



BY: DAVID SWAIM, MANAGING PARTNER

# LYING TO GET A JOB



Although college football coaches apparently routinely mis-state their accomplishments on their resumes and still obtain employment, the rest of us must be very careful when applying for jobs and particularly when filling out government forms required to obtain employment. Two of the most interesting developments in immigration law over the past year involve the process of completing the I-9 form when anyone applies for a job.

One of these issues involves the claim on the I-9 form that the employment applicant is a “U.S. citizen or national.” The other issue concerns the use of false documents, such as a false social security card or number when applying for employment.

Both of these issues have been raised in a variety of contexts with the Immigration Service, the Immigration Courts, and the Board of Immigration Appeals. We anticipate there will be future litigation on both of these issues as the cases develop.

The false claim of “U.S. citizenship or nationality” is important because a person making such claim may become deportable from the United States with a permanent bar to being readmitted. However, the removal and exclusion provisions of the Immigration Act refer to a false claim of “citizenship” not “citizenship or nationality.” Therefore, when a job applicant falsely indicates on form I-9 that he or she is a “U.S. citizen or national,” it is unclear which category is being indicated. It could very well be that the applicant is falsely indicating he or she is a U.S. national and there are no adverse immigration consequences for this claim. This, in fact, is the position taken by the Texas

Service Center of the Immigration Service but the opposite view has been taken by several different immigration judges as well as the Dallas District Office of the Immigration Service. This issue is currently being appealed to the Board of Immigration Appeals and should ultimately result in Federal court litigation for a final resolution.

The other issue concerns the use of false documents such as a social security card.

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## UNIVERSITY PROGRAM



### Addresses Concerns of F-1 Students and Recruiting Employers

By: Jessica LeBeau,  
Director of Client Services

The recent downturn in the economy and the inherent unemployment woes that go with it, have many F-1 foreign students at U.S. universities concerned about their futures.

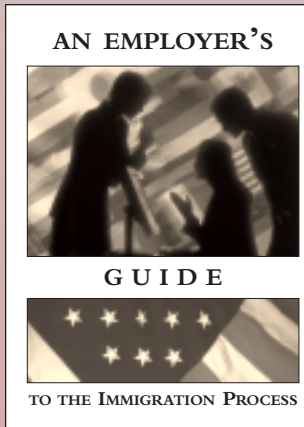
While David Swaim, managing attorney at Tidwell, Swaim & Associates, P.C. has conducted immigration law seminars to foreign students and faculty at numerous universities for over 20 years, the focus has now shifted to include the issues of recruiting employers as well. Now, more than ever, the need for understanding and information exchange between hiring employers and potential immigrant employee candidates is crucial.

In an effort to address these needs, the firm has instituted a program, working with the career placement centers and the international student services departments at various campuses, to (1) discuss the concerns of employers who are recruiting foreign students, and (2) provide information to these students who are preparing for careers in the U.S. and will need a sponsoring employer to obtain permanent residence.

The firm recently produced a brochure, "An Employer's Guide to the Immigration Process," which illustrates for the employer and student, the many practical issues in hiring foreign talent. Topics covered in the brochure, for example, deal with *Optional Practical Training (OPT)*, *Obtaining the Green Card*, and the *advantages and disadvantages of H-1 Classification*. For instance, one advantage of H-1 to the recruiting

employer is:

*"The H-1 category is limited to a specific position with the company. Once in this category, the six-year clock begins ticking and the employee must obtain permanent residence within that period of time. This forces the recent graduate to commit to a company for at least five years in order to complete the green card process."*



The brochure is available in printed format to students, university staff and recruiting employers. It can also be downloaded in PDF format on-line at [www.tsalaw.com](http://www.tsalaw.com). For information on ordering brochures or on immigration law seminars hosted by the firm, please call: 972.385.7900. ■

### Lying to Get a Job *Continued from Page 1*

This issue usually comes up when the employee later files for immigration benefits through employment or family. For example, the employee may marry a U.S. citizen at some point in the future and then apply for permanent residence based on that marriage. During that process, the Immigration Service normally will review previously completed I-9 forms if the applicant has been employed. If the Immigration Service discovers that false documents have been used, there is a possibility that the permanent residence could be denied.

The Immigration Service bases its reasoning on a provision of the Immigration Act which states that a person cannot be admitted to the United States if they have committed fraud in obtaining an "immigration benefit." The Immigration Service, at least in some cases, has concluded that applying for employment is an "immigration benefit" and therefore renders the applicant ineligible for permanent residence if the employment application is false.

