

# Immigration Spotlight

## Inside Spotlight

### U.S. Citizenship and Immigration Services

*Call-in Special Registration compliance period*..... 19.1  
*Errors on CIS receipt notices* ..... 19.2  
*CIS releases new H-1B numbers*..... 19.2

### Department of State

*Holiday travel advisory and new USVISIT* ..... 19.2  
*No auto reval. for Canadian PRs without visas*..... 19.3

### Department of State

*RIR, PERM and backlogs update*..... 19.3

### Other News

*Special Focus: Emp. reverification issues (part 2)*..... 19.4  
*Immigration Trivia* ..... 19.4

Selection for Special Registration is based on various criteria, including country of birth, nationality, citizenship, travel patterns, behavior, demeanor, or responses to questioning. There are two types of Special Registration, “**call in**” and “**entry/exit**”. Special registration usually applies to males although some females have been registered at the time of entry. A nonimmigrant’s obligation under this program vary depending on whether he is subject to one or both types of Special Registration.

“**Call in**” Special Registration involves reporting to a local U.S. Citizenship and Immigration Services (CIS) or Immigration and Customs Enforcement (ICE) field office within a specified period of time, to be photographed, fingerprinted, and interviewed about immigration status or any other subject deemed by the interviewing officer to be relevant. The nonimmigrant must also present immigration, residence, employment, school, and other related documents.

“Call in” Special Registration also includes the following:

- Annual re-registration requirements;
- Re-registration at specified ports of exit on every departure from the U.S.; and
- Reporting obligations with regards to changes of address, school, or employer.

“Call in” Special Registration requires re-registration *every year, within ten days before or after the anniversary of the initial registration date*. Re-registration is considered timely only if it occurs within ten days of the anniversary of the initial registration date. We are now in the annual “call in” re-registration period. Therefore, Jackson & Hertogs will start notifying potentially affected clients beginning next week.

The schedule for annual re-registration is as follows:

**Group I:** For certain male nationals or citizens

## USCIS News

### Annual “call in” Special Registration compliance period begins

Special Registration, otherwise known as the National Security Entry-Exit Registration System (NSEERS), involves several procedures designed to increase scrutiny and tracking of nonimmigrants. Special Registration was instituted by the U.S. Department of Justice (DOJ) in September 2002, and continued in March 2003 by the Department of Homeland Security (DHS). The stated rationale behind the Special Registration program is the improvement of U.S. national security in the post 9/11 era.

(including dual nationals or citizens) of Iran, Iraq, Libya, Sudan, or Syria. The compliance period for Group I runs from November 5, 2003 – December 26, 2003, and then again from January 17, 2004 – February 17, 2004.

**Group II:** For certain male nationals or citizens (including dual nationals or citizens) of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen. The compliance period for Group II runs from November 22, 2003 – February 17, 2004.


**Group III:** For certain male nationals or citizens (including dual nationals or citizens) of Pakistan or Saudi Arabia. The compliance period for Group III runs from January 3, 2004 – March 31, 2004.

**Group IV:** For certain male nationals or citizens (including dual nationals or citizens) of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait. The compliance period for Group IV runs from February 14, 2004 – April 7, 2004.

In addition to “call in” Special Registration, any nonimmigrant may potentially be selected for port of entry Special Registration upon arrival into the U.S.

For more information regarding Special Registration, please refer to our website under [special registration](#).


## Errors on CIS receipt notices



The California Service Center (CSC) has advised the American Immigration Lawyers Association (AILA) that an upgrade to the U.S. Citizenship and Immigration Service (CIS) computer system caused errors with respect to the number of days it takes to process applications, petitions, motions, and appeals on all receipt notices issued by all the Service Centers on October 6, 2003 and October 7, 2003. The errors also caused the national CSC call-in automated system and the CIS online system to incorrectly report processing dates. These errors are nationwide and affected all Service Centers.

Please refer to the most current processing times report for the various Service Centers on our website. It is important to note that the processing times listed on the receipts, the phones, and in response to CIS internet inquiries are often wrong. The current processing times for the Service Centers listed on our website are more accurate.

## CIS releases new H-1B numbers



U.S. Citizenship and Immigration Services (CIS) has released figures concerning H-1B nonimmigrant visa petition usage during fiscal year 2003 (the fiscal year ended on September 30, 2003). During that fiscal year, 231,030 H-1B petitions for both initial and continuing employment were received. Of these petitions, 217,340 were approved, 105,314 for initial employment and 112,026 for continuing employment. Approximately 78,000 petitions were counted against the Congressionally-mandated numerical limit of 195,000, which was reduced to 65,000 effective October 1, 2003. Please refer to our September *Spotlight* issue concerning the impact of the reduction in available H-1B visa numbers on employers for the current fiscal year.

