



Blaneys on Immigration

This newsletter is designed to highlight new issues of importance in immigration related law. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Immigration Law Group, Ian Epstein at 416.593.3915 or iepstein@blaney.com.

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“...an applicant for a grant of Canadian citizenship must have an adequate knowledge of one of the official languages of Canada.”

NEW LANGUAGE RULES FOR CANADIAN CITIZENSHIP APPLICANTS ANNOUNCED

Henry J. Chang

On September 28, 2012, the Minister of Citizenship, Immigration and Multiculturalism announced that citizenship applicants will now be required to provide up-front objective evidence of their language ability at the time of their citizenship application. The effective date of this change is November 1, 2012.

According to Paragraph 5(1)(d) of the *Citizenship Act* (R.S.C., 1985, c. C-29), an applicant for a grant of Canadian citizenship must have an adequate knowledge of one of the official languages of Canada. Adequate knowledge is defined as the ability to speak and understand basic statements and questions in the given language.

All adult applicants 18 to 54 years of age who are applying for Canadian citizenship are assessed on their ability to communicate in English or French. Currently, language ability is assessed by a written citizenship test; an applicant who fails the written test must pass an oral interview with a citizenship judge.

Citizenship and Immigration Canada (“CIC”) officials also confirm some of the basic informa-

tion on the application for citizenship with the applicant at the time of testing. Where there is an indication that the applicant does not comprehend basic spoken statements and/or questions, this information is passed on to the citizenship judge. The judge may then take this information into consideration when determining whether the applicant meets the language requirement.

There is currently no procedure in place to objectively test the language abilities of Canadian citizenship applicants. Under the new rules, applicants will now be required to submit objective evidence that they have achieved the Canadian Language Benchmark level 4, in speaking and listening, when they file their application. Acceptable evidence of language ability may include the following:

- The results of a CIC-approved third-party test;
- Evidence of the applicant's completion of secondary or post-secondary education in English or French; or
- Evidence that the applicant has achieved the appropriate language level in certain government-funded language training programs.

The requirement for adult applicants to provide objective evidence of language ability with their citizenship submission applies to applications

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received as of November 1, 2012. After that date, CIC will return any citizenship application, filed by an applicant between the ages of 18 and 54, which does not include objective evidence of language ability. ■

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ANNOUNCES NEW FILING OPTION FOR CANADIAN TN APPLICANTS

Henry J. Chang

United States Citizenship and Immigration Services (“USCIS”) recently announced that, as of October 1, 2012, it began accepting Form I-129s (Petition for Nonimmigrant Worker) filed on behalf of Canadian citizens who are outside the United States and are seeking Trade NAFTA (“TN”) status. TN status arises from the North American Free Trade Agreement and is available to certain professionals who hold Canadian (or Mexican) citizenship.

Prior to October 1, 2012, USCIS only accepted Form I-129 in connection with a request to extend a TN nonimmigrant's existing status or to change the status of an alien holding a different nonimmigrant status to a TN. Canadian citizens who were physically outside of the United States were not permitted to seek advance approval of their TN cases by filing a Form I-129.

Canadian citizens instead would apply at the time of entry, either at a land port of entry or at a pre-clearance facility located in a Canadian Airport. In such cases, the TN application would be adjudicated by United States Customs & Border

Protection (“USCBP”) immediately prior to the applicant's entry to the United States. Although this resulted in quick adjudications, applicants would not know whether they would receive their TN until they applied for admission.

Although the addition of an alternative process for the adjudication of TNs is welcome, given USCIS' less than stellar record in adjudicating other nonimmigrant categories (such as L-1 and H-1B), it is unlikely that USCIS will be overly generous in its TN adjudications. Nevertheless, in appropriate cases, the ability to seek a TN petition approval in advance of the alien's application for admission to the United States may be beneficial. ■

TAIWANESE CITIZENS NOW ELIGIBLE UNDER THE U.S. VISA WAIVER PROGRAM

Henry J. Chang

On October 2, 2012, Secretary of Homeland Security Janet Napolitano announced the designation of Taiwan under the Visa Waiver Program (“VWP”), which will facilitate U.S. travel for thousands of eligible Taiwan passport holders.

Citizens of designated VWP countries are permitted to enter the United States as visitors for business or pleasure for a maximum period of ninety days without a visa. The list of countries currently designated under the VWP now includes: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia,

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Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Taiwan.

Like other VWP travelers, eligible Taiwan passport holders will be required to apply for advanced authorization through the Electronic System for Travel Authorization (“ESTA”), a DHS Web-based system. Eligible Taiwan passport holders with an approved ESTA will be able to visit the United States without a visa starting from November 1, 2012. ■

EXPECT THE BEST

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We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Kylie Aramini at 416 593.7221 ext. 3600 or by email to karamini@blaney.com. Legal questions should be addressed to the specified author.