The Immigration Services view on this matter is not entirely consistent. For example, there have been appellate decisions which have stated that the act of applying for a job is not the same as attempting to obtain a "immigration benefit." This issue will also have to be resolved for future litigation and each case needs to be carefully analyzed before it is presented to the Immigration Service. For example, in some cases the Immigration Service is accepting a waiver application to resolve the issue and therefore avoid future litigation. However, we do not recommend that the waiver automatically be submitted since it is at least arguable that it is an admission that the individual has committed fraud in

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## INS Tightens Enforcement of Non-citizens' Requirement to Report



By: Garry Davis  
Associate Attorney



Although it has been a law for 50 years, INS has rarely enforced the requirement that all non-citizen residents of the United States must notify them when he or she changes addresses. That has now changed. INS will be enforcing this law, which means that all non-citizens should begin immediately to adhere to its requirements.

**Who is affected by this law?** All non-citizen residents of the United States, including permanent residents, all nonimmigrant visa classifications, and those who are here illegally, are subject to this requirement.

**What must be done to comply with the law?** The INS must be notified when any non-citizen resident of the United States changes their address.

**When must it be done?** The INS must be notified within 10 days after the change of address becomes effective. If the person is in removal proceedings in Immigration Court, the time is shortened to five days, and Form EOIR-33, is available at the local Immigration Court or for download at <http://www.usdoj.gov/eoir/formslist.htm>.

**How must it be done?** The "preferred" method for notifying INS is to use and mail in the AR-11 form, which can be obtained from the INS website at <http://www.ins.usdoj.gov/graphics/formsfee/forms/ar-11.htm>, or by calling 1(800) 870-3676. We do not advise sending letters or other means of

notifying INS from this point on. The form AR-11 is the only advisable method for complying with this requirement. Also, we highly recommend a copy of the form be made prior to sending, and that it be sent by some traceable method, such as U.S. Certified Mail, Return Receipt Requested. Once the green receipt card has been received, it should be kept in a safe place with the copy of the change of address form to demonstrate that the requirement has been met.

**Why do it?** Failure to comply with this requirement can result in a fine, jail time or removal from the United States. INS is only required to send information to the attorney of record or to the individual at the last known address. Following are some examples of situations where simple compliance with this requirement could have averted disaster.

*Example A:* A person is in removal proceedings before the Immigration Judge, and is not represented by an attorney. He attends one hearing, and the Immigration Judge sets his next hearing for December 12. In November, he moves across town to a new address and does not notify the Immigration Judge of the change of address. The Judge discovers he has to be out of town on the 12th, and reschedules the hearing for December 6th. The Judge's clerk sends the rescheduled hearing notice to the last known address. The person never receives the rescheduled hearing notice, and does not show up for the

hearing on the 6th. His failure to appear results in his being ordered removed in absentia, in his absence. When he shows up on the 12th, he discovers the hearing was rescheduled and that he now has a removal order that he has to find some way to get reopened. Otherwise, he will be required to leave the U.S. under an order of deportation.

*Example B:* A U.S. citizen spouse has petitioned for his wife to become a permanent resident, without retaining an attorney to assist them. They file the proper forms, and await the required interview from INS. While the case is pending, the couple moves across the street, without notifying INS. The couple is scheduled for their interview, and the notice is sent to their last known address. They do not attend the interview because they were not aware of it. INS denies their case as abandoned for failure to attend the interview.

Because the case was denied, the wife is placed in removal proceedings, with notice being sent to the last known address. Of course, she does not show up for the hearing, because she no longer lives at that address, which results in an in absentia removal order, same as in Example A above. While they think the case is still pending, she has an outstanding order of removal that can be executed at any time.

These are not extreme examples. They are very common cases that occurred regularly before the strict INS enforcement we are expecting and they are threatening in the near future. Retaining an attorney will lessen the likelihood of failure to receive notice, but it does not change the requirement. ]To avoid these consequences, Form AR-11 (and Form EOIR-33, if in removal proceedings) should be filed as soon as possible after any non-citizen resident of the United States changes their address. Failure to do so can result in dire consequences. ■



## SERIOUS PROBLEMS With the Once Convenient 'Third Country National' Processing Option in Canada and Mexico

By: Maggie Mills,  
Associate Attorney

Over the last few years, "Third Country National (TCN)" nonimmigrant visa processing has become very popular and convenient option for foreign nationals in countries all over the world. It allows foreign nationals to go to American Consulates in countries other than their home countries for nonimmigrant visa processing.

