

US IMMIGRATION CLIENT ALERT

If you have any questions about this announcement, please contact the legal professional with whom you usually work at Fragomen, Del Rey, Bernsen & Loewy, LLP.

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Travel Guidelines for Foreign Nationals

As the winter holiday season approaches, many foreign nationals begin making travel arrangements. If you are planning international travel in the coming months, it is not too early to familiarize yourself with potential immigration issues that could affect your exit from and reentry to the United States. This Client Alert provides general guidance on procedures, including visa issuance at U.S. consulates and embassies, security screening, and the immigration obligations of foreign nationals traveling to the United States. Because policies and procedures are subject to change, be sure to consult our website at <http://www.fragomen.com> for the latest information.

EXECUTIVE SUMMARY

Foreign nationals who will travel outside the United States should be aware of some general travel guidelines, each of which is discussed in more detail below:

- All foreign nationals should ensure that they and their family members possess the required documentation for travel and reentry to the United States, including valid passports and visas, machine-readable and digital passports (where required) for Visa Waiver Program travelers, and advance parole where necessary. **See Section 2.**
- All foreign nationals should expect complex visa application procedures at the U.S. consulates and embassies, including biometrics collection procedures and mandatory personal interviews for most visa applicants. Upon reentering the United States, travelers should expect comprehensive questioning by immigration officials. **See Section 3.**
- Most foreign nationals entering the United States by air and sea will be subject to the U.S. Visitor and Immigration Status Indication Technology (US-VISIT), a “check-in/check-out” system that collects biometric identifiers, verifies identity and immigration status, and tracks the entry and exit of foreign visitors to the United States. Travelers entering the United States through land ports of entry may be subject to US-VISIT procedures in certain circumstances. **See Section 4.1**
- Certain individuals who are nationals or citizens of designated countries may be registered in the Department of Homeland Security’s National Security Entry and Exit Registration System (NSEERS). Foreign nationals who are registered in NSEERS must be aware of and comply with strict departure control rules. **See Section 4.2.**
- Foreign students and exchange visitors must make sure that their enrollment or program information has been entered into Immigration and Customs Enforcement’s Student and Exchange Visitor Information System (SEVIS) and must make sure to pay the student and exchange visitor fee, if required. **See Section 5.**

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1. INTERNATIONAL TRAVEL AND REENTRY

In light of worldwide events, the U.S. government has imposed stricter visa issuance and admission policies, and has granted immigration and consular officers broad authority to initiate lengthy background and security checks, conduct personal interviews with visa applicants, collect biometric information from foreign nationals, deny visas, bar reentry, and impose special registration requirements on some foreign nationals entering the United States. Heightened security checks are possible at each stage of travel; therefore, if you or your family members are planning to travel outside the United States, you should be prepared for possible delay and inconvenience.

Upon application for entry to the United States, you should also expect stringent screening procedures at airports and other ports of entry. Your identity and the validity of your visa will be checked against law enforcement databases. You may be fingerprinted and photographed upon entry. You may also be subject to in-depth questioning about your immigration status, travel history, the purpose of your visit, background, employment and other issues.

During these entry procedures, you must remain patient. Answer all questions clearly. If you do not understand a question, make sure that you ask for clarification before answering. Make sure to comply with all required entry and exit procedures; if you do not understand the required procedures, ask for assistance. Omission or misrepresentation of information, or failure to comply with required procedures can result in denial of entry, removal from the United States at a later date or even possible criminal penalties. If detained, you are not entitled to legal representation at the port of entry, but may ask for permission to contact our offices if the need

arises. You should simply explain that contacting Fragomen will allow us in turn to contact your employer if further information is required.

2. YOUR TRAVEL DOCUMENTS; CHANGES AND EXTENSIONS OF YOUR STATUS

Well in advance of traveling internationally, you should verify that your passport and visa are valid for reentry to the United States, and you should also ascertain whether you will be required to obtain advance permission to reenter. If you are traveling to a destination other than your country of nationality, you should also verify the entry requirements of that country. Where questions arise on these complex issues, please contact the Fragomen professional with whom you regularly work.

2.1 Passport Validity

In general, your passport must be valid for at least six months beyond the expiration of your period of admission to the United States, to ensure that you will be able to depart the United States at the end of your stay and proceed to your home country or another country. There are some exceptions to this rule. Under international treaties, many countries have an agreement with the U.S. whereby a passport is deemed valid for an additional six months past its expiration date so that the passport holder can return to his or her country of citizenship. Also, Canadian citizens are generally not required to possess a valid passport to enter the U.S. unless they are entering from outside the Western Hemisphere, although they do need to present proof of Canadian citizenship. Note, however, that Canadian permanent residents (known in Canada as landed immigrants) must possess a valid passport for entry to the United States.

In April 2005, the Departments of State and Homeland Security proposed the Western Hemisphere Travel Initiative, which would require all U.S. citizens, Canadians, citizens of the British Overseas Territory of Bermuda, and citizens of Mexico to have a passport or other accepted secure document to enter or re-enter the U.S. as of January 1, 2008. Please note that this initiative is at the proposal stage only, and has not been implemented.

