

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

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The Department of State (“DOS”) recently published its instructions regarding the Diversity Lottery for 2008 (“DV-2008”). The U.S. Citizenship and Immigration Services (“USCIS”) recently announced that: (a) it is expanding the premium processing service to include three additional employment-based immigrant visa categories; (b) its district offices will no longer issue Interim Employment Authorization Documents (Form I-688B) as of October 1, 2006; and (c) any passport issued on or after October 26, 2006, by a Visa Waiver Program (“VWP”) country must be an e-passport for VWP travelers to be eligible to enter the United States under the VWP. The U.S. Department of Labor (“USDOL”) recently implemented an online system to provide the general public with information on cases pending at its Backlog Reduction Centers. Two states have passed legislation addressing immigration enforcement issues. In this Special Alert, we shall address these and other recent developments in the immigration area.

1. Diversity Visa Lottery 2008

The DOS recently published its instructions for the 2008 Diversity Lottery (“DV-2008”). Application procedures for DV-2008 remain largely the same as those last year. The applications must be filed electronically at the specified DOS Web site: <http://www.dvlottery.state.gov>. Applicants may submit only one application, which must include a digital photograph that conforms to DOS specifications.

Registration for DV-2008 will be available from **noon, October 4, 2006, through noon, December 3, 2006**. In response to public demand, each applicant for the DV-2008 lottery will receive a notice of receipt containing the person’s name, date of birth, country of chargeability, and a time/date stamp when all information has been properly registered. There is no fee to enter the DV-2008. Specific instructions on how to enter the DV-2008 are attached to this Special Client Alert.

2. USCIS to Expand Premium Processing Service

The USCIS began accepting premium processing requests for a limited group of I-140 Immigrant Visa Petitions on September 25, 2006. The following immigrant visa categories are included: EB-1, Outstanding Professors and Researchers; EB-2, Members of Professions with Advanced Degrees or Exceptional Ability not seeking a National Interest Waiver; and EB-3, Workers Other than Skilled Workers and Professionals. 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 program and how it might benefit your overall immigration strategy, contact your EBG Immigration attorney.

3. USCIS to Eliminate Form I-688B, Employment Authorization Card (“EAD”)

The USCIS will no longer manually produce Form I-688B EADs at district offices as of October 1, 2006. The USCIS and the Department of Homeland Security (“DHS”) believe that these manually produced I-688B EADs are too easily counterfeited and that their elimination will reduce the prevalence of fraudulent EADs. Accordingly, during September 2006 the USCIS district offices will accept filings of Form I-765 applications but will forward the applications to the appropriate Service Center. Applications received on or after October 1, 2006, will be returned to the applicants with instructions to file directly with the appropriate Service Center or Lockbox.

As a result of these procedural changes, the USCIS now will issue only the laminated Form I-688 EADs produced at the Integrated Card Production System in Corbin, Kentucky. This undoubtedly will complicate the efforts of foreign nationals seeking to secure interim EADs once their I-765 applications have been pending for 90 days, as well as complicate the efforts of students and others seeking EADs quickly for humanitarian and other urgent reasons.

4. Visa Waiver Pilot Travelers Must Use E-Passports on or after October 26, 2006

On October 26, 2006, the government will implement its long-anticipated regulations requiring any foreign national seeking admission to the United States under the Visa Waiver Pilot Program (“VWP”) to possess and use an “e-Passport.” The e-passport has an integrated computer chip that contains the same information printed on the passport’s data page. E-passports must comply with international technical standards established by the International Civil Aviation Organization. If the traveler does not possess the required e-passport, he/she will not be admitted under the VWP and will have to return home and secure the appropriate visa.

The rules carve out two exceptions to this requirement. First, VWP travelers who have machine-readable passports issued before October 26, 2006, with a digital photograph, do not need to obtain a new e-passport until their passports expire. Second, VWP travelers who have machine-readable passports issued before October 26, 2005, that do not contain a digital photograph, may wait until the expiration of their passports before obtaining a new e-Passport. For additional information regarding the new e-passport requirements for Visa Waiver Pilot travelers, please visit the DHS website at www.dhs.gov.