Possibly the most convenient system for TCN processing allows for TCN processing of foreign nationals, currently residing in the U.S., at American Consulates throughout Canada and Mexico. This system allows the foreign national to make an appointment for visa processing, and it provides for relatively quick (usually with a 24-hour-or-less) turnaround for nonimmigrant visas, if the applicant is approved at the interview. For most foreign employees, it is much less expensive and more convenient to fly to Canada or Mexico for one or two days to get their visas than it would be to go to their home countries.

However, recent regulations and policy changes have added serious risks to traveling to Canada or Mexico for TCN processing – risks that many employers and employees are not aware of. Consider the following scenario:

Ms. Lee was born in Malaysia and has been in the United States for nine years. She entered the U.S. as a student and has never left. After

graduation, she obtained a job in Texas with a company that sponsored her for H-1B status, so that she could work in the U.S. The H-1B petition was approved, and on a trip home a few years ago, she got the H-1B visa at the American Consulate in Malaysia. Her H-1B was approved and her status extended by INS last year. Ms. Lee decides that she wants to join her friends for a trip to Italy. She realizes her original H-1B visa expired last year and she needs to get a new visa in her passport, so that she will be able to reenter the U.S. upon her return from vacation in Italy.

She remembers hearing about TCN processing in Mexico and is ecstatic that she can drive across the El Paso border and obtain a visa in one day. She calls the TCN hotline and makes an appointment for TCN processing in Juarez. She gathers all of the paperwork her attorneys and employer have given her, takes the day off from work, and prepares to go to Mexico for her interview. On the day of the appointment, she drives across the border. She goes for her interview and the officer states that he cannot grant the visa, he does not have enough information. He refuses the visa and stamps her passport.

Distraught, she decides to go home to Texas to get additional information. However, at the border, she is not allowed to reenter because her visa has expired. She explains that she has just applied for her new visa at the Consulate, but they needed more information, so she needs to return to Texas to get it. The border officer will not let her back in. She remembers that there used to be a

law that allowed foreign nationals with a valid I-94 and passport who have been in Mexico or Canada for 30 days or less to reenter and have their visa revalidated immediately. She asks the border officer about that. He quickly tells her that, under new regulations, he is not authorized to revalidate her visa, nor readmit her. He orders her to return to her home country and states that she will not be able to reenter until she gets the new visa.

She is required to go to Malaysia directly from Mexico. She is not able to first go home to pack or even get the information she was missing. She is not able to go home to book a ticket. She has to leave from Mexico. Worse yet, she can't get back into the U.S. until she gets a new visa.

This is a very scary, very real situation that faces many foreign nationals. Since September 11, 2001, the Department of State has implemented several procedures to ensure careful review of applicants for entry to the United States, even if the applicant has been in the U.S. previously in proper status.

Effective November 2001, the Department of State has required that male foreign nationals from Afghanistan, Algeria, Bahrain, 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, are subject special security clearance checks that take up to 20 days. These checks are rumored to also apply to women from the above countries, as well as to foreign nationals from Bangladesh. Such nationals are still eligible for TCN processing, but it can take up to 20 days to get confirmation for an appointment (because of the security screening).

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# What Happened to All of the H-1Bs?

Since 1990 the phrase “H-1B” has been one of the most controversial issues in U.S. immigration law. Since the technology boom began in the mid -1990s, tens of thousands of H-1B professional workers have come to the U.S. at the request of U.S. employers. Now that the economy has slowed dramatically, what has happened to the H-1B professional workers and are they still coming to the United States?

## 1952-1989

The professional worker category was created by the Immigration and Nationality Act of 1952 and designated under Section 101(a)(15)(H)(i). It is this statutory reference which created the phrase “H-1 professional worker.” The intention of this visa category was simply to provide U.S. employers with the opportunity to hire expertise from other countries. The need for this expertise could be based on a particular skill set, a particular language enhancement by a professional worker or even a shortage in certain areas.

From 1952 until 1989 the H-1 category operated as a broad range of “professional” occupations which fluctuated with changes in the economy as well as technological advances. Certain occupations have always been considered H-1 professions such as teachers, engineers, architects, lawyers and scientific researchers. However, the category was not clearly defined and the only references to guide employers existed in decades of case law and extremely cryptic Immigration Service regulations.

