



BEACH - OSWALD
Immigration Law Associates, PC

Beach-Oswald Immigration Law Associates Newsletter

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Beach-Oswald is a full-service law firm, concentrating on immigration law. We have special expertise in work visas, family based visas, visa waivers, green cards through family and employment and asylum. We have staff members who speak many different languages to assist you.

We succeed when others don't!

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**N-400 Application Form
Expired on Oct. 31**



We would like to remind our clients that the prior edition of the N-400 Application for Naturalization is set to expire on October 31, 2008. A new application has not yet been released, however, and according to the USCIS website, naturalization applicants may continue to use the

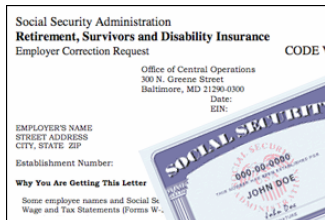
New TN Visa Regulation



The New TN Visa Regulation
The new rule increases the maximum allowable period of admission for TN nonimmigrants from one year to three years, and allows otherwise eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years instead of the current maximum of one year. TN visas petitions received on or after October 16, 2008 will be granted for three years or for the period requested, whichever is less. Any petitions received before October 16, 2008 however, will comply with the previous rule, and will be issued for a maximum of one year.

DHS's New Rule on "No Match" Letters Not Yet In Effect

The "no match" letter is a letter sent to employers by the Social Security Administration (SSA) to advise an employer that the information submitted by it regarding a newly hired employee does not match SSA records. In order to avoid fines for hiring undocumented workers, the employer is then required to comply with certain procedures. Because there have been many instances where authorized workers received unwarranted no match letters, there has been a lot of controversy about the no match letter procedure, and a federal lawsuit is currently pending in the U.S. District Court for the Northern District of California.



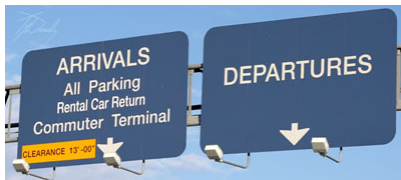
On October 23, 2008 the Department of Homeland Security (DHS) issued a supplemental final rule listing the steps that employers are required to do in the event that they receive a "no match" letter. The new rule is almost identical to a rule that was issued in August 2007, and essentially states that as long as the employer follows the "safe harbor" procedures

expired version of the form until the new one is posted. We recommend that you check the USCIS website (www.uscis.gov) for any updates prior to submitting the N-400 Application.

established in the rule, DHS will not use the no match letter as evidence that the employer had "constructive knowledge" that it hired an undocumented worker. If the employer does not follow the steps proscribed by the rule, it will be deemed to have had constructive knowledge of its employee's ineligibility and can face serious fines.

However, please note that this rule is **not** yet in effect. In October of 2007 the U.S. District Court, found that the DHS rule may result in irreparable harm to innocent workers and employers and granted a preliminary injunction that prohibits DHS from implementing the final "no match" rule until the court makes a final ruling. SSA has stated that it will not send no match letters to employers until the lawsuit is settled. Therefore, although a final rule has been issued, employers are not yet required to comply with it. For more information, please visit the [DHS website](#).

Trusted Traveler Program Now Operating at Several Airports

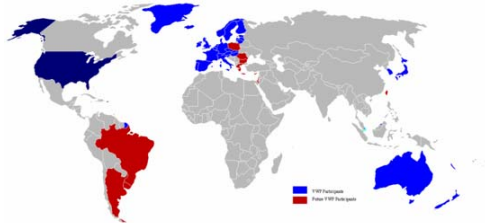


The Global Entry Trusted Traveler Program is the Customs and Border Protection Agency's (CBP) newest program that will allow U.S. citizens and permanent residents to expedite the process of returning to the U.S. after traveling abroad. U.S. citizens and lawful permanent residents that are considered to be "low-risk international travelers" can bypass the long lines at the border and instead use the Global Entry kiosks, where they will be prompted to insert their U.S. passport or permanent resident card into a document reader, and then to provide digital fingerprints. Upon successful completion of a few declaration questions, the travelers will be issued a transaction receipt that they will need to present to a CPB officer upon leaving the inspection area. The Global Entry Program is currently available at the following airports: Los Angeles (LAX), Miami, Chicago, Atlanta, New York (JFK), Washington DC (Dulles) and Houston. If you'd like to make your international travels easier by taking advantage of the Global Entry Program, you can

fill out an application at www.globalentry.gov.

7 New Countries Added to the Visa Waiver Program

President Bush announced on October 17, 2008 that the following seven countries will now be participating in the Visa Waiver Program:



Program: The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea. By being admitted to participate in the Visa Waiver Program, citizens of these countries will be allowed to travel to the United States for business or tourism without having to obtain a visa.

Notable Immigration Cases



False Claim of Citizenship on Employment Form Is Not a Bar to Finding Good Moral Character

A Mexican citizen's cancellation of removal application was denied because the Immigration Judge (IJ) found that she lacked the requisite good moral character based on the fact that she had lied about being a U.S. citizen in order to obtain employment. The IJ examined Section 101(f) of the Immigration and Nationality Act and concluded that although Section 101(f) does not list falsely claiming to be a citizen as one of the bases on which a person would be deemed to lack good moral character, the "catch all" provision at the end of Section 101(f) necessarily precluded her from establishing good

moral character.

The Board of Immigration Appeals (BIA) disagreed with the Immigration Judge's findings. The BIA stated that although the "catch all" provision of Section 101(f) *may* lead to the conclusion that the alien is not a person of good moral character, it *does not require* such an outcome. Therefore, the BIA found that the Respondent was in fact a person of moral character and was eligible for cancellation of removal.

For more information, see *Matter of Guadarrama*, 24 I&N Dec. 625 (BIA 2008).

Supreme Court Addresses The Complicated Issue of Filing a Motion to Reopen After Voluntary Departure

The Supreme Court recently decided an issue that circuit courts have been split on. Although four circuit courts had previously found that filing a motion to reopen automatically tolls the voluntary departure period, the Supreme Court has rejected this argument in *Dada v. Mukasey*, No. 06-1181 (June 16, 2008), ruling that filing a motion to reopen will NOT toll the voluntary departure period.

The Court also addressed an interesting issue: if a person that has been granted voluntary departure files a motion to reopen and remains in the United States, he would likely overstay the voluntary departure order, which would thus render him ineligible for the relief that he is trying to achieve through reopening. If he files a motion to reopen and leaves the country in compliance with the voluntary departure order, then his motion to reopen would be deemed abandoned. The Court therefore reasoned that the best solution is to allow an alien that has been granted voluntary departure to withdraw his voluntary departure request before the expiration of the voluntary departure period, so that he can remain in the United States and pursue a motion to reopen. By withdrawing a voluntary departure request and pursuing a motion to reopen, the alien is put in the same position as someone with a final order of removal, but in the Court's view such an arrangement is the best

solution available to someone who finds himself in this predicament. The Court also noted that the government has proposed a regulation that would provide for automatic termination of the grant of voluntary departure if a motion to reopen is filed during the voluntary departure period.

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