5. U.S. Department of Labor Institutes Online Backlog Public Disclosure System

The U.S. DOL has instituted an online public disclosure system that will allow the public to obtain information on cases pending at Backlog Elimination Centers. This system only accepts cases with numbers that begin with either a D or a P. The online case status can be accessed at the following Web address: www.pbbs.doleta.gov/pbbs_pds.cfm.

6. States Pass Legislation Addressing Immigration Enforcement Issues

With the failure of the federal government to address comprehensive immigration reform, many states have taken the matter into their own hands. Ten states have introduced legislation that sanctions organizations that employ undocumented workers. Two states, Colorado and Georgia, have passed such legislation.

The Colorado statute, enacted on June 6, 2006, presents a typical model. It prohibits state agencies from entering into agreements with contractors unless they represent that they do not knowingly employ undocumented workers or subcontract with entities that do and that they utilize the USCIS Pilot Program to verify the work authorization of potential employees. This can pose a significant dilemma for organizations seeking to do business in Colorado, because they may only engage in minimal activities in that state, yet the Colorado law requires them to conform in every location in the United States where they operate. Moreover, the USCIS Pilot Program is voluntary at the federal level, and many organizations have elected not to use it, because it imposes significantly more stringent work verification requirements on program participants than those required by the Immigration Reform and Control Act and its Form I-9 requirements. It requires more administrative support and, most significantly, is not always reliable.

The Georgia statute was enacted on April 17, 2006. It directs the commissioner of public safety to negotiate a memorandum of understanding (“MOU”) between the State of Georgia and the U.S. Department of Justice or the Department of Homeland Security (“DHS”) “concerning the enforcement of federal immigration laws.” Effective July 1, 2007, with a graduated implementation based upon number of employees over the next three (3) years, the statute requires all public employers, contractors and subcontractors to register and participate in a “federal work authorization program,” defined as an electronic verification program operated by the DHS. This statute further authorizes Georgia peace officers, trained under the MOU, to enforce the federal immigration and customs laws and amends the Georgia Revenue and Taxation Code to disallow as a deductible business expense any wages or remuneration paid for labor services to an individual who is not authorized for employment in the United States. Finally, the statute requires every Georgia agency or political subdivision to verify the lawful presence in the United States of any natural person eighteen (18) years of age or older who has applied for state or local public benefits.

At least eight other states are considering similar bills in response to perceived public frustration with the failure of the federal immigration authorities to enforce this country’s laws regarding the employment of undocumented workers. The constitutionality of this type of legislation will likely be challenged in court, since it appears to encroach on an area of law, namely immigration that historically has been under the exclusive jurisdiction of the federal government.

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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
pgbonnefil@ebglaw.com

Houston

Leigh Ganchan

713-750-3141

lganchan@ebglaw.com

Dallas

Elise Healy

214-397-4345

ehealy@ebglaw.com

Atlanta

William Poole

404-923-9035

wpoole@ebglaw.com

San Francisco

Jang Im

415-398-3500

jim@ebglaw.com

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EPSTEIN BECKER & GREEN, P.C. DIVERSITY LOTTERY INSTRUCTIONS

The State Department's Bureau of Consular Affairs ("BCA") has published the final rules governing this year's Diversity Lottery Program ("DV-2008"). They are summarized below.

I. DIVERSITY LOTTERY ELIGIBILITY

To be eligible for the DV-2008 Lottery, every applicant must (1) be a native of a "low admission" foreign country; (2) have at least a high school education or its equivalent (successful completion of a 12-year course of elementary and secondary education) or, within the past five years, have at least two years of work experience in an occupation requiring at least two years' training or experience; and (3) submit an application electronically via the DOS website www.dvlottery.state.gov during the 60-day registration period beginning **noon, Wednesday, October 4, 2006**, through **noon, Sunday, December 3, 2006**.

