

KANTER IMMIGRATION LAW OFFICE

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December 2015 Newsletter

SEASON'S GREETINGS



Office Holiday Hours

We would like to remind our clients that over the upcoming holidays, our office will open on a reduced-hour basis and will be closed on December 24, 25 and on December 31 and January 1. **We wish you all a happy holiday season and a prosperous new year!**

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Congress Reaches Deal on 2016 Omnibus Bill; Bill Contains Reforms to Visa Waiver Program, Extension of Four Popular Immigration Programs

On December 15, Congress reached a deal on the [FY2016 Omnibus Appropriations Bill](#), which funds the federal government through September 30, 2016. Congress is expected to vote on the bill later this week. The bill contains significant changes to the Visa Waiver Program (VWP) that are contained in [HR 158, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015](#), passed by the House of Representatives earlier in the month in the aftermath of the recent terrorist attacks in Paris and San Bernardino. The Omnibus Spending Bill also extends the EB-5, Conrad 30, Special Immigrant Religious Workers, and E-Verify programs through the end of FY2016, however, without any reforms. It does not, however, include proposals to end the resettlement of Syrian and Iraqi refugees.

The Visa Waiver Program Improvement Act, now part of the 2016 Omnibus Bill, revokes VWP travel privileges for all citizens of VWP countries who are dual nationals of Iraq, Syria, Iran, or Sudan. This revocation of VWP privileges would apply to all nationals of Iraq, Syria,

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Iran, or Sudan even if they have never resided in or traveled to any of these four countries. Because these countries confer citizenship through naturalization, marriage, or descent, many individuals will be barred from using the program, even if they have never been to Iraq, Syria, Iran, or Sudan. Some examples include:

- Dual-national French citizen (born to Syrian father) traveling to U.S. for business conferences and meetings;
- Dual-national German citizen (born to Iranian father) traveling to U.S. on vacation;
- Dual-national British citizen (born to Syrian father) traveling to the U.S. to take care of grandchild.

VWP travel privileges are also terminated for all who have been present in Iraq, Syria, Iran, or Sudan at any time on or after March 1, 2011. There is a very narrow exception for certain military personnel and government officials. All other travelers would automatically lose their VWP privileges. Affected travelers would include scholars, refugee caseworkers, humanitarian aid workers, human rights investigators, and others.

New passport requirements are also incorporated into the bill. Starting April 1, 2016, VWP travelers will be required to use electronic passports that are machine-readable and fraud resistant. The program country will also be required to validate these passports.

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Applying for Citizenship: Tips for Completing Form N-400

[Applying for U.S. citizenship](#) through the [naturalization process](#) is generally straightforward, especially if the lawful permanent resident (LPR) has not had previous immigration issues. For many LPRs, the process can be successfully completed without delay.

When USCIS adjudicates an [application for citizenship \(N-400\)](#), it does a comprehensive review of the applicant's entire immigration file. It also runs detailed criminal and security background checks, as well as checking Social Security and IRS records to ensure that the information on the N-400 is accurate. A common and often innocent mistake is not disclosing all dates and locations of residences and of employment. Discrepancies or inaccuracies in employment, if LPR status was based on employment, can not only derail a citizenship application but could subject the applicant to revocation of his or her green card.

Another key area is recording time outside of the United States over the last five years. A common difficulty is accurately reporting all trips over 24 hours taken outside the United States during the immediate five-year period. For those who travel abroad frequently, this can become onerous. It need not be. Look through your old passports for entry stamps. Make a list of travel times. Start with estimates. If you have sufficient time in the U.S., estimates even on the application can be okay.

An area that is critically important and must be accurate is reporting any criminal activity, even, for example, a long-ago arrest that was subsequently expunged. The N-400 requires a

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“YES” answer and disclosure of any incident where the applicant was “arrested, cited, or detained by any law enforcement officer.” However, some violations don’t disqualify someone from citizenship but they should be listed on the application. Applicants with any doubt whether an incident constitutes a “YES” answer should seek legal advice first before applying for naturalization.