2.2 Machine-Readable and Biometric Passports for Certain Visa Waiver Program Entrants

The Visa Waiver Program (VWP) permits citizens of designated countries to apply for admission to the United States for ninety days or less as nonimmigrant visitors for business or pleasure without first obtaining a B-1 or B-2 nonimmigrant visa from a U.S. consular officer. B-1 and B-2 visits are generally short-term and, with very limited exceptions, cannot involve employment in the United States or the undertaking of an academic study program. Entrants under the Visa Waiver Program cannot change their status to another nonimmigrant category, nor can they extend their stays beyond ninety days, except in very limited circumstances. The following countries are participants: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

If you are planning to enter the United States as a visitor for business or pleasure under the Visa Waiver Program, you should be aware of the following current and forthcoming passport requirements. Note that these requirements apply only to travelers entering the United States under the Visa Waiver Program. Nonimmigrant visa holders are not currently subject to these requirements.

- *Machine-Readable Passport Requirement*

All travelers entering under the Visa Waiver Program are required to possess **machine-readable passports** (MRPs) in order to make visa-free entries to the United States. MRPs are documents that conform to international passport standards and contain biographic data that can be electronically read and transmitted. Visitors who do not possess the MRP are required to obtain B-1/B-2 visitor visas to enter the United States. Under prior policy, Customs and Border Protection officers were permitted to grant a one-time exemption from the MRP requirement, but as of June 26, 2005, this exemption is no longer available.

A machine-readable passport can generally be identified by the presence of two typeface lines printed at the bottom of the biographical page, which can be read by machine, similar to a bar code. When scanned through a passport reader, the lines electronically provide information identical to that contained on the biographical page of the passport. Foreign nationals planning to travel under the Visa Waiver Program should ascertain whether their passports are machine-readable. Questions about the machine-readability of a particular passport should be addressed to the passport-issuing authority in the traveler's country of citizenship.

Individuals who are planning to travel under the VWP and who do not possess machine-readable passports should consider applying for the MRP. Families or groups should obtain an individual MRP for each traveler, including infants. Machine-readable passports typically have biographic data for only one traveler, and families may be denied visa-free entry into the U.S. if biographic data for only one traveler is machine-readable.

- *Digital and Biometric Passport Requirements*

In addition to the machine-readable passport requirement, discussed above, Visa Waiver Program travelers must be aware of additional passport rules – a digital photograph requirement and an “e-chip” requirement – that take effect in October 2005 and October 2006, respectively.

Digital photo requirement. Beginning **October 26, 2005**, travelers making visa-free entries under the Visa Waiver Program must present passports containing a digital photograph, though only if the passport was issued on or after October 26, 2005. VWP travelers whose passports were issued before October 26, 2005 are not required to comply with the digital photograph requirement, but their passports must be machine-readable, as noted above.

As of October 26, 2005, the Department of Homeland Security had verified that 25 of the 27 VWP participating countries were in compliance with the digital photograph requirement. Only France and Italy had not yet fully begun to issue passports with digital photographs as of effective date of the requirement. These countries announced that they had “limited” capabilities to produce the required passports. As a result, nationals of these countries should contact their local passport issuance office to determine whether the office has the capability to produce the required passport. If the passport office does not have this capability, the French or Italian national may be required to obtain a visa in order to enter the United States as a visitor.

E-chip requirement. By October 2006, VWP participating countries will be required to begin issuing secure passports containing integrated circuit chips, known as e-chips. The e-chips will contain the passport holder's biometric information (such as a fingerprint or iris scan). Originally, Visa Waiver Program countries were required to comply with a detailed biometric passport requirement by October 2004. Full compliance with the biometric passport requirement, initially required by 2004, has been deferred twice, and is now set to take effect on October 26, 2006.

2.3 Visa Validity

Upon your entry to the United States, the visa stamp in your passport must reflect your current nonimmigrant visa status, the visa must be unexpired and, if the visa has a limited number of entries, it must have a remaining valid entry available on the intended date of reentry to the United States. Under certain circumstances, if you are only making a short trip of 30 days or less to Canada or Mexico and have a valid Form I-94, your visa is deemed automatically revalidated upon reentry. However, if you have applied for a new visa while in Canada or Mexico or are a citizen or national of Cuba, Iran, Iraq, Libya, North Korea, Syria or Sudan, you will not be accorded automatic revalidation and consequently will not be readmitted to the United States without obtaining a new visa abroad. Also, with the exception of treaty traders and investors, Canadian citizens are generally not required to possess a valid visa to enter the U.S. Note, however, that Canadian permanent residents (known in Canada as landed immigrants) must possess a valid visa for entry to the United States. You should be aware that visa processing in countries other than your home country – also known as “third country national” or “TCN” processing – is still possible, but has become more restrictive.

Nearly all visa applicants are now required to appear for fingerprinting and photographs so that biometric visa stamps – required since October 26, 2004 – may be issued. The biometric visa requirement has resulted in the termination of visa revalidation within the United States for most nonimmigrant visa holders (with the exception of certain diplomatic visas in the A, G and NATO categories), because the State Department’s Revalidation Unit is not equipped to collect biometrics.