A. QUALIFYING "LOW ADMISSION" FOREIGN COUNTRIES

The DV-2008 Lottery divides the world into six geographic regions: Africa, Asia, Europe, North America, Oceania, and South and Central Americas/Caribbean. Visas in the DV-2008 Lottery are allocated to countries within these regions based on the total number of visas issued during the past five years. Those countries with the fewest admissions during this period receive a higher percentage of the 50,000 visas available under the DV-2008 Lottery. The countries whose natives are eligible for visas under the DV-2008 Lottery are as follows:

Africa	All countries
Asia	All countries (including Hong Kong, Macau and Taiwan) <u>except</u> China (Mainland), India, Pakistan, Philippines, Vietnam and South Korea
Europe	All countries (including Northern Ireland and Asian states formerly part of the Soviet Union) <u>except</u> the United Kingdom and its dependent territories, Russia, and Poland
North America	<u>Only</u> the Bahamas (Canada is <u>not</u> eligible.)
Oceania	All countries (including Australia and New Zealand)
South America, Central America and the Caribbean	All countries <u>except</u> Mexico, Jamaica, El Salvador, Colombia, Haiti and Dominican Republic

B. HIGH SCHOOL EDUCATION

A high school education or its equivalent means the successful completion of a 12-year course of elementary and secondary education in the United States or the successful completion in another country of a formal course of elementary and secondary education comparable to the completion of 12 years' elementary and secondary education in the United States.

C. WORK EXPERIENCE

Work experience must be two years' work experience within the past five years in an occupation that requires at least two years' experience. To determine whether an occupation requires at least two years' training or experience, the U.S. Citizenship and Immigration Services shall rely exclusively on the Department of Labor's O*Net OnLine database.

II. PROCEDURAL REQUIREMENTS

Applications must be filed electronically on an Electronic Diversity Visa ("EDV") Entry Form accessible at www.dvlottery.state.gov only during the application period, together with a digital photo image conforming to the DOS-prescribed specifications. This period begins at **noon, Wednesday, October 4, 2006**, and ends at **noon, Sunday December 3, 2006**. Applications received without the required digital photo or before **noon on October 4, 2006**, or after **noon on December 3, 2006**, will be rejected. Husbands and wives may apply separately, but the submission of more than one application by any single applicant will disqualify that applicant from registration. Paper applications will not be accepted. Upon proper registration, the applicant will see a confirmation screen containing the applicant's name, date of birth, country of chargeability and a date/time stamp. The confirmation screen should be printed and a copy kept for the applicant's records.

A. DIGITAL PHOTOGRAPHS

Recent photographs of the applicant, his/her spouse and each child under 21 years of age, including all natural children as well as all legally adopted children and stepchildren, except a child who is already a U.S. citizen or a Legal Permanent Resident, even if a child no longer resides with the applicant or does not intend to immigrate under the DV-2008 Lottery, must be submitted electronically with the EDV Entry Form. Group or family photos will not be accepted; there must be a separate photo for each family member. **The entry will be disqualified if all required photos are not submitted.**

1. Acceptable Format of Digital Photograph

All EDV Entry Forms must be accompanied by a separate computer file containing digital photos of the applicant, his/her spouse and child(ren). There must be a separate photo for each family member. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner. The digital photo must be in the Joint Photographic Experts Group ("JPEG") format, in color or grayscale, monochrome images (2-bit color depth). If the applicant chooses to submit a new digital photograph, it must have a resolution of 320 pixels wide by 240 pixels high and a color depth of either 24-bit color, 8-bit color or 8-bit grayscale. Applicants who submit a scanned photographic print must ensure that the print is two inches by two inches (50 mm × 50 mm) square and scanned at a resolution of 150 dots per inch (dpi) and with a color depth of either 24-bit color, 8-bit color or 8-bit grayscale. The maximum image size accepted will be 62,500 bytes. **If the submitted digital images do not conform to these specifications, the system will automatically reject the EDV Entry Form and notify the sender.**

