

November 10, 2006

# CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

Resurgens Plaza  
945 East Paces Ferry Road  
Suite 2700  
Atlanta, Georgia 30326-1380  
404.923.9000

150 North Michigan Avenue  
35th Floor  
Chicago, Illinois 60601-7553  
312.499.1400

Lincoln Plaza  
500 N Akard Street  
Suite 2700  
Dallas, Texas 75201-3306  
214.397.4300

Wells Fargo Plaza  
1000 Louisiana  
Suite 5400  
Houston, Texas 77002-5013  
713.750.3100

1875 Century Park East  
Suite 500  
Los Angeles, California 90067-2506  
310.556.8861

Wachovia Financial Center  
200 South Biscayne Boulevard  
Suite 2100  
Miami, Florida 33131  
305.982.1520

Two Gateway Center  
12th Floor  
Newark, New Jersey 07102-5003  
973.642.1900

250 Park Avenue  
New York, New York 10177-1211  
212.351.4500

One California Street  
26th Floor  
San Francisco, California 94111-5427  
415.398.3500

One Landmark Square  
Suite 1800  
Stamford, Connecticut 06901-2681  
203.348.3737

1227 25th Street, N.W.  
Suite 700  
Washington, DC 20037-1175  
202.861.0900

## SPECIAL CLIENT ALERT

The U.S. Citizenship and Immigration Services (USCIS) has announced an expansion of its premium processing service. Colorado approves voter referendum denying tax deductions for wages paid to undocumented workers. The Department of Homeland Security (DHS) and Department of State (DOS) propose changes to U.S. passport requirements under the Western Hemisphere Travel Initiative. President Bush signs the Secure Fence Act of 2006. In this Special Immigration Alert, we shall discuss these and other recent developments in this area of law.

### 1. USCIS to Expand Premium Processing Service

The USCIS announced that on November 13, 2006, its service centers will begin accepting Premium Processing requests for I-140 (EB-1) immigrant visa petitions that seek to classify foreign nationals as aliens of extraordinary ability. The announcement does not cover any other category of EB-1 immigrant visa petition. The USCIS premium processing service permits applicants to obtain an expedited adjudication upon payment of an additional \$1,000 filing fee. For additional information on the expanded Premium Processing currently available, please visit the USCIS Web site at [http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease\\_08No06.pdf](http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease_08No06.pdf).

### 2. Colorado Voters OK Referendum Barring Employers From Deducting Wages Paid to Undocumented Workers as Business Expenses

On November 7, 2006, voters in Colorado approved Referendum H. This prohibits employers that hire undocumented workers from claiming their wages as a deductible business expense for state income tax purposes. The measure was referred to voters by the state General Assembly during a special session on illegal immigration. For more information on Referendum H, please visit [http://www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/Bluebook/BlueBook2006.pdf](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/Bluebook/BlueBook2006.pdf). This is the second major action taken by Colorado in an effort to address the growing problem of undocumented workers in the state.

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In September 2006, we reported on a new Colorado law that prohibits organizations from doing business with the state unless they certify that they are using the voluntary Model Pilot program developed by the USCIS for ascertaining the work authorization of employment candidates.

### 3. **DHS and DOS Address Changes to U.S. Passport Requirements under the Western Hemisphere Travel Initiative**

The Intelligence Reform and Terrorism Prevention Act of 2004 compels the Department of Homeland Security (DHS) and the Department of State (DOS) to design and put into operation a proposal to require all travelers, U.S. citizens and foreign nationals alike, to present a passport or other document, or a combination of documents, that evidences identity and citizenship when entering the United States. Congress amended portions of the Act in 2006. The Western Hemisphere Travel Initiative (WHTI) is the Bush administration's projected plan to execute this directive.

The objective of the Initiative is to toughen border security and to smooth the progress of entry into the United States, for both U.S. citizens and bona fide foreign visitors, by providing standardized and trustworthy documentation that will allow DHS to identify a traveler accurately. The proposed implementation timeline has two phases. On **January 8, 2007**, all persons, including U.S. citizens, traveling by air between the United States and Canada, Mexico, Central and South America, the Caribbean, or Bermuda will be required to present a valid passport, Air NEXUS card, or U.S. Coast Guard Merchant Mariner document. As early as **January 1, 2008**, all persons, including U.S. citizens, traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, or Bermuda by land or sea (including ferries) may be required to present a valid passport or other documents as determined by DHS. While recent legislative changes permit a later deadline, the DOS and DHS are working to meet all requirements as soon as possible. Ample advance notice will be provided to enable the public to obtain passports or passport cards for land/sea entries.

Under the proposed implementation plan, American citizens will be able to use the following to fulfill the WHTI document requirements:

**U.S. Passport:** U.S. citizens may present a valid U.S. passport when traveling by air between the United States and Canada, Mexico, Central and South America, the Caribbean, or Bermuda, and may also use a U.S. passport when traveling by sea and land borders (including ferry crossings).

**Passport Card (also referred to as the PASS Card):** This limited-use passport in card format is currently under development and will be available for use for travel only by land or sea (including ferries) between the U.S. and Canada, Mexico, the Caribbean, or Bermuda. Similar in size to a credit card, it will fit easily into a wallet.

DOS and DHS also anticipate that the following documents will continue to be acceptable for current travel uses under WHTI: SENTRI, NEXUS, FAST, and the U.S. Coast Guard Merchant Mariner document. As proposed, members of the U.S. armed forces on active duty traveling on orders will continue to be exempt from the passport requirement. For additional information on the changes to U.S. passport requirements and the WHTI, please visit: [http://www.travel.state.gov/pdf/WHTI\\_fact\\_sheet.pdf](http://www.travel.state.gov/pdf/WHTI_fact_sheet.pdf).

### 4. **President Bush Signs Secure Fence Act of 2006**

On October 26, 2006, President Bush signed the Secure Fence Act of 2006. The bill allows for the construction of hundreds of miles of additional fencing along the southern border and more vehicle barriers, checkpoints, and lighting, and it sanctions the Department of Homeland Security to increase the use of advanced technology, such as cameras, satellites and unmanned aerial vehicles, to reinforce the infrastructure at the border. For additional information on the Secure Fence Act, please visit <http://www.whitehouse.gov/news/releases/2006/10/20061026.html>.



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If you have any questions about these issues or any other developments in the immigration area, you can contact:

**New York**

**Robert S. Groban, Jr.**  
**Pierre Georges Bonnefil**

**212-351-4689**  
**212-351-4687**

**[rgroban@ebglaw.com](mailto:rgroban@ebglaw.com)**  
**[pgbonnefil@ebglaw.com](mailto:pgbonnefil@ebglaw.com)**

**Houston**

**Leigh Ganchan**

**713-750-3141**

**[lganchan@ebglaw.com](mailto:lganchan@ebglaw.com)**

**Dallas**

**Elise Healy**

**214-397-4345**

**[ehealy@ebglaw.com](mailto:ehealy@ebglaw.com)**

**Atlanta**

**William Poole**

**404-923-9035**

**[wpoole@ebglaw.com](mailto:wpoole@ebglaw.com)**

**San Francisco**

**Jang Im**

**415-398-3500**

**[jim@ebglaw.com](mailto:jim@ebglaw.com)**

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