Please also be advised that overstaying the authorized period of your admission to the United States may cause you to be deemed unlawfully present or trigger laws that may result in the cancellation of your visa. Foreign nationals who overstay the period of authorized admission, as notated on the Form I-94 Arrival-Departure Record, for more than 6 months or more than one year may be subject to bars to admission to the United States of three or ten years, respectively. Overstays of as little as one day may trigger visa cancellation provisions, which would require the foreign national to return to his or her home country to apply for a new visa, except in very limited cases. Note that with the increase in security and information sharing since the events of September 11, 2001, the Government’s electronic databases and tracking systems have improved markedly, with the result that records of even brief overstays are now available to Customs and Border Protection (CBP) officers at ports of entry and State Department officers at U.S. embassies and consulates.

2.4 Advance Parole

If you are an applicant for adjustment of status to permanent residence, you must in some cases obtain advance permission to travel - known as advance parole - in order to leave the United States while your adjustment application is pending. If you already have a valid H-1B, H-4, L-1A, L-1B or L-2 visa, you may reenter the United States on that visa, without the need for an advance parole. Note, though, that the policies concerning H-4 and L-2 nonimmigrant family members who have been granted and used employment authorization as applicants for adjustment of status are unresolved; until future guidance is received, individuals in these statuses who have worked in the United States should proceed cautiously, and obtain and use an advance parole for reentry to the United States. Fragomen will continue to work with Department of Homeland Security officials to obtain resolution on this issue.

2.5 Suspension of Transit Without Visa Programs

On August 2, 2003, the State Department and Department of Homeland Security suspended two initiatives – the Transit Without Visa (TWOV) and International-to-International (ITI) programs – that permitted foreign national passengers traveling to foreign countries to enter the United States for transit purposes without a visa.

The Transit Without Visa program allowed travelers to travel through the U.S. to another foreign destination without first obtaining a visa. TWOV passengers were permitted to stop at up to two U.S. airports during their travel, subject to full customs and immigration inspection when first arriving in the United States. TWOV passengers were required to be scheduled to depart the United States on the same or a connecting flight within eight hours of arrival or on the next available flight. The International-to-International program permitted passengers arriving from foreign countries to transit through one United States airport on the way to another foreign destination. ITI passengers were subject to immigration inspection only, and were required to remain in a secure holding area – usually an international travel lounge – until departing the United States.

The suspension of the programs means that those who would have taken advantage of TWOV or ITI travel are now required to obtain visas to the United States. Note that though the program suspensions were intended to be temporary, as of November 2005, no lifting of the suspensions had yet taken place.

2.6 Changes and Extensions of Status

The Department of Homeland Security's policies concerning changes and extensions of status are complex and subject to change. Where questions arise on these sensitive issues, please contact the Fragomen professional with whom you normally work.

In general, applicants for a *change* of immigration status should be aware that traveling during the pendency of the change of status application will cause the application to be deemed abandoned; though the underlying petition is still approvable if travel is undertaken, the applicant will in most situations need to travel abroad to obtain a new visa outside the United States and then reenter prior to the effective date of the change of status. In contrast, the Government has taken the position that travel during the pendency of an application to *extend* status should not be deemed abandoned, provided that the applicant meets all the requirements for entry. Note, however, that this policy has not been officially adopted by the DHS, and has only been verbally communicated by DHS officials. Because your situation may differ, you should contact the Fragomen professional with whom you normally work to evaluate the facts and circumstances of your case.

3. VISA ISSUANCE PROCEDURES: INTERVIEWS, BIOMETRICS COLLECTION, SECURITY CHECKS AND DELAYS

3.1 Visa Issuance Delays

If you are traveling outside the U.S. and will be applying for a visa at a U.S. consulate or embassy, you should be aware of a number of important State Department security procedures and should also be prepared for delays in visa issuance. In the post-September 11 environment, visa issuance could take as long as several weeks, but currently most cases are processed to completion in less time. Bear in mind, however, that foreign nationals subject to security clearances may experience lengthy delays. If you plan to apply for a visa outside the

United States, you should contact the relevant consulate or embassy for specific information on application procedures and processing times before you travel. See http://www.travel.state.gov/visa/questions_embassy.html for up-to-date consular contact information. See http://www.travel.state.gov/visa/tempvisitors_wait.php for information on projected visa appointment and processing times.

3.2 Personal Interview and Application Requirements

In nearly all cases, you will be required to appear for a personal interview at a U.S. consulate pursuant to your nonimmigrant visa application. State Department guidelines require most classes of nonimmigrant visa applicants to appear at consulates for personal interviews. Because the guidelines represent a dramatic workload increase for the consulates, many have developed appointment systems for visa applicants; use of these systems can result in lengthy waits of up to four to six weeks or longer for visa appointments.

Previously, consular officers were authorized to waive personal appearances in certain limited circumstances, such as where the applicant sought to renew a previously issued visa or where the applicant was under 17 or over 60. Currently, however, most applicants will be obliged to appear at the consulate in connection with the State Department's Biometric Visa Program (discussed below), which requires most visa applicants to be fingerprinted and photographed as a part of their visa application. During this appearance, you may also be interviewed about your visa application and your prospective stay in the United States.