2. Content of Digital Photograph

The Applicant, spouse and any child(ren) must be directly facing the camera, and their heads cannot be tilted up, down or to the side. The applicant's, his/her spouse's or child(ren)'s face should cover about 50 percent of the area of the photo. In addition, the photo must be taken with the subject in front of a neutral, light-colored background. Photos with very dark-colored, patterned or busy backgrounds will be rejected. In addition, photos in which the subject is wearing sunglasses, headgear or other paraphernalia that detracts from the subject's face or where the subject's face is not in focus will not be accepted. Photos of applicants or family members wearing head coverings or hats are acceptable only when the items are worn due to religious beliefs and even then may not obscure any portion of a subject's face. Photos of subjects with tribal or other headgear not specifically religious in nature are not acceptable. Photos of military, airline or other personnel wearing hats will not be accepted. **If the submitted digital images do not conform to these specifications, the entry will be disqualified.**

B. THE ENTRY

There is only one way to enter the DV-2008 Lottery. Applicants must submit an EDV Entry Form, which is accessible only at: www.dvlottery.state.gov. Failure to complete the EDV Entry Form in its entirety will disqualify the applicant's entry. Entries must include the name, date and place of birth of the applicant's spouse and all natural children as well as all legally adopted children and stepchildren who are unmarried and under the age of 21, except those children who are already U.S. citizens or Legal Permanent Residents, even if the applicant is no longer legally married to the child's parent and even if the spouse or child does not currently reside with the applicant and/or will not immigrate with applicant. Married children and children 21 years or older will not qualify for the diversity visa and must apply separately. Applicants who fail to list all children will be disqualified for the visa.

Applicants will be asked to submit the following information on the EDV Entry Form:

1. **FULL NAME** - Last/Family Name, First Name, Middle Name
2. **DATE OF BIRTH** - Day, Month, Year
3. **GENDER** - Male or Female
4. **CITY/TOWN OF BIRTH**
5. **COUNTRY OF BIRTH** - The name of the country should be that which is currently in use for the place where the applicant was born.
6. **APPLICANT'S PHOTOGRAPH** - See above for information on photo specifications.
7. **MAILING ADDRESS** - Address, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country
8. **PHONE NUMBER** (optional)
9. **E-MAIL ADDRESS** (optional)
10. **COUNTRY OF ELIGIBILITY IF THE APPLICANT'S NATIVE COUNTRY IS DIFFERENT FROM COUNTRY OF BIRTH** - If the applicant is claiming nativity in a country other than his/her place of birth, this information must be submitted on the entry. If an applicant is claiming nativity through spouse or parent, please indicate this on the entry.

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11. **MARITAL STATUS** – Unmarried, Married, Divorced, Widowed, Legally Separated
12. **NUMBER OF CHILDREN WHO ARE UNMARRIED AND UNDER 21 YEARS OF AGE**
(except children who are U.S. permanent residents or U.S. citizens)
13. **SPOUSAL INFORMATION** - Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph
14. **CHILDREN'S INFORMATION** - Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph

There is no fee required to enter the DV-2008 Lottery. Applicants will be selected at random by computer from among all qualified entries. Those selected will be notified by mail between May and July 2007 and will be provided further instructions, including information on fees connected with immigration to the U.S.

Persons not selected will NOT receive any notification. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children under age 21 of successful applicants may also apply for visas to accompany or follow to join the principal applicant. Visas for DV-2008 Lottery winners will be issued between October 1, 2007, and September 30, 2008. Lottery winners are not assured of securing visas because the DOS selects more winners than there are visas available. DV-2008 Lottery winners, therefore, should pursue their applications diligently so they obtain their permanent residence before the visas expire on or before September 30, 2008.

In order to actually receive a visa, applicants selected in the random drawing must meet ALL eligibility requirements under U.S. law. Processing of entries and issuance of diversity visas to successful applicants and their eligible family members MUST occur by midnight on September 30, 2008. Under no circumstances can diversity visas be issued or adjustments be approved after this date, nor can family members obtain diversity visas to follow to join the applicant in the U.S. after this date.

Further information about the DV-2008 Program can be obtained from the DOS website at:
www.state.gov/r/pa/prs/ps/2005/53629.htm.