More importantly, the H-1 category had no restrictions in terms of the number of professional workers allowed into the country, the wages which were allowed to be paid, the displacement of U.S. workers or any other control. In fact, any U.S. employer could hire any professional worker from a foreign country and obtain H-1 status for that employee. This was also very prevalent in terms of hiring foreign students at U.S. colleges and universities and providing them with a form of work authorization through the H-1 category. Again, there were virtually no controls or limits on how the H-1 employee would be employed or compensated.

There were no labor condition applications (LCAs), there was no sixth year limit on the duration of stay nor was there an annual cap on the number of H-1 employees allowed in the country.

## 1989

A minor change in the Immigration Act in 1989 began the process which essentially developed into the H-1B category we know today. In that year, Congress separated the H-1 category into A and B, with the H-1A being reserved for Registered Nurses and the H-1B category reserved for all other the professional workers. At this point we began to refer to H-1 professional employees as H-1B although there was substantially no difference in the requirements for the category or the H-1 process itself.

## 1990 - Present

The Immigration Act of 1990 fundamentally changed the original Immigration and Nationality Act of 1952 by amending most of the references to the H-1B category. By 1990 the Congress had become concerned by a series of reports which indicated that the technology sector would begin experiencing tremendous growth and would demand increasingly high numbers of highly educated and skilled workers. Since the United States would be unable to provide these workers domestically, it seemed reasonable to assume that U.S. employers would begin to seek these workers in other countries and for foreign students in the U.S. To prevent a large influx of professional workers from having a negative impact on domestic workers, Congress implemented the reforms in 1990 which we live with today.

Essentially, the Congress created the labor condition application as a process by the Department of Labor to insure that H-1B workers would not be paid wages less than U.S. workers and therefore avoid artificially depress wages. This single change was probably the most radical departure from previous immigration policy in that it significantly increased the Department of Labor’s responsibilities in the immigration process as well as created an elaborate system of wage research and documentation which continues today. The changes in 1990 also placed a six year cap on the H-1B employee, a numerical quota each year to limit the number of H-1 professional workers allowed into the U.S. and laid the foundation for what eventually would become the policies of the Department of Labor regarding the displacement of U.S. workers. In effect, Congress had radically changed the H-1 professional employee category from a relatively wide open, easily obtainable visa category to that of a highly regulated, restrictive, expensive and confusing process. Despite the claims of anti-immigration groups throughout the 1990s, the H-1B category was actually intended by Congress to be restrictive in nature compared to its predecessor. The claim that the H-1B category was created in 1990 facilitate the admission of tens of thousands of highly skilled, professional workers to displace U.S. workers simply turns history on its head.

*What Happened to All the H-1Bs? Continued from Page 5*

**1990 - Present Continued**

For once, the Congress was correct in that the economy did demand an ever-growing number of highly skilled workers for the technology sector. This demand continued throughout the 1990s until the year 2000. Despite the fact that the rules initiated in 1990 significantly restricted the use of the H-1 and made it much more complicated and expensive, employers continued to bring in H-1B employees in ever-growing numbers until the year 2000, primarily because they had no other visible choice.

But as the economy began to slow down in 2000, employers initially slowed their hiring rates and eventually began to lay off tens of thousands of workers. And included in those workers were H-1B professional employees. In fact, the number of new H-1B petitions being filed has slowed dramatically to levels which are very close to those prior to the boom years of the middle and late 1990s. If, in fact, U.S. employers previously had been hiring H-1B employees to displace U.S. workers and artificially depress wages, it would certainly seem logical that they would continue to do so now. The fact that the H-1B category has been dramatically reduced within the last two years effectively dispels the lie promulgated by anti-immigration groups for the last decade.

Most things in life are relative and the economy is no exception. Comparing the current level of H-1B employment to 1998 would indicate that there has been a tremendous drop off in the use of this category by U.S. employers. However, comparing current levels to 1992 or 1985, we would find many similarities and even conclude that the H-1 category is alive and well and being utilized as it was intended for U.S. employers. Despite the restrictions and obligations placed on the H-1 category in 1990, employers still find the need for H-1B professional employees in critical shortage areas such as healthcare, teaching and, yes, some technology sectors. The fact that U.S. employers no longer import hundreds and even thousands of H-1 workers at a time does not diminish the fact that the H-1 category has been successfully utilized since 1952 in certain limited situations.