Because the interview requirements have caused significant changes in procedure, you should contact the consular post at which you will apply for a nonimmigrant visa in order to obtain the latest information. See http://www.travel.state.gov/visa/questions_embassy.html for consular contact information. See http://www.travel.state.gov/visa/tempvisitors_wait.php for information on projected visa appointment wait times at U.S. consulates and embassies.

Many U.S. consulates require nonimmigrant visa applicants to use a special bar-coded version of Form DS-156, the nonimmigrant visa application form. This form is completed online at a dedicated State Department website located at <http://evisaforms.state.gov>. Once all data fields of the form are completed online, the user clicks a button marked "continue" and a three-page PDF version of the form is generated, with a unique bar code identifier on the first and third pages. All three pages should be printed out and submitted with the visa application.

3.3 Biometrics Collection and Issuance of Machine-Readable Visas

If you are applying for a visa at a U.S. consulate or embassy, you may be required to make a personal appearance at the post so that your biometrics – a photograph and two fingerprints -- can be taken pursuant to the State Department's Biometric Visa Program. The Biometric Visa Program requires U.S. consulates and embassies to issue visas that contain biometric identifiers. Under the program, most nonimmigrant visa applicants between the ages of 14 and 79 will be required to make a personal appearance at the embassy or consulate so that their fingerprints can be scanned. Visa applicants may also be photographed during the appearance (though some consulates still require applicants to submit photographs with a visa application). Biometric information captured during the visa application process is later coordinated with fingerprints and photographs taken during the US-VISIT arrival-departure process at the U.S. port (discussed below).

The Biometric Visa Program has caused significant changes in procedure at consulates and embassies, with most consular posts requiring applicants to make an appointment for a visa interview and biometrics collection. Foreign nationals planning to apply for a visa should contact the relevant consular post to obtain the latest information. See http://www.travel.state.gov/visa/questions_embassy.html for consular contact information.

The biometric visa requirement has caused the State Department to suspend its domestic revalidation service for most foreign nationals (with the exception of foreign nationals holding certain diplomatic visas in the A, G and NATO categories). This service had permitted certain nonimmigrant visa holders to apply for revalidation of their visa without the need to travel abroad. Because the State Department's Revalidation Unit was not equipped to collect biometrics or conduct personal interviews, the agency ceased accepting most revalidation applications as of July 2004, though certain holders of diplomatic or official visas may still apply for domestic revalidation.

3.4 Security and Background Checks

When applying for a visa to the United States, you may also be subject to additional security and background checks. Though the State Department has provided only limited information on the circumstances that will prompt the checks, the following may trigger additional screening:

- *Citizenship, Nationality or Country of Birth*

Since September 11, 2001, special scrutiny is imposed on male visa applicants between the ages of 16 and 45 who were born in or are nationals or citizens of 26 countries of concern.. Though the State Department has declined to release the list of countries on national security grounds, it is thought to include Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. In addition, nationals or citizens of Cuba and North Korea – countries among those that the U.S. has identified as state sponsors of terrorism – are being subjected to increased scrutiny as well.

- *Background Information*

The State Department requires visa applicants to provide extensive background information, which may trigger more intensive security clearances. Currently, males ages 16 to 45, regardless of nationality or citizenship, are required to complete State Department Form DS-157, Supplemental Nonimmigrant Visa Application (available at http://travel.state.gov/visa/frvi_forms.html), which collects extensive information on the applicant's foreign travel history, education, military service, weapons and combat training, membership in and contributions to charitable organizations and other details. While the form is mandatory for males ages 16 to 45, consulates and embassies have wide discretion to require all nonimmigrant visa applicants (male and female regardless of age) to complete it.

- *Involvement in High-Technology Fields*

If you work in high technology, engineering, or the sciences, you should be prepared to be questioned closely about the details of your job. This is also true if you work with products or services that have both commercial and military applications (known as "dual use" technologies). Visa delays may result as consular officers seek security advisory opinions from federal agencies on your work background. If an export control license is required for your

position, you must ensure that your job activities are within the terms of the license and that your employer can document your compliance with the license.

- *Home Country References for Students and Exchange Visitors*

All applicants for foreign student visas in the F and M categories and exchange visitor visas in the J category must complete State Department Form DS-158, Contact Information and Work History for Nonimmigrant Visa Applicant (available at <http://travel.state.gov/visa/frvi/forms.html>), which collects information on the applicant's family members and employment, and also requires applicants to provide the names, addresses and telephone numbers of at least two persons in the country of residence who can verify information about the applicant. Consular officers may elect to verify an applicant's background information with family members, current and former employers and other references.

- *Appearance in National Security and Law Enforcement Databases*

Consular officers are required to screen visa applicants through the State Department's security databases and lookout lists, which contain the names of individuals identified as security risks. A positive "hit" on one of these lists will trigger additional security clearances and may cause the consular officer to seek guidance from State Department headquarters on the further handling of the case; as a result, visas may be delayed or refused. If you believe that your name may appear in one of these databases, please contact the Fragomen professional with whom you normally work for assistance.