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E-3 and TN Visa Endorsement Issues

Under the Department of State’s current policy, visas are generally only annotated with the primary employer’s information. This is problematic for visas issued to beneficiaries with multiple employers, such as E-3 and TN visas, because the applicant has no way of knowing which employment opportunity or opportunities were found to be qualifying and authorized by the consular officer for visa issuance. Although the Department of State will not annotate the visa stamp with more than one employer, it will make sure that consular officers’ case notes clarify which employment relationships were reviewed and endorsed for visa issuance. Consular officers are also instructed to relay this information verbally to the applicant during the interview. Case notes are the primary means of sharing adjudication information with other government agencies, such as USCIS. In the meantime, E-3 and TN visa applicants should present employment letters from all employers.

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ICE Deploys Additional Student and Exchange Visitor Program Field Representatives to Work With U.S. Schools

In mid-December, the [Student and Exchange Visitor Program \(SEVP\)](#) added 16 additional field representatives to its staff to serve as liaisons between the nearly 9,000 U.S. schools that enroll international students. SEVP-certified schools can now expect greater monitoring from the government.

SEVP, a program housed within U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI), certifies schools to enroll international students and oversees those students and the schools they attend for compliance with U.S. laws. Specifically, SEVP field representatives serve as school resources on SEVP certification and recertification, including educating school officials on the rules, regulations, and federal laws governing foreign students. Field reps also are involved in improving the data integrity of the [Student and Exchange Visitor Information System \(SEVIS\)](#), the Web-based system that contains information on international students and exchange visitors in the U.S. The system is also used to ensure compliance with U.S. immigration laws. Field representatives are supposed to meet twice a year with each SEVP-certified school with active international

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students. (If a school is SEVP-certified, but does not have any current international students, the field representative will reach out to that school via an annual visit, phone call, or e-mail.)

SEVP monitors approximately one million international students (F and M visa holders) and their dependents. The Department of State monitors exchange visitors (J visa holders) and their dependents, and oversees exchange visitor programs. Both use the SEVIS database. The information in SEVIS is shared with CBP and USCIS to ensure that only legitimate international students and exchange visitors gain entry into the United States. HSI reviews SEVIS records for potential violations and refers cases with possible national security or public safety concerns to its field offices for further investigation.

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USCIS Director Confirms Review of Fiancé Visa Program

The Director of USCIS, Leon Rodriguez, told lawmakers that USCIS is reviewing the [K fiancé\(e\) visa](#) program, and that the agency has been ordered to retroactively review such cases approved in recent years. The K visa was used by one of the attackers in San Bernardino, California. Applicants should expect longer waiting periods for their cases.

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Refugee Resettlement – What’s Happening and What is Lawful

The recent violent attacks in Paris, Beirut, and California have traumatized and saddened the world, including the United States. These despicable acts of violence have created very real concerns for our nation and our leaders, and have focused much public attention — media and otherwise — on immigrants and refugees coming to our shores. The U.S. House of Representatives overwhelmingly passed [a bill](#) that would effectively end the resettlement of Syrian and Iraqi refugees in the United States; some 31 state governors vowed to refuse the admission of Syrian and Iraqi refugees; and a Texas [lawsuit](#) was filed against the federal government to halt refugee resettlement there. The proponents of these measures say one refugee terrorist is one too many. But, what are the facts and what is the law?

First, in the history of the U.S. refugee program, there has not been a single reported act of terrorism committed by a refugee. In fact, a [recent study](#) conducted by a Syracuse University research group, TRAC (Transactional Records Access Clearinghouse), found that the removal of a *noncitizen* (asylum seekers, nonimmigrants, and immigrants) through the immigration courts on the grounds of terrorism is extremely rare. Of the 176,397 removal orders sought by DHS in FY2015, two were based on terrorism concerns. In FY2014, DHS sought only three such orders. TRAC reports these extremely low numbers are consistent with the numbers observed during the last four years of the Bush Administration.

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Second, refugees, unlike asylum seekers, are by definition individuals outside of the United States who are seeking protection from persecution. The process that they undergo in order to be deemed eligible for resettlement in the United States is thorough and extensive. They are vetted more rigorously than any other immigrant or nonimmigrant. And, this vetting is conducted while they are still overseas. They are screened by national and international intelligence agencies. Fingerprints and other biometric data are checked against terrorist and criminal databases. They are interviewed several times over the course of the vetting process, which takes 18–24 months and often longer. While refugees may not have had proper documentation when this vetting process begins because of the circumstances of their home country departure, the backgrounds of those who successfully pass the screening process and are resettled here are known by the government.

