail, or a notice by personal delivery. The nonimmigrant must comply with special registration **within 10 days** of such notice. The notice states that for some nonimmigrants, the re-registration requirement may be *more frequent* than the former 30-day and annual re-registration requirements.

While the December 2003 ICE notice suspends future **blanket** application of 30-day and annual re-registration requirements at this time, call-in special registration may be reinstated at any time by notice in the Federal Register.

"Call in" special registration involves a periodic re-registration requirement, as well as a reporting obligation on change of address, school, or employer (unless the change of address or school is updated through the Student and Exchange Visitor Information System (SEVIS)), and re-registration at specified ports of exit on departure from the United States.

Port of entry special registration

The U.S. Justice Department published a regulation in August 2002, and policy memos beginning in September 2002, establishing a much broader system of special registration of nonimmigrants on entry into the U.S. While the regulation was publicly available, the memoranda were initially not released to the public. One of the Justice Department memoranda is available through our website's special registration page. Note: **Given the broad discretion and vague criteria stated in the former INS memo, any nonimmigrant could be made subject to special registration through selection at the port of entry, whether male or female, and regardless of citizenship or nationality.**

Under the August 2002 regulation, nonimmigrants who are (or who an officer has reason to believe are) nationals or citizens of **Iran, Iraq, Libya, Sudan and Syria**, are subject to special registration at the port of entry.

Under a former INS memo issued September 2002, available on our website at <http://www.jackson-hertogs.com/misc/sr.pdf>, a nonimmigrant can be made subject to special registration based on "officer discretion", "pre-existing criteria," travel that is "not well explained" and "behavior, demeanor, or answers" to questioning. This memo identified male nonimmigrants between ages 16 and 45, who are (or who an officer has reason to believe are) citizens or nationals of **Pakistan, Saudi Arabia, and Yemen** as meeting "pre-existing criteria" for special registration.

A nonimmigrant selected for special registration at a U.S. port of entry is diverted to more in-depth "secondary inspection", is fingerprinted, photographed, and interviewed, and provided with a "walk away" packet, also available on the ICE website <http://www.ice.gov/pi/specialregistration/index.htm#wavier>

If a nonimmigrant subject to special registration at the port of entry remains in the U.S. for at least 30 days, there is a small possibility that s/he may be required to re-register at a local ICE field office on a periodic basis.

As of March 2003, INS was eliminated and the newly created Bureau of Customs and Border Protection (CBP) took over inspections at U.S. ports of entry. As CBP officers may have either an immigration or customs background, their familiarity with the special registration program varies. Neither the former INS nor the current CBP has uniformly enforced the port of entry special registration requirement.

Port of exit special registration

All nonimmigrants who became subject to **either** "call in" special registration, **or** port of entry special registration (or both), must depart through the **designated ports of exit** listed below, and re-register with CBP at the specified hours and location at that designated port of exit. For a list of designated ports of exit, refer to the ICE website at <http://www.ice.gov/pi/specialregistration/index.htm#wavier>

CBP will interview, photograph, and fingerprint registrants, and will note compliance with exit special registration

on the I-94 card or passport (by using either a departure stamp or annotating “Departure Recorded”), and in the DHS databases. Failure to comply with exit special registration can result in denial or complications with an application for a visa stamp at a U.S. consulate, an application for readmission at the port of entry, or with subsequent immigration applications or petitions. **Unless a nonimmigrant who was subjected to special registration obtains a waiver of or determination of exemption from the special registration requirement, s/he must comply with exit registration.** Therefore, if a nonimmigrant was subjected to special registration, statements made by airline personnel or even CBP officers that a nonimmigrant is not subject to registration cannot be relied upon, a formal waiver or exemption is required. A nonimmigrant must ensure that s/he is in compliance with port of exit special registration before exiting the U.S. This may mean initially reporting to the international terminal before boarding a domestic flight in a main terminal. If you have been subject to special registration, do not rely on airline personnel to handle departure registration for you. It is your responsibility to comply with exit special registration.

Change of address, job or school

Nonimmigrants who are subject to *either* “call in” *or* port of entry special registration (or both) must report changes of **address, job or school** within 10 days using **Form AR-11SR (not AR-11)**. The only exception to this requirement is for F, J or M nonimmigrants whose change of address or school is updated through the Student and Exchange Visitor Information System (SEVIS); notification of change of address or school through SEVIS is considered compliance with the change of address or school requirement such that filing an AR-11SR is not necessary. Note that all nonimmigrants subject to special registration, including F, J or M nonimmigrants whose change of address or school is updated through SEVIS, must file the Form AR-11SR within 10 days of change of employment.

See our website address change page, and our *Change of Address FAQ* for details. Please note that DHS does not have a designated procedure for updating its database to indicate that an individual is no longer subject to special registration (i.e., upon becoming a permanent resident). Submitting a new AR-11SR to indicate that one is no longer subject, and/or writing a letter to the local USCIS/ICE/CBP offices, may result in updating of DHS’s database.

