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Immigration Law Newsletter

August 18, 2008

U.S. State Department Failing to Issue Passports to Texans Born with the Help of Midwives

The U.S. Department of State has been failing to issue passports to Texans who were born in towns close to the Mexican border where the birth certificate shows that the person was delivered by a midwife. Many Texan midwives have been convicted of fraudulently signing birth certificates, thus causing the Department of State to reject birth certificates signed by midwives as lacking in credibility.

Starting in 2009, a passport will be required to travel between the United States and Mexico. This has prompted thousands of people living near the Mexican border, and with relatives in Mexico, to apply for passports.

Pursuant to the Department of State regulations, the passport applicant bears the burden of proving that he or she is a U.S. citizen. The regulations also provide that a birth certificate signed by the official custodian of birth records, bearing the seal of the issuing office, and filed (Cont'd on Page 3).

Federal Contractors May Soon Be Required to Use E-Verify System

On June 6, 2008, President Bush amended Executive Order 12989 to require all Federal contractors to use the E-Verify system to verify the employment eligibility of all persons hired during the contract term, and all employees assigned to perform work on a Federal contract.

The E-Verify system is a web-based system created by the Department of Homeland Security and the Social Security Administration (SSA) to assist employers in verifying the employment eligibility of new hires. For the most part, it is a voluntary program, where employers input data from the I-9 forms within 3 days of hire. The system then checks with databases from SSA and the U.S. Citizenship and Immigration Service to verify whether the new hire is authorized to work in the United States.

After inputting the data, the employer will receive one of three messages:

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U.S. Government Adopts New Procedures for Adopting Orphans from Hague Convention Countries

New procedures will apply to U.S. citizens who adopt foreign-born orphans from a country that has signed on to the Hague Convention on Inter-Country Adoptions.

Prior to 2008, two procedures existed for U.S. parents who wanted to adopt a foreign-born child, based on whether the child was an orphan. Orphans are children whose parents: (1) died; (2) abandoned the child; or (3) are separated or lost from the child.

U.S. parents who adopted an orphan could bring the child into the United States faster than parents who adopted a non-orphan. This is due to the fact that U.S. law requires the adopting parent to have custody of a non-orphan, and live with the child for two years overseas before the United States will grant the visa.

If adopting an orphan, the U.S. parents must undergo a home environment study, and (Cont'd on Page 3)

Congressional Update



Symbolic Victory for HIV/AIDS Activists

In a purely symbolic act, President Bush signed into law an act that removed HIV/AIDS as a reason specifically listed in the Immigration and Nationality Act (INA) to find a person inadmissible to the United States.

AIDS was the only disease specifically mentioned in the INA. The new law removes that reference. However, the INA provides that a person with “a communicable disease of public health significance” is inadmissible to the United States. The Department of Health and Human Services still lists HIV/AIDS as a communicable disease of public health significance in its regulations. This means that while HIV/AIDS is no longer specifically mentioned in the INA, it is still a reason to find a person inadmissible.

Bill to Extend Availability of Special Immigrant Religious Workers Visas Passes House, Is Referred to Senate Judiciary Committee

The House of Representatives passed a bill that would extend the availability of the special immigrant religious worker visas. Currently, the special immigration religious worker visas expire on October 1, 2008.

The bill, H.R. 5570, entitled, “Religious Worker Visa Extension Act of 2008,” would extend the availability of the special immigrant religious worker visas through January 1, 2010. If the Department of Homeland Security issues final regulations to eliminate or reduce fraud associated with these visas, the law would further extend the availability of the visas through January 10, 2016.

The bill was referred to the Senate Judiciary Committee on August 1, 2008.

Pending Legislation

- **H.R. 5924** -- This bill would provide for 20,000 visas annually for three years to address the nation’s shortage of nurses.
- **H.R. 5882** – This bill would recapture employment-based and family-based immigrant visas lost each year to administrative delay. A similar bill, S. 3414, has been introduced in the Senate.
- **H.R.6633** – This bill, which has passed the House of Representatives, would re-authorize the E-Verify system for an additional five years. The bill was referred to the Senate Judiciary Committee on August 1, 2008.■

Passport Woes for Texans Delivered by Midwives

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within one year of birth is the primary evidence of birth in the United States. Nonetheless, the regulations further provide that the Department could require any additional evidence “that it deems necessary” to prove citizenship.

