

LACBA: INS & Outs

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NSEERS: THE FUTURE

By Faith Nouri

By the time you read this article or soon thereafter, you will have been informed by the Secretary of the Department of Homeland Security (DHS), Governor Tom Ridge, that NSEERS, as we know it, has ended. The reality is that the Department of Justice will relinquish part of its broad power to DHS. It is likely that the program will continue under another name and it may even change its form from how it functioned in the past. Let us review the origin of these newly-enacted regulations. First, we need to recall that on July 21, 1998, the Federal Register (Vol. 63, section 39109), identified non-immigrants from Iran, Iraq, Libya and Sudan as subject to special fingerprinting requirements at the time of their Arrival-Departure Record. However, waivers of requirements were granted and many non-immigrant aliens were admitted to the United States without being fingerprinted or photographed. This new phenomenon of Call-In Registration and its process is rooted in Title II, Chapter 7. The Aliens' Failure to Register and its process is enunciated under §§ 261 – 266.

Unfortunately, September 11, 2001 produced policies and regulations which have merely served to punish law-abiding non-immigrants. Individuals from the designated countries, who fled their own country due to those governments' instability, discrimination, prejudice and abuse, became the target of these blanket regulations. Their sweeping powers came into effect when Congress empowered the Attorney General to register those seeking entrance to the U.S. and those already in the U.S. under the Immigration and Nationality Act (INA) Section 264(a).

After September 11, 2001, the Attorney General established special registration procedures, known as the National Security Entry-Exit Registration System (NSEERS), at Ports of Entry and at local INS offices for persons already in the U.S. from the designated 26 countries. Thus, the Attorney General has had the power to make determinations as to who would register and the form of registration which would take place.

This regulation applied to individuals who entered U.S. with a non-immigrant visa, and excluded individuals who applied for asylum prior to the specified dates articulated in the Federal Regulation.

During the course of registration, through question and answer sessions, we were able to clarify that males with advance parole are exempt. Many individuals who complied with the registration requirements with approved I-130 & I-140 with pending 485 were not deferred to the Investigation Unit. This Unit somewhat exercised prosecutorial discretion that was published and distributed to AILA & LACBA members during a meeting held in December of 2002. Investigators were to consider individuals' equities, family ties, and possibility of remedy available at the Immigration Court, along with many other factors.

Back in December 2002, we saw how prosecutorial discretion was seldom exercised and many were placed in proceedings with 485 pending and with available benefits. Many registrants were males who previously sought refugee status in Europe and, for a variety of reasons, subsequently relocated to the U.S. Many with American family members and U.S. native and citizen children complied. The individuals with Visa Waiver were expeditiously removed pursuant to INS §271.

Before each group's deadline, each registrant was to answer questions under oath and present documentation such as travel documents, including passport and I-94, proof of residence; proof of matriculation and employment (as applicable), personal and family contact information, business license information, and many other pieces of information to the immigration officer. The registrants were fingerprinted and photographed. All registered aliens are required to appear before an INS officer 10 days prior to each anniversary of the date they registered and are required to inform INS of any changes in address, employer or school. Upon departure from the United States, registered aliens are required to depart from designated port locations and turn in their I-94 cards. Failure to report to the departure point would result in being inadmissible. Many who failed to read the package that was provided to them at the time of registration became inadmissible due to this blanket application of the regulation. The fact that the regulation's interpretation is proving to be different from the plain wording contained therein has raised questions and is being reviewed by the BCBP at this time.

Willful failure to register may be punishable by deportation and the alien may be removable. Although the wording refers to "may", the Headquarter memorandum substituted that word with "WILL". In addition, failure to register is punishable by a fine of up to \$1,000 or imprisonment for up to 6 months [INA § 266 (a) & §266 (c)]. Making a false statement at the time of registration is punishable, upon conviction, to detention and removal. Failure to provide a change of address or other specified information is punishable by a fine of up to \$200 and imprisonment for 30 days. The Attorney General could also remove non-immigrant aliens who violate the provisions for filing changes of address and other required information, even if the alien had no adverse factors such as a criminal conviction.

Now that registration for the designated 26 countries is completed, the California Service Center has started mailing Requests For Further Evidence (“RFE”) to individuals with pending petitions and requests for evidence of registration. Failure to supply the said proof is tantamount to denial. However, there have been no published or otherwise disseminated guideline for this and the California Service Center is implementing this in anticipation of future would-be guidelines! However, LA. has yet to follow in the footsteps of the California Service Center and will not issue RFEs’ until such time as a guideline is issued.

During registration, if a security hit was discovered while running a registrant's name, further action would be taken by more grueling questioning and detention to follow.

Let us discuss 245(i) applicants. Many of the registrants have already paid the \$1000 penalty and applied for residency under the 245(i) law which was passed and extended by President Clinton. Today, we are informed that Washington views and treats individuals from the designated 26 countries differently now. Thus, all 245 (i) applicants who have registered have been placed in removal proceedings and are likely to be deported if no immediate benefit is available to them by the time of their merit hearings. We were told that all 245(i) applicants must be in status and this law does not provide any protection to them. This is contrary to the Service practice whereby 245(i) applicants stay out of status in this country until their adjustment date. The reality is that the law was established to turn illegal immigrants into legal immigrants. 245(i) was put in place to address the many illegal immigrants who have been living in the shadows and were lost in the system. However, by implementing these new regulations, the DOJ has denied immigrant status to these registrants and applied a discriminatory policy with no qualms whatsoever.

This discriminatory policy will undoubtedly bring shame to the U.S. in the not-too-distant future. History will repeat itself with a similar scenario and chain of events that occurred to Japanese Americans during WWII.

What will the future hold? If we consider the DHS mandate and the laws that have been passed by Congress, this program will continue. The name and the form of this program may change, but this insatiable hunt for would-be terrorists will continue for the time being.☺

Faith Nouri
Nouri Law Corporation
Chair of NSEERS Standing Committee of Immigration Section of LACBA.