4. ENTRY AND EXIT PROCEDURES AT U.S. BORDERS

When entering or departing the United States, you may be required to undergo certain registration procedures depending upon your immigration status or security profile.

4.1 The US-VISIT System

Many foreign nationals will be required to comply with the entry and exit requirements of the U.S. Visitor and Immigration Status Indication Technology (US-VISIT) system when traveling through a U.S. port. US-VISIT is a "check-in/check-out" system that collects biographic information and biometric identifiers from certain foreign nationals entering the United States, to determine whether an individual is eligible to enter the United States or should be prohibited from entering because of security risks such as past visa or criminal violations or terrorist connections. The system is currently in operation at many U.S. air, sea and land ports, and at selected pre-flight inspection stations abroad.

- *Who Must Comply with US-VISIT?*

Currently, US-VISIT is applicable to nonimmigrant visa holders and Visa Waiver Program entrants between the ages of 14 and 79 who are traveling to or from the United States through a port at which US-VISIT is in operation. In addition, foreign national crewmembers applying for landing privileges are required to comply with the system's requirements. Travelers subject to US-VISIT are not required to enter or exit through a port where US-VISIT is in operation, but if their chosen port of entry or departure is a US-VISIT port, compliance with the procedures is obligatory. Failure to comply where required may result in a foreign national being deemed inadmissible to the United States, in violation of the terms of his or her status, or ineligible for future immigration benefits.

Several groups of travelers are currently exempt from the system. These include (1) U.S. citizens and lawful permanent residents; (2) travelers who are under the age of 14 or over the age of 79; (3) certain individuals who hold visas in categories for foreign diplomats, employees of international organizations, travelers in immediate transit through the United States or NATO representatives and employees; (4) individuals or classes of foreign nationals who have been exempted by the Department of Homeland Security, the Department of State or the Central Intelligence Agency; (5) registrants in the INSPASS program, an advance registration system for frequent business visitors to the United States; and (6) individuals who are registered in the National Security Entry-Exit Registration System (NSEERS, discussed below), unless those individuals have received an NSEERS waiver. Most Canadian citizens are exempt from US-VISIT, unless they are entering the United States under a nonimmigrant visa. In addition, DHS has announced US-VISIT exemptions for Mexican citizens entering the United States using a Border Crossing Card when their stay is within 25 miles from the border (or 75 miles in the case of entry at an Arizona port) and the stay is for no more than 30 days. Also exempt are certain

- *Entry and Exit Procedures*

All foreign visitors must have their travel documents reviewed by an officer of the Customs and Border Patrol (CBP) bureau. The officer will also interview the visitor about the purpose of his or her stay. For many foreign travelers, this document check and brief interview will be the extent of their entry process.

Travelers subject to US-VISIT are required to undergo additional procedures. If the foreign national is traveling through a port at which US-VISIT entry procedures are in operation, he or she may be required to provide fingerprints and photographs. Using an inkless scanner, the CBP officer records prints of both index fingers, one after the other. The officer also takes a digital photograph of the visitor. The fingerprint and photographic data, along with information in the visitor's travel documents, are used to verify the visitor's identity and will be scanned against law enforcement and national security lookout lists. Based on the verification results, the visitor will be admitted to the United States or asked to undergo further verification. If data in the verification process indicate possible national security or law enforcement concerns, the visitor will be referred for additional screening.

US-VISIT exit procedures are currently being tested at designated air and sea ports. If exit procedures are in operation at the traveler's chosen exit port, the traveler may be required to have his or her fingerprints, photographs and travel documents re-scanned so that departure information can be automatically reconciled with arrival data to determine whether the visitor has complied with the terms of his or her entry. The exit procedures generally take place at self-service departure kiosks, where travelers can scan their travel documents and submit to biometrics collection, and hand-held scanners operated by DHS officials. Currently, fifteen ports have been outfitted with US-VISIT exit procedures. These are:

- Baltimore/Washington International Airport;
- Chicago O'Hare International Airport;
- Dallas/Fort Worth International Airport;
- Denver International Airport;
- Detroit Metropolitan Wayne County International Airport;
- Fort Lauderdale-Hollywood International Airport;
- Hartsfield-Jackson Atlanta International Airport;
- Long Beach and San Pedro Seaports (Los Angeles);
- Luis Munoz Marin International Airport (San Juan, Puerto Rico);

- Miami International Cruise Line Terminal;
- Newark Liberty International;
- Philadelphia International;
- San Francisco International; and
- Seattle-Tacoma International.

4.2 Special Registration in the National Security Entry-Exit Registration System

In September 2002, the U.S. government began registering certain foreign nationals in the Department of Homeland Security's National Entry-Exit Registration System (NSEERS, or "special registration"), so that these individuals could be tracked and monitored throughout their stays in the United States. Though the goals of NSEERS have been largely superceded by the US-VISIT program (discussed above), special registration still remains a possibility for some foreign nationals.