## DOS News

### Holiday travel advisory and the new USVISIT program

Due to the upcoming holidays, we will be posting a special holiday travel advisory on our website's home page. The advisory contains information similar to what we have already provided to you and your employees in letters informing them about the approval of petitions filed on their behalf. This information is also posted on our website under “Travel”. Due to increased security checks, mandatory interviews when applying for new visas, high volume of cases at consulates, and recent changes in the law, traveling continues to be problematic. Delays in obtaining visa interviews and delays in actually receiving the visas should be anticipated. We strongly urge individuals who will need to apply for visas while abroad to make their applications as soon as possible upon arriving in the Consular district and not leaving the application process for the last few days of their travel. Furthermore, individuals should keep in mind the fact that Consular posts will be closed on all U.S. holidays as well as national holidays of the host country. We suggest that open-ended return tickets be purchased which will allow for changes in travel plans that may be mandated by delays in visa applications.

In addition to delays at U.S. Consulates, the United States Visitor and Immigrant Status Indicator Technology program (“USVISIT”) will be implemented on December 31, 2003. USVISIT is designed to serve as the Department of Homeland Security's (DHS) cornerstone to improving border management at U.S. ports of en-

try. DHS believes that by capturing more complete arrival and departure data for those who require a visa to enter the United States, the USVISIT program will enhance the security of our citizens and visitors while expediting legitimate travel and trade.

Initially, USVISIT will be implemented at airports starting on December 31, 2003. Per Asa Hutchinson, Under-Secretary of Border & Transportation Security of the DHS: "We are on target to achieve this first increment of USVISIT." USVISIT uses scanning equipment to collect "biometric identifiers" such as fingerprints (an inkless process) along with a digital photograph of the visitor. Combined with the standard information gathered from a visitor about their identity and travel, the new program will verify the visitor's identity and compliance with visa and immigration policies.

All data obtained from the visitor is securely stored as part of the visitor's travel record. This information is made available only to authorized officials and selected law enforcement agencies responsible for ensuring the safety and security of U.S. citizens and foreign visitors. At exit points, visitors will check out at kiosks by scanning their visa or passport and repeating the simple inkless 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 by 2005 and 2006.



While DHS hypothesizes that the entry procedures will only add a few seconds to each individual's inspection process, immigration practitioners believe that immigration inspections will, in fact, take much longer. Therefore, foreign travelers should plan for potential travel delays due to delays at inspection.

The DHS press release from October 2003 states that "All of these entry and exit procedures address our critical need for tighter security and our commitment to expedite travel for the millions of legitimate visitors we welcome each year to conduct business, learn, see family or tour the country." Under-Secretary Hutchinson also commented that, "The new program is designed to enhance the security of U.S. citizens and visitors, expedite legitimate travel and trade, ensure the integrity of the immigration system, and safeguard visitors' personal privacy."

The law requires that an automated entry/exit system be implemented at air and seaports by December 31, 2003; the 50 most highly trafficked land ports of entry by December 31, 2004; and all ports of entry by December 31, 2005.

We will provide more information about USVISIT as it becomes available. Please encourage your employees to review the Travel Advisory and the "Travel" section on our website.

## No automatic revalidation for Canadian PRs without visas



The U.S. Department of State (DOS) has confirmed that Canadian permanent residents (previously known as "landed immigrants") who are in the U.S. and who were previously considered to be visa exempt as citizens of former British Commonwealth countries and therefore do not already have nonimmigrant visas in their passports, must apply for and obtain a visa before seeking readmission to the U.S. Consequently, when these individuals return to Canada, they must obtain a visa in order to reenter the U.S. or they will be refused admission. This rule applies even if Canadian permanent residents meet all of the other requirements for automatic revalidation (i.e., maintenance of status, departure only to Canada or Mexico for no more than 30 days); since they never previously obtained visas, there are no visas to be revalidated. Canadian permanent residents who already have been issued visas can travel either on the visas or under the automatic revalidation rules.

## DOL News

### Update: RIRs, PERM, and backlogs

The U.S. Department of Labor (DOL) has provided an update on three issues:

#### Reduction in Recruitment (RIR)

As we have previously reported in *Spotlight* and on our website, DOL Region VI (the region which has jurisdiction over labor certifications filed in California and other Western States) has been automatically remanding pending RIR applications to local state employment offices for supervised recruitment without providing employers the opportunity to address the alleged deficiencies. The national Foreign Labor Certification division of the DOL conducted meetings with attorneys representing the American Immigration Lawyers Association (AILA) in San Francisco this past summer. Jackson & Hertogs hosted the meetings, and one of our partners, attorney Norman Plotkin, attended in his dual role as a member of the national AILA/DOL liaison committee and as co-liaison

to Region VI for AILA's Northern California Chapter.

