

# One Minute Memo<sup>®</sup>



## USCIS to Issue Two-Year Employment Authorization Documents; DHS to Require Visa-Exempt Travelers to Register

On June 13, 2008, United States Citizenship and Immigration Services (USCIS) announced that it will begin issuing two-year Employment Authorization Documents (EADs) to adjustment of status ("green card") applicants whose applications are pending and who are unable to adjust status because immigrant visa numbers are not available. USCIS will continue to grant EADs that are valid for one year for adjustment applicants to whom immigrant visa numbers are available.

Adjustment applicants (*i.e.* those who have filed a Form I-485, Application to Register Permanent Residence, or Adjust Status) are only eligible to obtain green cards when immigrant visa numbers are available to individuals in their preference categories. While their applications are pending, the applicants are eligible to work in the United States after obtaining EADs. For many applicants, visa numbers are available at the time of filing the adjustment of status application but later become unavailable (known as retrogression). The purpose of the new rule is to reduce the burden on and cost to "retrogressed" adjustment applicants who must otherwise file annual EAD extension applications.

A USCIS officer will decide to issue an EAD for a one- or two-year validity period based on the most recent Department of State Visa Bulletin available at the time the application for an EAD is adjudicated. (The Visa Bulletin is available by [clicking here](#).) If an applicant's visa number has retrogressed and is unavailable, USCIS may issue a renewal EAD valid for two years. Otherwise, a one-year EAD will be issued.

USCIS expects to implement this initiative for cases pending on June 30, 2008.

### *Changes to Visa Waiver Program*

On June 9, 2008, the Department of Homeland Security (DHS) published an interim final rule requiring pre-travel authorization for Visa Waiver Program (VWP) travelers. After implementation of the final rule, which will occur on or before January 12, 2009, VWP travelers will be required to either obtain advance travel authorization or obtain a visa prior to traveling to the United States. The VWP allows nationals of certain countries to travel to the United States for tourism or business for a period of up to 90 days without obtaining a visa.

The rule amends DHS regulations to implement recommendations of the 9/11 Commission Act of 2007 for foreign nationals who wish to enter the United States under the VWP at air or sea ports of entry. Currently, foreign nationals from VWP countries must provide certain biographical information, such as name, country of citizenship, and date of birth, to United States Customs and Border Protection (CBP) officers at air and sea ports of entry on the Form I-94W, Nonimmigrant Arrival/Departure Document. Under this interim final rule, VWP travelers will provide the same information to CBP electronically before departing for the United States.

By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP hopes to determine, before his or her departure for the United States, the eligibility of a foreign national

to travel under the VWP and whether such travel poses a law enforcement or security risk. According to the CBP, this system will result in more efficient screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at United States ports of entry.

*If you have any questions regarding this One Minute Memo, please contact the Seyfarth Shaw attorney with whom you work, or any Business Immigration attorney on our website, [www.seyfarth.com](http://www.seyfarth.com).*

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