The NSEERS program authorizes immigration and consular officials to require any foreign national deemed a potential security risk to be fingerprinted, photographed and registered at a port of entry upon arrival in the United States (known as port-of-entry registration). U.S. citizens, lawful permanent residents of the United States, nonimmigrants in the A (foreign diplomats) and G (employees of international organizations) visa categories, parolees, and asylees are exempt from NSEERS registration.

The program also authorizes the Department of Homeland Security to require foreign nationals who are citizens or nationals of designated countries to appear in person at a DHS office to be registered after entry to the United States (known as "call-in" registration). Between September 2002 and April 2003, the DHS administered four registration call-ins, which affected male nonimmigrants age 16 and older who are citizens or nationals of Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Jordan, Kuwait, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Tunisia, United Arab Emirates and Yemen, with certain exceptions. Though the DHS has issued no new call-in notices since February 2003, it has the authority to do so at any time. Therefore, please continue to monitor our firm's website at <http://www.fragomen.com> for up-to-date information. For DHS information on special registration, see <http://www.ice.gov/graphics/specialregistration/index.htm>. If you believe that you were required to register during a call-in period but did not meet the deadline for your country of citizenship or nationality, please contact the Fragomen professional with whom you usually work.

- *Departure Control for Special Registrants*

If you have been entered as a special registrant in NSEERS, either at a port of entry or pursuant to a call-in, and are planning to travel outside the U.S., you must be sure to comply with the departure control rules. As an NSEERS registrant, you may depart the United States only through a port that has been authorized for departure control. At the authorized port, you must report to a special departure control office, where your departure will be verified and your registration will then be closed. Be aware that departure control offices may have limited hours of operation and may not be conveniently located near your airline. A list of authorized ports of entry, with departure control office locations, hours of operation and contact information, is available at <http://www.ice.gov/graphics/specialregistration/WalkawayMaterial.pdf>. Note that the list of ports of entry for NSEERS departure is substantially different from the list of ports enabled for US-VISIT departure procedures (discussed above).

Departure control serves to close your registration. If you return to the United States and are required to register on the subsequent trip, a new registration cycle, with its accompanying follow-up obligations and deadlines, begins. Note that failure to comply with departure control rules may render you inadmissible to the United States should you try to reenter in the future. Furthermore, a willful failure to report may subject you to criminal penalties and fines.

- *Reporting Changes of Address, Employment and School*

Special registrants must inform the Department of Homeland Security of any change in their address, employment or school within 10 days of any such change, using Form AR-11SR. However, changes of address that occur within the first 29 days of a special registrant's stay in the United States do not need to be reported on the form. Likewise, changes of employment or school that take place within the first 29 days of a special registrant's stay are not required to be reported. Form AR-11SR is available at <http://uscis.gov/graphics/formsfee/forms/ar-11sr.htm>.

Note that all foreign nationals, including lawful permanent residents, are required to inform the Department of Homeland Security of any changes in address, within 10 days of such change. The standard change of address notification is made on Form AR-11, available at <http://uscis.gov/graphics/formsfee/forms/ar-11.htm>, as discussed below.

- *Follow-Up Interview Requirements*

Some NSEERS registrants may be required to appear for follow-up interviews after their initial registration. DHS officials have the discretion to designate particular NSEERS registrants for follow-up interviews to determine whether they are in compliance with the terms of their admission and nonimmigrant visas. Registrants who are selected for follow-up interviewing will be notified individually by a letter or e-mail communication, or through a notice published in the Federal Register. The notification will instruct the foreign national to appear on a specific date and time at a designated DHS office, unless other instructions are provided in the notice. According to DHS, registrants will be given at least 10 days to comply with the notice, measured from the date that the notice is published or sent to the registrant.

- *Waivers of NSEERS Requirements*

If you have been registered in NSEERS, you may apply for exemptions from certain special registration obligations. However, until an application for relief is approved, you must comply with all NSEERS requirements. Note also that if you receive an approved waiver of an NSEERS requirement, you must comply with entry-exit procedures under the US-VISIT system if you are traveling through a port at which US-VISIT is enabled, as discussed above.

Relief from departure control. Any special registrant may seek an exemption from the departure control requirements of NSEERS. In order to obtain the exemption, the registrant must, prior to his or her departure date, apply to a designated official of the Department of Homeland Security or to the Customs and Border Protection (CBP) field office director of the port from which the foreign national seeks to depart. The foreign national must show that there are "exigent or unusual circumstances" to warrant the exemption.

Relief from future port-of-entry registrations. NSEERS registrants who make frequent trips to the United States may apply for an exemption from future NSEERS registrations. To obtain the exemption, the special registrant must submit an application to the CBP field office director of the port at which the registrant most frequently arrives when visiting the United States and must show that there is good cause or exigent or unusual circumstances to warrant the exemption. In

determining whether to grant relief, the field office director may consider the foreign national's mode of travel, business and economic concerns, the purpose of the travel, and other factors. If granted, relief from port-of-entry registration also includes relief from departure control requirements.

