

CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

SPECIAL CLIENT ALERT

Diversity Visa Lottery 2007; USCIS Reports the Current Cap Count for H-1B Visas; GAO Says DHS Devoted Little Resources to Workforce Enforcement of Immigrant Laws

Last week, the Department of State (“DOS”) published its instructions regarding the Diversity Lottery for 2007 (“DV-2007”). The U.S. Citizenship and Immigration Services (“USCIS”) recently announced the current cap count for the H-1B nonimmigrant classification. On September 21, 2005, the federal government’s General Accounting Office (“GAO”) reported that the U.S. Department of Homeland Security (“DHS”) is devoting little resources to worksite enforcement of immigration laws. In this Special Alert, we shall address these and other recent developments in the immigration area.

1. Diversity Visa Lottery 2007

The DOS recently published its instructions for the 2007 Diversity Lottery (“DV-2007”). The procedures for DV-2007 are similar to last year. Applicants can only submit one application and it must include a digital photograph that conforms to DOS specifications. The applications are filed electronically to the specified DOS website: <http://www.dvlottery.state.gov>.

The website to register for DV-2007 will be available from noon **October 5, 2005 through noon December 4, 2005**. In response to public demand, applicants for the DV-2007 lottery will receive a notice of receipt containing their name, date of birth, country of chargeability, and a time/date stamp when all information has been properly registered. There is no fee for entering the DV-2007. Specific instructions are attached.

See pages 3 through 6 to view EBG’s Diversity Lottery Instructions.

2. USCIS Reports the Current Cap Count for H-1B Visas

As we advised in our last Client Alert, the USCIS announced on August 12, 2005 that it had received sufficient H-1B petitions by August 10, 2005 to reach the normal H-1B quota for fiscal year 2006. However,

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this did not include the 20,000 additional H-1B visa numbers received for applications with master's degrees or higher from U.S. universities. The USCIS recently reported that it had just over 7,000 H-1B visas left in this quota for fiscal year 2005 (ending September 30, 2005), and approximately 7,500 left in the quota for fiscal 2006. Those thinking of utilizing these visas should apply as soon as possible.

3. GAO Says DHS Devoted Little Resources to Workforce Enforcement of Immigrant Laws

On September 21, 2005, the GAO released a report critical of the government's efforts enforcing the immigration laws that require employers to verify the identity and work authorization of new hires via the Form I-9 process. According to the GAO, lax enforcement has undermined the effectiveness of laws barring employers from hiring undocumented workers. Despite the requirement that all employers verify a new hire's work authorization by completing a Form I-9, the GAO report found that document fraud and identity theft have made it difficult to maintain the integrity of this process. This report will likely lead to a re-examination of the employment verification process, and revive discussions about reducing the number of documents that employers can accept to establish identity and valid work authorization in connection with the Form I-9 process.

* * *

If you have any questions about these issues or any other developments in the immigration area, you can contact: **Robert S. Groban, Jr.**, the head of our Immigration Law Group, in the **New York** office at **212/351-4689** or **rgroban@ebglaw.com**. You may also contact: **Elise Healy**, the immigration partner in our **Dallas** office, at **214/397-4345** or **ehealy@ebglaw.com**; or **William Poole**, the immigration partner in our **Atlanta** office, at **404/923-9035**, or **wpoole@ebglaw.com**.

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

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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-2007"). They are summarized below.

I. DIVERSITY LOTTERY ELIGIBILITY

To be eligible for the DV-2007 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 <http://www.dvlottery.state.gov> during the 60-day registration period beginning **noon, Wednesday October 5, 2005** through **noon, Sunday December 4, 2005**.

A. QUALIFYING "LOW ADMISSION" FOREIGN COUNTRIES

The DV-2007 Lottery divides the world into six geographic regions: Africa, Asia, Europe, North America, Oceania and South and Central Americas/Caribbean. Visas in the DV-2007 Lottery are allocated to countries within these regions based on the total number of visas issued during the past five years. Those countries with fewest admissions during this period receive a higher percentage of the 50,000 visas available under the DV-2007 Lottery. The countries whose natives are eligible for visas under the DV-2007 Lottery are as follows:

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

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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 <http://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 5, 2005**, and ends at noon on **Sunday December 4, 2005**. Applications received without the required digital photo or before **noon** on October 5, 2005 or after **noon** on December 4, 2005 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-2007 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 2 inches by 2 inches (50mm x 50mm) 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 sixty-two thousand five hundred (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 his/her head 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% 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, photo's where the subject is wearing sunglasses, headgear, or other paraphernalia which 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 due to religious beliefs, and even then, may not obscure any portion of the 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-2007 Lottery. Applicants must submit an EDV Entry Form, which is accessible only at <http://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.
11. **MARITAL STATUS** – Unmarried, Married, Divorced, Widowed, Legally Separated
12. **NUMBER OF CHILDREN THAT ARE UNMARRIED AND UNDER 21 YEARS OF AGE (except children that are U.S. permanent residents or US 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

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There is no fee required to enter the DV-2007 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 2006 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-2007 Lottery winners will be issued between October 1, 2006 and September 30, 2007.

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, 2007. Under no circumstances can diversity visas be issued or adjustments 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-2007 Program can be obtained from the DOS website at <http://www.state.gov/r/pa/prs/ps/2005/53629.htm>.

