

# The New Horizon: Important Changes to Programs We Know



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## The New Horizon: Important Changes to Programs We Know



- Changes to the Visa Waiver Program
- Proposed AC21/ACWIA Regulation
- Final Rule on Enhancing Opportunities for H-1B1, CW-1, E-3, and EB-1
- *Matter of Simeio* and Amending your H-1B

# Changes to the Visa Waiver Program



- Numerous changes designed to increase security for travel into US on Visa Waiver Program (VWP)
- Generally viewed as a reaction to terrorist attacks in Europe

# Changes to the Visa Waiver Program



- **VWP General Guidelines:**
  - Travel Purpose to the US Must be Permitted on a Visitor Visa
    - ✦ Business
    - ✦ Tourism
  - Must be a Citizen of a VWP Designated Country

Andorra	Estonia	Italy	Netherlands	South Korea
Australia	Finland	Japan	New Zealand	Spain
Austria	France	Latvia	Norway	Sweden
Belgium	Germany	Liechtenstein	Portugal	Switzerland
Brunei	Greece	Lithuania	San Marino	Taiwan*
Chile	Hungary	Luxembourg	Singapore	UK*
Czech Rep.	Iceland	Malta	Slovakia	
Denmark	Ireland	Monaco	Slovenia	

- Traveler Must Have Authorization Under ESTA

# Changes to the Visa Waiver Program



- **Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015**
  - Following travelers are no longer eligible:
    - ✦ Nationals of VWP countries who have traveled to or been present in Iran, Iraq, Sudan, or Syria after March 1, 2011
      - DHS added Libya, Somalia and Yemen Feb 2016
    - ✦ Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria
    - ✦ Must obtain B visa at US Consulate abroad
    - ✦ There are certain diplomatic and military exemptions, must go through ESTA first, get denied, and then go through CBP or apply for B visa
    - ✦ Additional information about other possible waivers “forth coming”

# Changes to the Visa Waiver Program



- Updated Passport Requirements
  - As of April 1, all VWP travelers must have an e-passport (enhanced secure passport with electronic embedded chip)
    - ✦ Temporary or emergency passports must still be e-passports
  - All travelers (including infants) must have their own passports
  - Passports must be valid for at least 6 months after planned departure

# Proposed AC21/ACWIA Regulation



- **GREEN CARD IMPLICATIONS**
  - Continued validity of I-140 after it has been approved for 180 days
  - Retention of priority date
  - I-140 EADs based upon compelling circumstances
  - Portability for adjustment applicants and new Supplement J to I-485

# Proposed AC21/ACWIA Regulation



- **H-1B IMPLICATIONS**
  - H-1B extension benefits under AC21
  - Recapture of time spent abroad
  - H-1B Portability
  - Whistleblower protection



# Proposed AC21/ACWIA Regulation



- MISCELLANEOUS PROVISIONS
  - 10-day grace period before and after authorized period of stay
  - One-time 60-day grace period when terminating employment
  - EAD changes:
    - ✦ Automatic EAD extension for 180 days
    - ✦ Effect on I-9 reverification
    - ✦ Elimination of 90-day EAD adjudication requirement

# Final Rule on Enhancing Opportunities for H1B1, CW1, E3, and EB1



- **Extensions**
  - H1B1s, E3s and CW-1a are afforded 240 day continued work authorization while timely filed extension remains pending
  - Existing regs on filing procedures for extension of stay and change of status requests now include H1B1s and E3s
- **Work Authorization**
  - Clarification that H1B1s and E3s are allowed to work incident to status
- **EB1 Outstanding Professors/Researchers**
  - May now submit initial evidence comparable to the other forms of evidence already listed in 8 CFR 204.5(i)(3)(i), in line with other employment-based immigrant categories that already allow for submission of comparable evidence if listed standards do not apply

# *Matter of Simeio and Amending your H-1B*



- *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015)
  - Precedent AAO decision issued April 9, 2015
  - Subsequent implementing Policy Memo from July 21, 2015
  - A change in location of employment to a geographical area that requires the filing of a new LCA constitutes a "material change"
  - Employers must file an amended or new H-1B petition with the corresponding LCA for changed location BEFORE the employee starts working at the new site
  - Grace period is over – any changes in location requiring a new LCA as on or after August 19, 2015 require an H-1B amendment

# *Matter of Simeio and Amending your H-1B*



- When is an H-1B amendment NOT required for a new location?
  - Move within the same area of intended employment
    - ✦ CAVEAT: must still post notice prior to starting work at the new location
  - Short-term placements
  - Non-worksites locations