Form of application for relief. In order to seek an NSEERS exemption, the registrant must send a letter to the appropriate CBP field office director. The letter should include a detailed description of the type of relief sought, the registrant's name, date of birth, Fingerprint Identification Number (FIN, located on the foreign national's I-94 Arrival-Departure Record), a passport-style photograph measuring 1 inch x 1 inch, the foreign national's alien registration number if available, and any other documents to support the request. If you are interested in applying for an NSEERS waiver, please contact the Fragomen professional with whom you regularly work.

5. TRAVEL REQUIREMENTS FOR FOREIGN STUDENTS AND EXCHANGE VISITORS

If you are a foreign student in the F or M nonimmigrant visa category or an exchange visitor in the J visa category and you will apply for a visa outside the United States, you must ensure that you have the required documentation, that your enrollment or program participation has been entered into the appropriate government databases, and that you have paid the student and exchange visitor fee, if required.

All schools and exchange programs are required to enter foreign students and exchange visitors in the Student and Exchange Visitor Information System (SEVIS). SEVIS is a tracking and database system used to monitor and collect data on foreign students and exchange visitors, to ensure their entry to and exit from the United States and their proper participation in educational or exchange programs. Schools must also use the system to generate Form I-20 Certificates of Eligibility for Nonimmigrant Student Status and Form DS-2019 Certificates of Eligibility for Exchange Visitor Status (previously known as Form IAP-66).

5.1 Payment of the Student and Exchange Visitor Fee

If you are seeking classification as an F or M foreign student or a J exchange visitor, you may be required to pay a fee for registration in the Student and Exchange Visitor Information System. Foreign nationals who receive a Form I-20 or Form DS-2019 certificate of eligibility with an issuance date of September 1, 2004 or later are subject to the SEVIS fee, unless they qualify for an exemption. Individuals whose certificate of eligibility was issued prior to September 1, 2004 are not subject to the fee.

Applicable fees. Foreign nationals seeking status in the F-1, F-3, M-1 or M-3 student categories will be assessed a \$100 fee. Most J-1 exchange visitors will similarly be subject to the \$100 fee, though participants in summer work/travel, au pair, and camp counselor programs will pay a reduced fee of \$35. Individuals in certain federally sponsored exchange programs are exempt from the fee, as are spouses and dependents in the F-2, J-2 and M-2 categories. F, J, and M nonimmigrants applying for a visa to return to the United States as a continuing student or exchange visitor are also fee-exempt.

Fee payment. The SEVIS fee must be paid either electronically or by mail, using DHS Form I-901 (available at <http://www.fmjfee.com>) so that it arrives at the Department of Homeland Security at least three business days before your scheduled visa interview or, if you are visa-exempt, before an application for admission at a U.S. port of entry, in order for the consular or border officer to verify that payment has been made. You may pay the fee on your own behalf,

but the Department of Homeland Security also accepts fees paid for you by your school, exchange program, a relative, friend or other interested party.

If Form I-901 is submitted by mail, the fee must be paid by check or money order drawn on a U.S. bank and payable in U.S. currency. Note that many foreign banks are able to issue checks or money orders drawn on U.S. banks. In the alternative, the fee may be paid electronically by credit card, by submitting an electronic version of Form I-901 through the SEVIS fee payment website, <http://www.fmjfee.com>.

Your fee receipt. Once the SEVIS fee is paid, you will receive a receipt from the Department of Homeland Security. If you submit the SEVIS fee electronically, you will receive two receipts: an automatically generated online receipt that can be printed out from the SEVIS fee website and a paper receipt sent by mail from the DHS. If you pay the fee by mail, you will receive a receipt by mail only. DHS will return the paper receipt by expedited courier service for an additional fee.

You must retain the receipt, which you must bring with you to your visa interview or, if you are visa-exempt, which must be presented to the immigration officer at the border. Though in most cases, the consular or immigration officer will electronically verify that you have paid the fee, the DHS has acknowledged that some consulates may not have immediate access to electronic fee verification. Where electronic verification is not available, the paper receipt – either that received by mail from DHS or that generated from the Internet payment system – will be the primary means of fee verification. If you are applying for a change of status to F, M or J, you are not required to submit the paper receipt with your application, since the adjudicating officer will verify your payment electronically through SEVIS. You should retain the receipt, however; if the officer cannot electronically verify payment, he or she will require you to submit proof of payment.

5.2 Documentation of Your Status

You must ensure that you have the proper documentation of your student or exchange visitor status before applying for a visa at a U.S. consulate or embassy. As noted above, you must possess a certificate of eligibility for student or exchange visitor status that has been generated through the SEVIS system.

SEVIS versions of Forms I-20 and DS-2019 are three-page documents bearing a bar code. F-1 students receive Form I-20A-B/Form I-20ID. M-1 students receive Form I-20M-N/Form I-20ID. J-1 visitors receive two copies of Form DS-2019, one of which bears a watermark. In the past, the watermarked copy was submitted to an immigration inspector at the port of entry for data entry purposes, but is now obsolete and may be discarded. Your dependents will receive their own copies of Form I-20 or DS-2019.

5.3 Verification of Your Status

During adjudication of your visa application, the consular officer will consult the SEVIS database to verify your status as an exchange visitor or student. Your school or exchange program sponsor must enter your database record into SEVIS in order for verification to take place.