As a result of these meetings, DOL agreed to halt RIR remands until a resolution is reached on the criteria for RIR processing. It is expected that DOL will issue guidance nationwide regarding how DOL regions are to process RIR applications. However, the much anticipated release of this field memorandum has been delayed. The latest report from DOL indicates that this guidance will be released sometime during November 2003. It is important to note that DOL has previously set deadlines for issuing the memorandum, but then failed to do so. Therefore, it is likely that the guidance providing criteria for processing of RIR applications will be issued at a later date.

### PERM

According to DOL projections, PERM regulations will be published by the end of the year. DOL has advised AILA that implementation of the PERM program will probably occur 120 days after the regulations are published. DOL is planning to schedule approximately four training sessions throughout the U.S. During this period, DOL will also conduct Beta testing of the PERM software.

### Backlog reduction

DOL is in the process of establishing two backlog reduction centers. One will be located in Philadelphia, Pennsylvania and the other will be in Dallas, Texas. DOL will replace the pilot backlog reduction center, which was located in Gaithersburg, Maryland. The centers will be operational once DOL selects a contractor for the project, since the software is already in place and training was completed for the center in Gaithersburg.

Stay tuned, we will provide you with further DOL updates as they become available.

## Special Focus

### I-9 Employment Eligibility Reverification (Part 2 of 2)

Last month in the October issue of *Spotlight*, we discussed issues related to I-9 reverification. In Part 2 of this series, we will discuss the Social Security Administration's (SSA) "mismatch" letters and its impact on an employer's I-9 obligations, as well as explore the

pros and cons of using agents to complete the reverification process for "remote" hires.

### SSA "mismatch" letters



The Social Security Administration (SSA) reviews W-2 forms and credits social security earnings to all workers annually. If a name or a social security number (SSN) on a W-2 form does not match the SSA's records, the social security earnings are deposited into a suspense account while the SSA works to resolve the discrepancy.

As part of the resolution, the SSA will send what is known as a Code V (or "mismatch") letter to the employer requesting corrected name and SSN for employees whose W-2 data does not match SSA records. In 2002, approximately 800,000 Code V letters were mailed to employers. However, in 2003, the number of Code V letters that were sent dropped dramatically to 130,000. The decrease in letters was the result of a new SSA policy, in which the Code V letters were mailed only to employers for whom there are at least ten employees with mismatched W-2 data, provided those ten cases represented at least 0.5% of the employer's workforce. At the same time, the SSA also sends a letter regarding this issue directly to the employee.

Mindful of the employer's concern over a possible charge of discrimination, the SSA Code V letters recommend that the employer compare the W-2 form with its employment records. If the W-2 does not match the company records, then the employer should complete a W-2C form. If the W-2 form does match the company records, then the employer should ask the employee for clarification. If there continues to be a discrepancy, then the employer should ask the employee to contact the SSA directly.

The Code V letter is careful to point out that the issuance of such a letter is not in and of itself a basis to terminate an employee, or a comment on the employee's immigration status. The Code V letter should also *not* be interpreted as evidence that the employee is unauthorized to work in the U.S. In addition, the letter cautions that an employer who uses information in the letter to justify adverse action against the employee "*may violate federal law and be subject to legal consequences.*"

Several issues arise with regard to these SSA "mismatch" letters. Although the U.S. Citizenship and Immigration Service (CIS) has not directly addressed these issues, we have received some general guidance from sources within the CIS such as the

General Counsel's office. The issues include:

- *Does receipt of a "mismatch" letter invalidate an I-9 if the employee used a SSA card as a List C document?*

The Code V letter alone does not indicate that the I-9 is invalid, because there is no presumption that receipt of a Code V letter creates unauthorized employment. If the employee presents another acceptable List C document verifying work authorization, the employer need only annotate the I-9 with the new document. The SSN discrepancy needs to be handled separately.

- *Should receipt of a "mismatch" letter put an employer on notice that the employee may not be work authorized? If so, does continuing to employ the individual constitute a "knowing" violation (i.e., continuing to employ an unauthorized worker), thus subjecting the employer to possible sanctions?*

A Code V letter alone does not support a finding that the employer knew, or should have known, that the employee may not be work authorized. Similarly, unsubstantiated rumors at the work place about an employee who may not be work authorized will not support a finding of a "knowing" violation by the employer. However, the cumulative effect of a receipt of a Code V letter, coupled with rumors at the work place and the employee's request for green card sponsorship, may support a finding of an employer's constructive or actual knowledge of an I-9 violation. Consequently, receipt of a Code V letter may lead an employer towards the path of employment termination, based on a reasonable conclusion that the employee is not work authorized. However, caution by the employer in this regard is extremely important, to avoid a claim of employment discrimination.