From this perspective the H-1B employee is still a valuable asset to most employers. The immigration process in the United States still takes many years to achieve permanent residence if the employee desires to do so and generally the employee is required to work for the same employer throughout the process. This is a distinct advantage for the U.S. employer and one of the major considerations any company should contemplate when evaluating the need for H-1B employees. ■

*Lying . . . Continued from page 2*

attempting to obtain an immigration benefit. In other words, it is best to file the waiver only in the situation where the Immigration Service understands that that applicant is not conceding that fraud was committed in the first place.

It is obvious that these two issues are extremely technical as well as being very fact sensitive. We encourage everyone to carefully review their employment history prior to applying for immigration benefits and to make sure that the situation is reviewed by a qualified immigration attorney before approaching the Immigration Service. Although these are very minor and technical questions, the ultimate penalty can be removal from the U.S. and a permanent bar from this country. ■

**TSA Posts Successes**

**JULY 2002**

H-1B - 17  
L-1 - 3  
Labor Certifications - 4  
I-140 - 8  
Permanent Residence - 4  
I-765 - 19  
I-131 - 25

**JUNE 2002**

H-1B - 14  
I-131 - 23  
I-140 - 5  
I-765 - 16  
Labor Certifications - 8  
Nat'l Interest Waiver - 4  
Naturalization - 3  
Permanent Residence - 10  
Priority Worker - 1

**MAY 2002**

H-1B - 9  
I-140 - 7  
I-765 - 26  
L-1 - 3  
R-1 - 2  
Advance Parole - 9  
Labor Certification - 12  
Permanent Residence - 159  
Priority Worker - 4

**APRIL 2002**

H-1B - 13  
I-130 - 1  
I-131 - 14  
I-140 - 7  
I-765 - 38  
Labor Certifications - 5  
Nat'l Interest Waiver - 1  
PR - 13

**MARCH 2002**

H-1B - 3  
L-1 - 5  
Labor Certifications - 1  
I-140 - 24  
Priority Workers - 4  
PR - 4  
I-765 - 14  
I-131 - 13

# Immigration Updates

BARBARA NELSON, SENIOR PARALEGAL

MINDY WOLFSON, SENIOR PARALEGAL

## The Department of State (DOS)

On June 1, 2002 the new schedule of consular fees went into effect. This included an increase in the fee for all nonimmigrant visa applications – the Machine Readable Visa or MRV fee – from US \$45.00 to US \$65.00.

Revalidations through DOS . . . DOS recently announced that if there is a question of eligibility, the visa application and the passport are turned to the applicant with instructions to apply at AC. They are reviewing on a case-by-case basis on whether a case is considered to be “clearly approvable.” There is a list of 26 countries which requires additional security checks. This security check adds an additional 24 days to the normal backlog of six to eight weeks.

DOS may require citizens of British Commonwealth countries to obtain nonimmigrant visas to enter the United States ... currently they are exempt visa requirements.

NOTE: Due to increasing problems in obtaining visas at the U.S. Consuls abroad, you should contact the American Consul prior to your scheduled trip to ascertain processing times for issuance of nonimmigrant visas. The delays at the American Consul offices are increasing since the establishment of additional security checks. You should allow enough time to process the visa while you are on holiday or business. Apply at the AC immediately upon arrival and request a tentative processing time schedule.

## The Department of Labor (DOL)

A policy memorandum regarding the recent layoff developments, especially in the information technology field, was finally issued by DOL on March 20, 2002, with a subsequent clarification memorandum issued on June 7, 2002. Basically, DOL reevaluated the RIR requests in light of the increased layoffs throughout the U.S. and established new standard operating procedures for RIR cases. If the Certifying Officer (CO) has reason to believe that the employer may have laid off workers since the time of the filing the application, or if the CO has reason to believe that there have been layoffs by other employers a Notice of Findings will be issued by the CO. The employer will need to provide documentation as to whether or not there was a layoff. If a layoff occurred there are certain steps an employer must take to determine if the case can proceed under the RIR program or sent back to the State Office for processing under the basic labor certification process. If the employer hasn't had a layoff, the CO will give the employer the option of publishing one additional advertisement consistent with the ad provided in the original RIR application or request that the application be remanded to the state for regular processing.

DOL – Region VI has sent out several hundred of these letters to employers in its region.

## Immigration & Naturalization Service (INS)

INS has instituted a new procedure whereby all petitions and applications are being subjected to a new security check. What kind of processing delays can we expect? We are already seeing all applications and petitions delayed in processing. While the backlogs will differ from office to office, a significant delay is already appearing in various services centers. For example, I-129 petitions in Texas are backlogged from April 2002 and I-140 petitions are backlogged to February 2002.