Note that there may be a delay between the time that your school or exchange program sponsor enters your information into SEVIS and the time the information becomes available for viewing by the consular officer, with the result that the consular officer may not be able to issue the F, M or J visa immediately. In order to alleviate visa issuance problems resulting from the time lag, the Department of Homeland Security has established a correction mechanism for situations in

which a SEVIS record does not appear at a consular post until after the prospective student or exchange visitor has applied for a visa. Your school or exchange program sponsor should send an email to sevishelp@eds.com. The email must contain the subject line "SEVIS Record Not Found in Consular System." The body of the message should contain only the following: (1) your last name and first name; (2) the SEVIS record number (N#); (3) the visa category; (4) the date that the record was entered into SEVIS; and (5) the date of the visa application. The SEVIS Help Desk should communicate with the consular post regarding fixing the error within two days.

Note also that foreign students who are applicants for a future change of status to another nonimmigrant visa category may be prematurely terminated from SEVIS when the change of status is approved and reported. In order to rectify this type of error, the school official responsible for SEVIS should contact the SEVIS help desk at 1-800-892-4829 to report the problem; the official may be asked to provide a letter explaining the premature termination, along with a copy of the USCIS notice approving the foreign national's change of status.

Like other applicants for nonimmigrant visas, students and exchange visitors should be aware that visa processing may be delayed for security clearances and personal interviews. F, J and M visa applicants are subject to heightened investigations and background checks, and are also required to provide extensive work history and contact information to the State Department on Form DS-158, discussed above.

6. ADDRESS CHANGE NOTIFICATION REQUIREMENT FOR ALL FOREIGN NATIONALS

Though not strictly a travel-related requirement, all foreign nationals must be aware of the Department of Homeland Security's regulations on address change notification. All non-U.S. citizens, including lawful permanent residents, are required to notify DHS of changes of address within 10 days of such change, using Form AR-11. The only foreign nationals exempt from this requirement are nonimmigrants in the A (foreign diplomats) and G (representatives of international organizations) visa categories, and nonimmigrants who are not required to possess a visa and are in the United States for fewer than 30 days. In addition, nonimmigrants who are special registrants in the National Security Entry Exit Registration System (NSEERS) (discussed above) must notify DHS on Form AR-11SR whenever there has been a change of address, employment or school; the notification must likewise occur within 10 days of such change.

Note that the change of address you make on Form AR-11 or AR-11SR will not be communicated to DHS Service Centers or District Offices. Therefore, if you are an applicant for an immigration benefit, you must also send a written notice of the address change to the relevant DHS office(s) processing the case.

Failure to comply with the address change notification requirements may affect your ability to remain in the United States and your ability to reenter the United States after travel abroad; noncompliance may also be criminally punishable as a misdemeanor, with a fine not to exceed \$200 and/or imprisonment of not more than thirty days. Therefore, it is imperative that you follow the address change notification requirements, and we recommend that you make a copy of your address change form and other pertinent documents in the event that the Government alleges that you failed to comply.

See <http://uscis.gov/graphics/howdoi/address.htm> for additional information on the address change requirement.

7. CARRYING DOCUMENTATION OF YOUR IMMIGRATION STATUS

U.S. immigration laws and regulations require every foreign national age 18 or older to carry documentation of their lawful registration as a foreign national while in the United States. Documents acceptable for this purpose include the Form I-94 Arrival-Departure Record; the Form I-551 Permanent Resident Card (“green card”); the Form I-766 Employment Authorization Document (EAD); the Form I-185 or I-186 Border Crossing Card for citizens of Canada and Mexico; the Form I-688 Temporary Resident Card; and the Form I-688A or I-688B Employment Authorization Document or Card.

Failure to carry a required document is a misdemeanor, with fines of up to \$100, imprisonment of up to 30 days, or both. While convictions for this offense are not common, in the current climate of heightened national security concern and more stringent immigration enforcement, you are advised to carry the relevant documents with you or keep them close by at all times.

8. APPLYING FOR A SOCIAL SECURITY NUMBER UPON ARRIVAL IN THE UNITED STATES

Many foreign nationals entering the United States to work pursuant to a nonimmigrant visa will apply to the [U.S. Social Security Administration](#) (SSA) for a Social Security Number (SSN). Before a Social Security Number can be issued to you, the SSA must verify your nonimmigrant status, using information from the Department of Homeland Security's Nonimmigrant Information System (NIIS) database. It takes approximately 10 business days from the time you enter the United States for this data to be entered into the system and made available to SSA for verification purposes. It is therefore recommended that you wait 10 days after entry to file the application for a Social Security Number, to minimize verification difficulties. Note also that if you depart the United States while your application is pending, the system will indicate your departure and your Social Security application will be suspended. You will then have to reapply upon your re-entry to the U.S. We therefore recommend that you remain in the U.S. until your Social Security card is issued.

If you have any questions regarding these or any immigration issues, please do not hesitate to contact the legal professional with whom you work at Fragomen. As immigration laws, regulations and procedures are subject to constant change, please continue to check our firm's website at <http://www.fragomen.com> for up-to-date information on important immigration matters.

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