

## Immigration Alert: May 2005 New Benefits Update

### President Signs Bill Granting Australians & Foreign Nurses Unexpected Immigration Benefits

On May 11, 2005, President Bush signed into law the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005 (H.R. 1268) (Public Law #109-13), which includes the following two immigration-related changes.

First, Section 501, "Reciprocal Visas for Nationals of Australia," creates a new non-immigrant visa classification ("E-3") to be used exclusively by Australian nationals who will perform work in the United States in a specialty occupation. As with an H-1B visa, the E-3 will require the sponsoring U.S. employer to demonstrate that it has filed a Labor Condition Attestation ("LCA") with the U.S. Department of Labor. The law limits the number of E-3 visas to 10,500 per fiscal year.

Second, Section 502, "Recapture of Visa Numbers for Schedule A Occupations," provides that unused employment-based immigrant visa numbers for fiscal years 2001 through 2004 are to be placed into a "bank" and reserved for immigrant worker petitions based on Schedule A occupations, *i.e.*, Nurses, Physical Therapists and Performing Artists of Exceptional Ability. The total number of visas used from this "bank" may not exceed 50,000.

No further details are provided in the legislation. The government is expected to publish regulations to clarify how both new provisions will be implemented. However, as with most pieces of immigration legislation creating new benefits and/or limiting existing benefits, delays of months or even years in the publication of proposed regulations are common. In the interim, the agencies normally issue memoranda explaining how to apply for the benefits. Presumably, the same procedure will apply to these two new provisions.

We will issue new Duane Morris client alerts as information becomes available. Please contact one of the attorneys in our Immigration Practice Group listed below for assistance.

### Visa Waiver Tourists Must Have Machine-Readable Passports After June 26, 2005

In separate press releases, the Department of Homeland Security ("DHS") and the Department of State ("DOS") announced that travelers to the United States from 27 countries eligible to enter the under the Visa Waiver Program ("VWP") must be in possession of machine-readable passports ("MRP") after June 26, 2005. According to the CIS and DOS, substantial fines will be imposed on carriers found to be in violation. Individual applicants for admission will be denied entry and advised to return to their home country to secure a MRP or apply for a visa stamp.

#### *DHS Press Release:*

[http://www.dhs.gov/dhspublic/interapp/press\\_release/press\\_release\\_0673.xml](http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0673.xml)

**DOS Press Release:**

<http://www.state.gov/r/pa/prs/ps/2005/46138.htm>

**Sample MRP:**

[http://www.travel.state.gov/visa/temp/without/without\\_1990.html#4](http://www.travel.state.gov/visa/temp/without/without_1990.html#4)

The 27 VWP countries are: Andorra; Australia; Austria; Belgium; Brunei; Denmark; Finland; France; Germany; Iceland; Ireland; Italy; Japan; Liechtenstein; Luxembourg; Monaco; the Netherlands; New Zealand; Norway; Portugal; San Marino; Singapore; Slovenia; Spain; Sweden; Switzerland and the United Kingdom.

### For Further Information

If you have any questions regarding changes in the law and agency practices, including how these changes may affect your business, or if you would like to discuss how to hire and retain foreign nationals on your workforce, please contact one of the members of the Immigration Group below or the lawyer in the firm with whom you are regularly in contact.

#### Immigration Group

Duane Morris' Immigration Group serves a diverse group of clients – from multinational and Fortune 500 corporations to small professional businesses, from financial institutions to embassies.

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