

USCIS Memo Summarizes REAL ID Provisions

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Following is the text of a USCIS field memo on REAL ID:

"On May 11, 2005, President Bush signed Public Law 109-13, which included provisions of the REAL ID Act of 2005. This new measure provides for significant changes to existing immigration laws.

Further detailed guidance on the provisions of the REAL ID Act - many of which will affect USCIS -- will be forthcoming, but in brief, they include the following:

Sec. 101: Tightens evidentiary standards and burdens of proof for applicants for asylum and for relief or protection from removal. Removes entirely the annual limitations of 10,000 adjustments of asylees to lawful permanent resident status and of 1,000 grants of asylum or refugee status to persons resisting coercive population control methods. Clarifies that judicial review limitation in section 242(a)(2)(B) of the INA is applicable to USCIS discretionary decisions not necessarily arising from removal proceedings (this change appears in sec. 101 but is more closely related to the subject matter of sec. 106).

Sec. 103: Significantly amends and expands the terrorism-based grounds of inadmissibility in section 212(a)(3)(B) of the Immigration and Nationality Act, particularly with respect to membership, representation, endorsement or espousal, military-type training, material support, solicitation, and the definition of a terrorist organization.

Sec. 104: Provides a discretionary exception to inadmissibility for certain aliens who have endorsed or espoused, materially supported, or been a representative of a terrorist organization, and to the definition of certain groups as terrorist organizations, to be exercised by DHS or DOS in consultation with each other and DOJ.

Sec. 105: Significantly expands the terrorism-based ground of deportability in section 237(a)(4)(B) of the Immigration and Nationality Act to cover any alien described in the terrorism-based grounds of inadmissibility at section 212(a)(3)(B).

Sec. 106: Limits judicial review of removable orders, especially review in the district courts arising out of habeas corpus claims.

Secs. 201-07: Requirements that States must meet for their drivers' licenses to be accepted for Federal purposes (such as boarding commercial aircraft or entering Federal buildings) will phase in and fully apply in three years. These requirements include verification of the citizenship or lawful immigration status of drivers' license applicants

(through the SAVE system in the case of aliens), the issuance of temporary drivers' licenses valid only during the period of lawful stay in the United States to certain categories of aliens, and marking of nonconforming licenses to be recognizable as unacceptable for Federal purposes.

Secs. 301-03: Studies, pilot programs and communications integration with respect to border security.

Secs. 401-07: The "Save Our Small and Seasonal Businesses Act of 2005" contains a number of provisions intended to provide additional temporary or seasonal workers under the H-2B nonimmigrant category and otherwise to modify the H-2B program. These provisions include: A new exception for fiscal years 2005 and 2006 from the H-2B limitation of 66,000 per fiscal year for "returning workers" who have already been counted toward that limitation in any one of the previous three fiscal years, a new fraud prevention and detection fee of \$150 for H-2B petitions for fiscal year 2006 and after, with the receipts to be divided between the Departments of State, Labor and Homeland Security for antifraud activities; civil penalty and petition debarment authority for misrepresentations in H-2B petitions; a new division of the 66,000 H-2B limitation into semiannual limitations of 33,000 in order to provide H-2B workers for employers petitioning for the second half of the year; reporting requirements; and a discretionary exemption from certain statutory procedural requirements in order to ensure quick implementation (the "returning worker" provisions and the new fee are to be implemented within 14 days of enactment).

Sec. 501: Provides up to 10,000 "specialty occupation" nonimmigrant admissions in new E-3 classification for nationals of Australia (similar to provisions previously enacted in free trade agreement implementing legislation relating to H-1B workers from Singapore and Chile).

Sec. 502: Provides for up to 50,000 employment-based immigrant visas authorized but unused in fiscal years 2001-04 to be available to employment-based immigrants described in the Department of Labor's "Schedule A" (primarily, but not exclusively, nurses), and their accompanying family members.