Significantly, a bipartisan group of national policy experts – generals, national security advisors, and secretaries of defense, state, and homeland security, including former Secretaries of State Madeline Albright and Henry Kissinger – expressed opposition to measures that would effectively end the refugee resettlement program for Syrians and Iraqis. Here are some excerpts from their poignant [letter](#):

“We believe that America can and should continue to provide refuge to those fleeing violence and persecution without compromising the security and safety of our nation. To do otherwise would be contrary to our nation’s traditions of openness and inclusivity, and would undermine our core objective of combating terrorism.

“The process that refugees undergo in order to be deemed eligible for resettlement in the United States is robust and thorough. They are vetted more intensively than any other category of traveler,

“Given the stringent measures in place, we are especially concerned by proposals that would derail or further delay the resettlement of Iraqis who risked their lives to work with the U.S. military and other U.S. organizations. . . . The United States has a moral obligation to protect them.

“We must remain vigilant to keep our nation safe from terrorists, whether foreign or homegrown, and from violence in all its forms. At the same time, we must remain true to our values. These are not mutually exclusive goals. In fact, resettlement initiatives help advance U.S. national security interests by supporting the stability of our allies and partners that are struggling to host large numbers of refugees.

“Refugees are victims, not perpetrators, of terrorism. Categorically refusing to take them only feeds the narrative of ISIS that there is a war between Islam and the West, that Muslims are not welcome in the United States and Europe, and that the ISIS caliphate is their true home. We must make clear that the United States rejects this worldview by continuing to offer refuge to the world’s most vulnerable people, regardless of their religion or nationality.”

Moreover, some 400 legal, faith, labor, refugee, and humanitarian aid organizations, as well as civil and human rights groups, wrote a similar letter. They likewise urge members of

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Congress to support the U.S. refugee resettlement program and to oppose any policy riders that would stop, pause, or defund resettlement of Syrian refugees.

States cannot categorically deny federally funded benefits and services to Syrian refugees. It's basically against the law. In late November, the Department of Health and Human Services' Office of Refugee Resettlement (ORR) released a "[Dear Colleague Letter](#)," advising that states may not deny ORR-funded benefits and services to refugees based on a refugee's country of origin or religious affiliation. "Accordingly," it advised, "states may not categorically deny ORR funded benefits and services to Syrian refugees." A state that does so would not be in compliance with various laws and their own assurances, and could be subject to enforcement action. In addition, the [Civil Rights Act of 1964](#) prohibits discrimination on the bases of race and national origin in all programs or activities that receive federal financial assistance. Thus, it is impermissible to deny federally funded benefits to refugees who otherwise meet the eligibility requirements.

Nevertheless, in early December, the state of Texas filed a [lawsuit in federal district court](#) against the federal government and the International Rescue Committee to block the resettlement of refugees from Syria in the state. The Texas Human Service Commission argued, among other things, that the federal government is violating the [1980 Refugee Act](#), which requires the federal government to communicate "regularly" with state and local governments and nonprofits regarding refugee resettlement. This is a creative reading of the Refugee Act, an interpretation that does not take into account the federal government's ultimate authority over immigration. And, the federal government is the sole entity responsible for screening and accepting refugees. (Though procedures vary at the state level, in many instances the states simply direct the federal government to in-state charities that provide or facilitate the majority of essential services for the refugees once they land in the U.S.) The district court denied Texas's application for a temporary restraining order (TRO), finding that the state failed to establish that there was a substantial threat of irreparable injury posed by the Syrian refugees.

Between October 1, 2011, and October 31, 2015, the U.S. admitted 2,070 Syrian refugees. None committed any terrorist act.

