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### Immigration Law Newsletter

**October 20, 2008**

#### **TPS Extended for Nicaragua, Honduras and El Salvador**

The U.S. Government announced that it would extend Temporary Protected Status (TPS) for Nicaragua, Honduras and El Salvador for an additional 18 months.

Under the TPS program, the Department of Homeland Security determines whether conditions exist that make it dangerous for nationals of certain countries to return. Nationals of a TPS-designated country are allowed to stay in the United States, and may be given permission to work.

A TPS designation is only temporary. An initial TPS designation can be between 6 and 18 months. DHS may extend the designation for another 6, 12 or 18 months.

TPS does not lead to permanent residency. A national of a TSP-designated country must apply separately to stay beyond the TPS designated period.

The TPS designation for Nicaragua and Honduras has been extended through July 5, 2010. The TPS designation for El Salvador has been extended through September 10, 2010. ■

#### **DHS Eases Visa Rules for HIV-Infected Individuals**

The Department of Homeland Security amended its regulations to ease the burden on individuals infected with HIV to apply for a nonimmigrant visa to the United States.

Currently, U.S. law provides that people with communicable diseases of public health concern are not admissible to the United States. Over the summer, President Bush signed a law which removed HIV as the only communicable disease specifically named as a reason to deny admission to the United States. However, pursuant to the regulations of the Department of Health and Human Services, HIV is still listed as a communicable disease of public health concern. An HIV-positive individual, therefore, is required to apply for a waiver from the Department of Homeland Security before being granted a visa.

For individuals looking to visit the United States temporarily, the process for applying for a waiver can take (Cont'd on Page 3)

#### **USCIS Updates List of Required Vaccines**

U.S. Citizenship and Immigration Services updated the list of required vaccinations for aliens seeking a visa to become a permanent resident, or seeking to adjust status to permanent residency. As of July 1, 2008, aliens seeking permanent residency are required to have been vaccinated against these additional infections: Rotavirus, Hepatitis A, Meningococcal, the Human Papillomavirus and Zoster. Although the new vaccination requirements went into effect July 1, 2008, a 30-day grace period was approved for medical examinations occurring before August 1, 2008.

U.S. law requires all aliens seeking permanent residency to be examined by a civil surgeon as certain health conditions can render a person inadmissible to the United States. Section 212(a)(1)(A)(ii) of the Immigration and Nationality Act requires all immigrants to show documentation of vaccination against certain diseases. The Act specifically mentions mumps, measles, rubella, polio, (Cont'd on Page 3)

## Congressional Update



### **Congress Passes an Extension of the Religious Worker Program**

Both houses of Congress passed the “Special Immigrant Nonminister Religious Worker Program Act,” which was signed by President Bush into law on October 10, 2008. The Act extends the availability of visas for religious workers who are not ministers through March 6, 2009. The availability of these visas was set to expire on October 1, 2008.

Congress, however, expressed concern that the non-minister religious worker visas have been subject to fraud. To that end, the Act requires the Department of Homeland Security to adopt regulations to eliminate or reduce fraud within 30 days of enactment. The Act also requires the Inspector General of the Department of Homeland Security

to report to Congress on the effectiveness of the newly adopted regulations no later than March 6, 2009.

### **Congress Passes Extension of Conrad-30 Program**

The United States provides a visa for foreign physicians to come to the United States on an exchange program to receive graduate medical education or training. However, the foreign physician must return to his or her home country once the training is complete for a period of two years before being able to return to the United States.

The law provides a waiver for this two year foreign residency requirement when the physician agrees to practice medicine in an area designated by the Department of Health and Human Services as having a shortage of health care professionals. This is known as the Conrad-30 program. The waiver could be requested either by a Federal agency, or a State. Under the old law, the State was limited to receiving 5 waivers per year. This program expired on June 1, 2008.

Both houses of Congress passed a bill to extend the Conrad-30 program through March 6, 2009. The bill also extends the number of waivers that a State may receive each year to 10. The bill was signed into law on October 10, 2008.