Penalties for noncompliance

Penalties for failure to comply timely with the special registration requirements include:

- USCIS may determine the nonimmigrant failed to maintain nonimmigrant status, which may cause USCIS to deny an application for change or extension of nonimmigrant status or adjustment of status to that of a permanent resident (Note: USCIS routinely issues Requests for Evidence (RFEs) requesting documentation of compliance with special registration in applications for nonimmigrant status, immigrant visa petitions, adjustment of status applications, etc).
- Criminal conviction of a federal misdemeanor involving imprisonment of up to six months, and fine up to \$1,000, for fraudulent statements or for “willful” failure to register.
- ICE may initiate removal (deportation) proceedings from the U.S., unless you can establish that such failure was “reasonably excusable or was not willful”.
- If the nonimmigrant applies for a visa stamp, the U.S. State Department consular officer may presume that s/he is inadmissible and refuse to issue the visa stamp. In May 2003, DOS issued a cable guiding consular officers on how a visa stamp applicant might overcome the presumption of inadmissibility by showing good cause and by establishing that the nonimmigrant does not intend to enter the U.S. to engage in unlawful activity. The December 2003 ICE notice states that a nonimmigrant applying for a new nonimmigrant visa must demonstrate good cause and admissibility to the U.S. consular officer reviewing his or her application for a visa stamp, and that the U.S. consular officer’s determination is **not binding** but is a significantly favorable factor for the CBP inspecting officer at the port of entry.
- If the nonimmigrant applies for readmission, CBP may presume that s/he is inadmissible and refuse admission to the U.S. As stated above, the CBP inspecting officer may refuse admission even if a U.S. consular officer found good cause for failure to special register, no inadmissibility, and issued a nonimmigrant visa stamp.

Waiver

Affected nonimmigrants who believe they are eligible for a waiver from special registration may apply to the CBP Field Director who has jurisdiction over the port of intended departure for a temporary waiver of up to one year, from port of entry/exit special registration. The nonimmigrant must be able to establish that **exigent or unusual circumstances** exist, and that the nonimmigrant **warrants a favorable exercise of discretion**. The decision of the Director is final and not subject to appeal.

Affected nonimmigrants who apply for a waiver from special registration due to frequent travel (possibly limited to frequent business travel), may apply to the CBP Field Director who has jurisdiction over the port of most frequent travel for a temporary waiver of up to one year, from port of entry/exit special registration. Business travelers may have to establish only **good cause** and that they **warrant a favorable exercise of discretion**.

The special registration waiver excuses the port of exit registration requirement, but does not significantly impact the entry requirement. Instead of port of entry special registration, the nonimmigrant must present the waiver to a CBP officer at secondary inspection. Until a nonimmigrant is granted a waiver, he or she is subject to and must comply with all applicable special registration requirements. The waiver may be terminated by notice to the nonimmigrant at any time.

Exemption

Affected nonimmigrants who believe they should be exempted from special registration may apply to DOS for exemption from special registration at a U.S. consular officer. It is unclear but likely that an application for exemption from special registration may be made only at the time of application for a nonimmigrant visa stamp. The decision of the DOS consular officer is final and not subject to appeal.

Until a nonimmigrant is granted an exemption, he or she is subject to and must comply with all applicable special registration requirements. The exemption may be terminated by notice to the nonimmigrant at any time.

Who is **not** subject to special registration?

- Lawful Permanent Residents or U.S. citizens;
- Nonimmigrants who were admitted in A or G (diplomatic, international organization employee) status;
- Certain asylum applicants who would be otherwise subject to “call in” special registration;
- Nonimmigrants who have been granted asylum (asylees) or refugee status (refugees);
- Parolees (e.g. adjustment applicants who are admitted using advance parole, humanitarian parolees), as they were not admitted as nonimmigrants,
- EWIs (those who entered without inspection), as they were not admitted as non-immigrants.

ICE procedures and required documents

Nonimmigrants reporting to a ICE Field Office for special registration for periodic re-registration, must report to the designated ICE office at the designated time or date, answer questions of an ICE officer under oath, and present:

- travel and immigration documents, including passport and Form I-94 and any other forms of government-issued identification;
- proof of residence, such as, but not limited to, title to land, lease or rental agreement, proof of school enrollment or graduation, and/or proof of employment, and list of contacts in the U.S. and abroad;
- other information and/or documentation as required by the ICE officer.

Former INS offices are typically but not always the location of current ICE offices. For a list of offices, refer to ICE’s special registration webpage <http://www.ice.gov/pi/specialregistration/index.htm#walver>. ICE will interview, photograph, and fingerprint registrants, and will note registrants’ compliance on their I-94 cards and on its database by issuing a “FIN” (fingerprint identification number).

Late registration

A nonimmigrant who was required to special register but who did not report before his/her 30-40 day or annual re-registration deadline may be registered at ICE discretion, if an ICE officer and his or her supervisor determine that the failure to register in a timely manner was "reasonably excusable" or was not "willful". A former INS memo provides the following examples: hospitalization, severely limited mobility, or lack of awareness of the requirement. Fear of arrest or deportation is not considered reasonably excusable. **If ICE determines that the failure was not reasonably excusable, or was willful, the nonimmigrant may be placed in removal (deportation) proceedings.** Even if the nonimmigrant is not placed in removal proceedings, DHS and DOS databases may be updated to indicate the failure to register, and the nonimmigrant may be subsequently denied applications for extension or change of status, applications for visa stamps, immigrant visa petitions, or applications for permanent residency.

Special registration vs. US-VISIT

DHS has implemented a new registration program that applies to most nonimmigrants, called US-VISIT (United States Visitor and Immigrant Status Indicator Technology), as of December 31, 2003. **US-VISIT does not terminate the special registration program.** In fact, special registration is regarded as a pilot program and US-VISIT is an expansion of that program. US-VISIT uses scanning equipment to collect "biometric identifiers," such as fingerprints, in an inkless process, along with a digital photograph of potentially all nonimmigrant visitors coming to and departing from the U.S. Together with the standard information gathered from a visitor about their identity and travel, the program verifies the visitor's identity and compliance with visa and immigration policies. At exit points, visitors will check by scanning their visa or passport and repeating the fingerprinting process. The exit confirmation will be added to the visitor's travel records to demonstrate compliance. Land border processing will be introduced in phases in 2005 and 2006. One major distinction between special registration and US-VISIT at air ports of entry is that US-VISIT occurs at primary inspection, while nonimmigrants selected for special registration are diverted to lengthier "secondary inspection" and are interviewed.