The Department’s wholesale rejection of birth certificates signed by midwives in Texas raises serious concerns that the Department is violating the Administrative Procedures Act. Generally, any administrative decision must be supported by substantial evidence. Where an applicant has presented the Department with an official birth certificate recognized by the state government, the fact that some midwives may have committed fraud in other instances may not withstand this scrutiny. The Department’s actions also raise concerns under the Full Faith and Credit clause of the Constitution.

Reports are that this phenomenon is not limited to passport applications. Rather, people born in Texas with the help of midwives have found other federal benefits scrutinized as well. U.S. citizens seeking to file a visa petition for foreign-born spouses, for example, have seen the petitions denied by U.S. Citizenship and Immigration Services on the basis that the petitioner is not a citizen.

With the Federal Government sharing more information among different administrative agencies, this phenomenon is disturbing as it could lead to natural-born U.S. citizens being denied the right to work all because they were delivered by a midwife.

According to the Wall Street Journal, at least one lawsuit has been filed against the Department of State in Federal court. The ACLU is considering joining the lawsuit.■

Hague Convention

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satisfy all of the requirements of state adoption law. The parents would then file a form I-600 with the appropriate fee. The parents could adopt the child overseas, or gain legal custody of the child and pursue the legal adoption in the United States. Children adopted before the age of 16 by U.S. citizens would themselves become U.S. citizens and receive proof of citizenship by filing a form N-600 before the child’s 18th birthday.

These procedures will still apply if the child’s country is not a signatory to the Hague Convention.

The Hague Convention, however, entered into force with respect to the United States on April 1, 2008. Prospective parents are now required to fill out Form I-800A, the Application for Determination of Suitability to Adopt a Child from a Convention Country, and submit it with the appropriate fee. The requirements are similar to the process for non-signatory countries. All state law requirements must be met, and a home environment study must be completed. Once the application is approved, the parents will then be required to fill-out Form 800, the Petition to Classify Convention Adoptee as an Immediate Relative. There is no fee for this form.

Once the adoption process is complete, the parents file the form N-600 for proof that the adopted child is a U.S. citizen.

As of February 26, 2008, 75 countries have signed on to the Hague Convention.■

E-Verify

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(1) Employment Authorized; (2) SSA Tentative Nonconfirmation; or (3) DHS Verification in Process. With the receipt of a tentative nonconfirmation, the employer must inform the employee in writing, and give the employee eight Federal Government working days to begin addressing the problem with SSA. So long as the employee begins addressing the problem in those eight days, the employer must allow the employee to continue working, and provide the same working conditions as other employees. If the employee does not begin to address the problem with SSA within those eight days, or if the employee cannot fix the problem with SSA, then the employer may terminate the employment.

Under E-Verify guidelines, the system is only to be used for new hires after the employer registers for the program. Moreover, the system must be used for all new hires, not just those the employer selects to verify. The system is not to be used as a screening mechanism before hiring new workers.

Some states require that employers use the E-Verify system. They are: Arizona, Arkansas, Colorado, Georgia, Mississippi, Missouri, North Carolina and Oklahoma. Other states have similar requirements pending. They are: Alabama, California, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, New Jersey, New York and West Virginia.

The amended Executive Order is unique in that it requires Federal contractors not only to verify new hires during the term of the contract, but also to verify all employees assigned to work on a Federal contract.

The Department of Defense, the General Services Administration and NASA issued a proposed rule to implement this amendment on June 12, 2008. Comments on the proposed rule were due by August 11, 2008.

The law authorizing the E-Verify system is set to expire in November of this year. The House of Representatives has passed legislation to re-authorize the program. The bill now requires Senate approval.■