## Immigration and Naturalization Service Processing Times

### California Service Center as of February, 2002

I-140 - 11/08/2001      I-485 - 01/01/2001  
I-765 - 11/15/2001      I-131 - 12/21/2001

### Nebraska Service Center as of February, 2002

I-140 - 12/12/2001      I-485 - 02/10/2001  
I-765 - 01/14/2002      I-131 - 01/14/2002

### Texas Service Center as of February, 2002

I-140 - 01/02/2001      I-485 - 03/01/2000  
I-765 - 09/25/2001      I-131 - 01/22/2002

### Vermont Service Center as of February, 2002

I-140 - 12/17/2001      I-485 - 04/01/2001  
I-765 - 01/22/2002      I-131 - current

## State Employment Security Agency / Department of Labor Processing Times

### Texas SESA

Basic 03/05/2001  
RIR 12/27/2001  
RFE / 45 day close out  
to forward to DOL –  
current

### Texas DOL

01/2000  
05/2001 –RIR Recommended  
03/2000 –RIR *not recommended*  
07/2001 –Limited Review  
01/2001 –Special Handling

### Oklahoma SESA

Basic - 12/2000  
RIR - 04/2001

### Texas DOL

same as above

### California SESA

Basic - 04/2001  
RIR - 06/2001

### California DOL

05/01/2001  
10/2001

### New York SESA

Basic - 03/1998  
RIR - 03/2001

### New York DOL

01/2001  
Current

### Illinois SESA

Basic - 03/2001  
RIR - 11/2001

### Illinois DOL

03/2001  
11/2001

## INS Publishes Interim Rule

*'Third Country National'*

*Continued from Page 4*

*INS Publishes Interim Rule Allowing the Concurrent Filing of I-485 Applications for Adjustment of Status with I-140 Immigrant Visa Petitions*

It is now permissible in certain circumstances for beneficiaries of I-140 immigrant visa petitions to submit concurrently an Application for Adjustment of Status. This opportunity is available to beneficiaries of I-140 visa petitions, whether they are pending or will be filed in the future, and their eligible dependents for whom visas are currently immediately available. Beneficiaries of pending I-140 petitions must submit the application form, together with the appropriate fee, and a copy of the receipt notice for the pending I-140 petition. For those who will file the I-140 in the future, the I-485 application may simply be included, with the appropriate fee. Filing the I-485 application allows the I-140 beneficiary, plus any derivative family members, to file for work and (if eligible) travel authorization. This opportunity certainly lessens the advantages of Consular Processing, which does not allow for employment or travel authorization. The opportunity to have work and travel authorization while the I-140 is pending is very exciting. ■

Effective April 1, 2002, the regulations concerning visa revalidation when coming back to the U.S. from Canada or Mexico after being gone less than 30 days, were amended and new policies were implemented.

The amendment to Section 41.112(d) of the Federal Regulations prohibits the reentry using an automatically revalidated visa of any foreign national who has applied for a new visa while outside the U.S. It also prohibits reentry on an automatically revalidated visa of any foreign nationals from "terrorist sponsoring" states (Iraq, Iran, Syria, Libya, Sudan, North Korea, and Cuba). However, the nineteen additional countries listed above are also subject to additional security screening, so it is assumed that nationals from these countries are also prohibited from automatic revalidation.

Because of these changes, TCN processing has certainly lost some of its appeal. Not only does it require an extra 20 days in some cases to get the appointment, it is now law that if a TCN visa application is refused at the consulate, the applicant must leave from Canada and Mexico and go to his/her home country to obtain the visa! The applicant may no longer reenter the U.S. on the automatic revalidation rule. Because he/she has "applied for a visa outside the U.S.," he/she is no longer eligible for reentry until the

new visa is approved and in his/her passport.

For the above reasons, we do not recommend TCN processing in most cases. Rare cases in which the applicant lives in Canada or Mexico and is moving to the U.S. are the exception to our stance. Otherwise, it is quite risky, because the Consular Officers have complete discretion to approve or refuse an applicant for visa processing. If the applicant is refused, there is no option for argument, and the applicant will be forced to return home, or to stay outside the U.S. until he/she can get the missing information and reapply. What was originally convenient and relatively less expensive could turn into a visa processing nightmare. ■

The Compass®

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