



IMMIGRATION ALERT!



THE INS IS DEAD! LONG LIVE THE DHS!

THE NEW DEPARTMENT OF HOMELAND SECURITY AND THE ABOLISHMENT OF THE INS

The purpose of this Immigration Alert is to provide advance guidance on important changes within the structure of the Immigration and Naturalization Service (INS) as well as changes to the provision of immigration benefits to employers, families, and individuals.

On November 25, 2002 President Bush signed legislation (Pub. L. No. 107-296) creating the Department of Homeland Security (DHS). The composition of this agency will dramatically alter U.S. immigration law—from the adjudication of visas to the enforcement of immigration law to the implementation of regulations affecting employers and their foreign national workers.

I. Issuance of Immigration Benefits

Under this new legislation, on March 1, 2003 the Immigration and Naturalization Service ceased to exist and the Department of Homeland Security was placed in charge of our nation's immigration functions. The Bureau of Citizenship and Immigration Services (BCIS) now controls the administration of immigration benefits such as the adjudication of work petitions and applications for lawful permanent residence and citizenship. Although the Department of State will continue to issue visas at embassies and consulates, the DHS has the power to change the visa issuance process and veto the approval of individual visa applications. Despite this monumental transition, the government has announced that critical components of current immigration operations will not be immediately affected:

- Official forms and documents issued by the former INS are still valid and will continue to be accepted by the BCIS and other agencies as evidence of status in the United States.
- BCIS local offices will remain in existing INS locations, including application support centers and service centers. There will be no immediate change in office locations.

- Forms should continue to be mailed to the address indicated in forms and notices.
- The National Customer Service Call Center will continue to be available at 1-800-375-5283, or for the hearing impaired, at 1-800-767-1833.
- Individuals will still be able to download forms and check the status of their case online (for cases pending adjudication at service centers). The new web address for the BCIS will be www.immigration.gov.

The creation of a new bureau focusing exclusively on immigration benefits is designed to enhance the quality of service received by the tens of thousands who interact with INS every day. The BCIS will be made up of 15,000 employees and contractors headed by a director who reports to the Deputy Secretary for Homeland Security. Eduardo Aguirre Jr., currently Vice Chairman and Chief Operating Officer of the Export Import Bank of the United States, has been nominated by President Bush as BCIS Director. The services provided by the BCIS include:

- Adjudication of family and employment-based petitions;
- Issuance of employment authorization documents;
- Asylum and refugee processing;
- Naturalization; and
- Implementation of special status programs such as Temporary Protected Status.

II. Enforcement and Border Security

While the BCIS will govern the administration of benefits, two new offices will share the burden of enforcing immigration laws and protecting our borders.

A. Bureau of Immigration and Customs Enforcement (BICE)

The BICE will bring together approximately 14,000 employees including the investigative and interior enforcement components of the INS, U.S. Customs Service, and the Federal Protective Services. This Bureau also includes customs air and maritime assets. The government hopes that by unifying several agencies' investigative functions, the BICE will enhance the Federal government's ability to carry out an effective, comprehensive interior enforcement strategy. Acting INS Commissioner Michael Garcia has been nominated by President Bush to lead the BICE as Assistant Secretary.

B. Bureau of Customs and Border Protection (BCBP)

The BCBP will consist of approximately 30,000 employees, including inspectors from the Agricultural Quarantine Inspections, the INS, U.S. Customs, and the Border Patrol. The Bureau will focus its operations on the movement of goods and people across our borders. The government hopes that the consolidated agency will ensure consistent inspection procedures and coordinated border enforcement. U.S. Customs Commissioner Robert Bonner will serve as the Commissioner of the BCBP.

III. The Face of Change

Although significant changes in the administration of immigration laws should be expected, the government has not released a comprehensive list of changes to be implemented. Indeed, new procedures and structures are currently under development. It is worth noting that the government has articulated goals for the new department, which may improve the issuance of immigration benefits:

- Integrating departmental functions;

- Streamlining and strengthening information sharing; and,
- Improving and protecting immigration practices.

The Homeland Security Act also calls for the establishment of an ombudsman (and local ombudsman offices) to identify severe problem areas in the delivery of immigration services. Moreover, the law allows for the funding of an office for Private Sector Liaison and Advisory Councils in order to create a line of communication for the needs of employers and foreign national workers.

Much remains to be learned about the precise shape of the new Department of Homeland Security and how its immigration bureaus will function, but it is clear that many changes are ahead. Seyfarth Shaw will keep its clients abreast of changes as they are disclosed and will provide analysis on how they may affect the administration of immigration benefits.

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