- *If the employee is unable or refuses to clarify the discrepancy with his SSN, what are the employer's obligations?*

The employer must give the employee every opportunity to correct the SSN discrepancy and present another original document verifying work authorization. Documenting the employer's attempts to clarify the SSN discrepancy is important, but it is also critical that the employer not give the employee the impression that a direct link exists between a Code V letter and the I-9. The employer needs to document other objective reasons that led to the employer's conclusion that an employee's I-9 may not be invalid. Legal counsel is essential before a request to reverify is made by the employer, and also before any action

leading to termination is taken.

### Remote hires and the use of agents

The general rule is that the person who observes the new hire and examines the Section 2 documents must also sign the I-9 on behalf of the employer. However, in some industries, it is common for an employer to hire a new employee at a remote job site, which means that the new employee will not appear in person at the employer's offices to carry out his I-9 obligations.

This type of situation occurs in a variety of scenarios. For example, a regional marketing manager is hired as a W-2 employee, but works out of his home. Therefore, there is no designated individual on-site to complete the I-9. Another example is a consultant whose initial assignment is at a remote job site such as a customer's place, where there is no employer representative and the employer does not trust the on-site manager's ability to correctly complete the I-9. Absent the expense and time that it would take to bring the new employee to the employer's principal place of business or send an I-9 verification team off-site, how can the I-9 be adequately completed for a remote hire?

CIS has responded that in such situations, the employer can designate an authorized representative/agent to carry out its I-9 responsibilities. The agent can be a notary public, accountant, attorney, personnel officer, foreman, etc. Since the employer is liable for the actions of its agents, the employer needs to ensure that the agent is viewing the original I-9 documents and endorses the Section 2 box of the I-9 entitled "Signature of Employer or Authorized Representative". We also recommend that the employer develop an agency agreement with the agent, and attach a signed copy of that agreement to the I-9 on file.

This concludes Part 2 of our series on I-9 reverification. Accordingly, we recommend that you examine your current I-9 policies and contact J&H if you would like us to assist you with any I-9 issues.

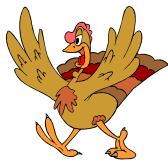
## J&H News

### J&H First Wednesday Seminars

Please note that there will be no seminar for December 2003. We will resume our First Wednesday Seminars in January 2004, and will keep you updated as to the upcoming schedule.



## J&H Holiday Schedule



In our ongoing effort to provide you with the best service, we would like to give you advance notice to changes in our office hours during the upcoming holiday season.

### J&H will be closed on the following dates:

**November 27-28;**  
**December 25-26; and**  
**January 1-2, 2004.**

**Our office will also close at 1:00 p.m. on both December 24 and 31.**

If you have any questions, please contact our office. We wish you a safe and happy holiday season!

## Client feedback

Jackson & Hertogs is interested in hearing from our corporate clients. We are attaching a questionnaire to this month's circulation of Spotlight, designed to elicit information from our corporate clients regarding our services. We would appreciate your taking a few minutes to complete the survey and return it to us. You may return it by email, fax, or snail mail. We need your input to understand what we are doing right and where we can improve. Thank you in advance for your assistance.

## Best wishes, Ellen!



Ellen Chin, after over 30 years with Jackson & Hertogs, retired from the firm earlier this month. The firm commends Ellen for her dedicated service to our clients during her tenure with the firm. Ellen was primarily responsible for working on many of our family-based and naturalization cases and has befriended many of our long-time clients over the years. We wish her well in her retirement.

## Immigration Trivia

**If an employer receives a SSA "mismatch" letter, this invalidates the I-9 if the employee used a SSA card as a List C document:**

- True
- False

**Answer:** False. A Code V (or "mismatch") letter alone does not indicate that the I-9 is invalid, because there is no presumption that receipt of a Code V letter creates unauthorized employment. If the employee presents another acceptable List C document verifying work authorization, the employer need only annotate the I-9 with the new document. The SSN discrepancy needs to be handled separately.



On Friday, October 31st, J&H employees celebrated Halloween by dressing up for a lunch-time party. Below are some photos you might enjoy.



Can you recognize your J&H contacts?



Four girls from the 'hood



Scooby Doo and friends chastise the Immigration Ghoul

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