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New Policy Will Restrict Work Authorization Eligibility for Certain G-4 Dependents

Due to a new interpretation by the Department of State of the reciprocity rules between the United States and other countries, G-4 dependents may be deemed ineligible for work authorization in the United States unless a bilateral work agreement exists between the United States and the principal G-4's country of nationality. While 112 countries have such agreements – although some agreements have limitations on work – and another 35 countries have de facto reciprocal work arrangements, noticeably absent is China, Indonesia, and Vietnam, among others. It is important to note that it is the principal visa holder's country of nationality that controls. This means that spouses and children of G-4s "deemed" from

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countries that do not have such agreements with the United States will not be able to renew their work authorization when it expires, and first time applicants will be denied. In other words, if the principal G-4 is a Chinese national, for example, her G-4 dependent spouse who is a national of the United Kingdom is ineligible for work authorization, even though the United Kingdom has a bilateral work agreement with the United States.

While senior officials from the various international organizations are meeting with senior State Department officials to discuss how to ameliorate the impact on family members of G-4 international employees – hopefully by postponing or phasing in implementation – it is doubtful that the new policy will be reversed.

Why the change and what is the basis for it? Historically, Foreign Service family members have been limited to doing volunteer work or working within a U.S. mission while abroad because of their diplomatic or consular status. To increase their opportunities for employment, bilateral work agreements have been established through a formal exchange of diplomatic notes between the United States and an individual country. These work agreements enable spouses and dependent children of U.S. government employees assigned to official duty at a U.S. embassy or consulate in one of these countries to seek work authorization and work in the local economy. In other cases, on the basis of de facto reciprocity established by precedent, spouses and dependent children of similarly situated U.S. government employees also have been able to obtain work permits. Because G-4 visa holders have certain diplomatic privileges and immunities, these reciprocity rules are now being applied to them.

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Detention of Central American Families Continues, and So Does the Fight in Court

In late October, a federal district had ordered the government to bring its treatment of asylum-seeking families – Central American unaccompanied minors – into compliance with a 20-year old settlement agreement. It ordered that the children affected be released from detention without delay while the suit proceeds in court. Yet, DHS has failed to comply with the judge's order, and children and families continue to be detained. Other actions are now being pursued while the litigation continues with requests for expedited briefing.

In an action filed with the DHS Office for Civil Rights and Civil Liberties and the Office of Inspector General, the complainants detail serious obstacles indigenous language speakers face in procuring access to relief in family detention centers. The lack of adequate language services for such individuals has led to: wrongful deportations of families; extended delays in processing and lengthier detention for mothers and children; lack of informed consent by mothers and children to medical treatment; and the inability of children to meaningfully participate in school while detained. In yet another move to prod compliance, a law suit was filed in Texas that blocks Texas from licensing the family detention centers in Dilley and Karnes as child care facilities – Dilley and Karnes are the two main family detention

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facilities used by DHS. A Texas judge issued a temporary injunction to block the state from fast-tracking the licenses.

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News in Brief

The following additional items may be of interest to our readers:

January Visa Bulletin: USCIS has determined that for family-sponsored filings, the Dates for Filing Visa Applications chart for January 2016 may be used. The agency has determined, however, that for employment-based filings, the Application Final Action Dates must be used. The dates are shown on this [USCIS web page](#).

New E-Verify Toolkit: USCIS released a revised [E-Verify Employee Rights Toolkit](#), which should be useful for workers, job seekers, employers, and workforce employers. The toolkit is designed to help employees learn about their Form I-9 and E-Verify rights, assist employers with “onboarding,” and provide tools to workforce organizations.

State Department to Discontinue Addition of Passport Pages: The [U.S. Department of State has announced](#) that beginning 1/1/2016, it will no longer add visa pages into U.S. passports. Applicants in need of additional pages in their valid passports will be required to obtain a new passport.

Adoptive Family Relief Act: On October 16, 2015, President Obama signed into law the [Adoptive Family Relief Act](#), which amends the immigration law and declares that if an immigrant visa was issued on or after 3/27/13 and is related to a renewal or replacement of an adoption visa, the new visa fees may be waived or refunded under certain circumstances.

December 21 is Deadline to Register for Nepal TPS: The deadline for eligible nationals of Nepal (and people without nationality who last habitually resided in Nepal) to register for temporary protected status (TPS) is Monday, 12/21/15. Rules about re-registration and initial applications are provided at <http://www.uscis.gov/tps>.

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