### **Bills Introduced to Address Mistreatment of People Detained by ICE**

Both the House and the Senate have introduced bills (H.R. 7255 and S. 3594) that would require the Department of Homeland Security to adopt regulations governing the treatment of detainees in ICE custody, and ensure their humane treatment. The bills are in response to numerous press reports concerning the mistreatment and lack of medical for people held in ICE custody during removal proceedings. ■

## **Indian Tribe Immigration Scam**

Some Latinos looking for a quick and easy way to come to the United States, or a way to avoid deportation, have fallen victim to a scam perpetrated by a so-called American Indian tribe.

The Bismark Tribune has reported that the Kaweah Indian Nation have been recruiting undocumented immigrants to join the tribe. For a fee, the tribe will issue documents that the tribe claims have gotten undocumented immigrants out of trouble with Federal authorities.

Such documents, however, do not solve an alien's immigration issues.

Provisions of U.S. law exist that grant members of American Indian tribes the ability to receive permanent residence status. However, the alien must be from Canada, be a member of a recognized American Indian tribe, and have at least 50% American Indian blood.

The problem does not appear to be limited to a single tribe. Immigration attorneys have reported similar problems with Latinos seeking to apply for immigration status showing the attorney similar tribal documentation.■

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## **New HIV Rules**

(Continued from Page 1, Column 2)

about 18 days. Department of State consular officers could not grant the waiver. Instead they could recommend that the Department of Homeland Security grant the waiver.

The amended regulation stream-lines this process by authorizing consular officers to issue either a B-1 (business) or B-2 (tourist) visa to an HIV-positive applicant permitting a stay of up to 30 days, provided certain criteria are met. For example, an HIV-positive individual must be aware of his or her condition, and must have received counseling on the communicable nature of the condition. In addition, the individual cannot be showing symptoms of an active, contagious infection associated with HIV, and must pose only a minimal risk to the public health of the United States and to the infection of another individual in the United States. The individual must also have access to a sufficient supply of medication to treat the HIV infection during his or her stay in the United States, cannot create any cost to the federal, state or local governments, and otherwise admissible to the United States.

An HIV-infected individual may still apply for asylum. Moreover, an HIV-positive asylee may apply for permanent residence, but only after receiving a waiver of the ground of inadmissibility relating to communicable diseases.

Those who do not qualify for a visa under this new process may still apply for a waiver from the Department of Homeland Security.■

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## **Updated Vaccine Requirements**

(Continued from Page 1, Column 3)

tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B. The Act also requires immigrants to have any other vaccinations recommended by the Advisory Committee for Immunization Practices, a committee of 15 experts who provides advice and guidance to the Center for Disease Control.

Of the newly required vaccines, the vaccine against the Human Papillomavirus, which goes by the trade name Gardasil, is the most controversial. The vaccine is recommended for  
(Continued on Page 4)

## Updated Vaccine Requirements

(Continued from Page 3)

girls aged 11 to 26. According to the Wall Street Journal, the vaccine is expensive and studies have questioned whether it should be required for all girls in this age group. Moreover, all of the other required vaccines are meant to prevent highly contagious diseases spread through the airways. The Human Papillomavirus, which is a known cause of cervical cancer, is sexually transmitted.■

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## E-Verify Program Extended Temporarily

On September 30, 2008, President Bush signed a continuing resolution to keep the Federal Government operating through March 6, 2009. The bill also included an extension of the E-Verify system through that date. The E-Verify system is a mostly voluntary web-based system created by the Department of Homeland Security and the Social Security Administration to assist employers in verifying the employment eligibility of new hires. Several states, including Arizona, Arkansas, Colorado, Georgia, Mississippi, Missouri, North Carolina and Oklahoma, have legislation requiring employers to use the E-Verify system. The Federal Government also recently passed rules to require Federal contractors to use E-Verify to verify the employment eligibility of not only new hires, but also of all employees working on Federal contracts. The program was set to expire in November of 2008.■



William J. Kovatch, Jr., Attorney at Law, PLLC, is located in Old Town Alexandria, on the north side of King Street between Washington and Columbus Streets. The office address is 717 King Street. By Metrorail, take either the Blue Line or the Yellow Line to the King Street station. From the King Street Station, you can take either DASH bus lines AT2, AT5 and AT7, or the King Street Trolley. Go to the blue door with the blue awning between the Taj Palace and Bistro Europa. During the day, the blue door is unlocked. Push the door and walk up to the second floor where William J. Kovatch, Jr. has his office. Call now for an appoint at (703) 837-8832.