

Kentucky Department of Criminal Justice Training

Matricula Consular Cards

Kentucky law enforcement officials are now being faced with new and complex issues relating to the validity of certain documents presented by foreign nationals (aliens). These documents range from visas/passports, operator's licenses from foreign countries, International Driver's Permits to Taxpayer Identification Number cards, among others. This memorandum concerns the "matricula consular" card that is being increasingly issued by Mexican consulates in the United States.

ISSUANCE OF A MATRICULA CONSULAR

One document that an officer might receive as identification from a Mexican national is called a Certificado de Matricula Consular, often just referred to as a matricula consular¹ card. This card is being issued by Mexican consulates across the United States on the strength of the Mexican foreign national presenting three documents: a Mexican birth certificate, a photo ID (such as a Mexican operator's license or military identification card) and documentation (such as a letter from a landlord) that the Mexican national is residing in the United States at a particular address. The document also requires two passport-sized photographs. However, there have been news reports that failure to present all three of these documents is not fatal, and that aliens have been allowed to get a matricula consular without having the required documents.

The original purpose of the matricula consular card was to provide photo identification to a Mexican national who had left Mexico without valid documents, such as a passport and visa, the documents that the individual would need to get back *into* Mexico. In other words, for illegal aliens to return home. While these cards have been issued for many years, their use was previously very limited, and law enforcement officers would be highly unlikely to see even one in their whole career. However, in recent years, Mexican consulates have been issuing large numbers of these cards; reports indicate that more than one million are currently in circulation in the United States.²

Newly-issued matricula consular cards have become more difficult to counterfeit; they include an address and the location of the issuing consular office and they have holographic design. There are older cards in circulation, however, that are still valid for use. The "breeder" documents, the birth certificate, the photo ID from Mexico and the document to prove a home address, are not necessarily scrutinized by individuals who are trained to spot counterfeits, and the standards for issuing the cards appear to differ

¹ This document is referred to by several variations on the name, the memo uses the form preferred by the U.S. Congress.

² Wall Street Journal, Mexico Expects to Issue More Than 1M Consular IDs in US, <http://www.freerepublic.com/focus/news/709906/posts>

from consulate to consulate.³ Given how quickly the cards are issued upon request, within hours if not minutes, there is apparently no attempt made by the Mexican consulate to verify the validity of these documents, or if it is even possible for the consulates to access the information needed to verify the documents provided. (State governments in Mexico do not apparently have the ability to verify such information by computer in a timely fashion.) Matriculas may be issued from “mobile” consular officer, set up in locations in the community, and since all are issued the same day they are requested, in-depth scrutiny of the breeder documents appears impossible.

ACCEPTANCE OF THE MATRICULA CONSULAR

There has been a concerted effort by the Mexican consulates in certain states (Texas, California and Colorado, among others) to strongly encourage government and governmentally-regulated private entities, such as banks, to accept the matricula consular as a valid form of identification for their services. Access to banking services is a particularly important issue for most Mexican nationals, who otherwise are forced to send money through brokers, or by purchasing money orders and the like, both of which add to the cost of sending money to family members in Mexico. The U.S. Treasury is required by Section 326 of the Uniting and Strengthening American by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to develop regulations requiring “financial institutions to implement reasonable procedures to verify the identify of any person seeking to open an account, to the extent reasonable and practicable...”⁴ Currently, the final rule issued under this statute gives banks a tremendous amount of flexibility in choosing which documents they may accept, including foreign government-issued documents such as the matricula. At this time, these regulations are under a congressional resolution of disapproval, essentially a congressional veto.⁵ In addition to those actions already mentioned, there are three other pieces of federal legislation currently pending that concern, directly or indirectly, the issue of matricula consular cards.⁶

Legal foreign national visitors to the United States are permitted to open bank accounts, using their passports and visa documents. (Note that visas are issued by the United States, for visitors to the U.S., while passports originate with the holder’s home country.) If they do not have work privileges, but have need of a bank account, for example, if they are students, and thus are not eligible for a Social Security number, they may

³ The author has found no reliable statistics to show how many individuals are denied matricula consular cards by the various consulates.

⁴ Vol. 68, No. 90, May 9, 2003, Federal Register 25090-25113 (Final Rule).

⁵ H.J.Res. 58 (<http://thomas.loc.gov/cgi-bin/query-D?c108:5:./temp/~c108mYrN6g>).

⁶ H.R. 502, introduced January 29, 2003, restricts federal benefits to individuals who present federal or state government-issued identification, identification that is subject to verification by law enforcement. H.R. 687, introduced February 11, 2003, prohibits the Federal Government from accepting any form of identification issued by a foreign government, except for a passport. This Act may be cited as the “Identification Integrity Act of 2003.”

H.R. 773, introduced February 13, 2003, specifically authorizes the Treasury to formally accept the matricula consular as valid identification.

obtain an Individual Taxpayer Identification Number (referred to as an ITIN or just TIN) from the IRS.⁷ Some form of a TIN is needed for banking in the United States.

Steven McCraw, of the FBI, spoke before a congressional immigration panel concerning the acceptance of the matricula consular. McCraw expressed concern about the lack of sufficient security measures in obtaining the card, and cited instances of alien smugglers holding multiple cards when arrested, and an Iranian national with a matricula consular in his own name. The FBI noted that Mexican birth certificates are a “hot item in the fraudulent-document trade.”⁸ During this same hearing, it was noted that the federal government had stopped accepting the matricula consular as identification to enter federal buildings early in 2003. Witnesses in opposition to the FBI’s view noted that it allows the holders to have bank accounts, thus reducing their need to carry large amounts of cash, which subjects them to a greater risk of theft, and because it gives law enforcement a form of identification.

The U.S. Border Patrol in California has also expressed concern about the ready acceptance of matricula consular cards, citing the same cases as mentioned by the FBI.⁹

In addition, congressional leaders have lobbied Secretary Tom Ridge, Homeland Security, to “act decisively” in dealing with the issue of consular identification cards. They expressed concern that the matricula consular “can be a perfect breeder document for establishing a false identity....” They stated that there is an executive branch interagency task force meeting to generate a “unified federal policy” concerning federal acceptance of the cards, acknowledging that the federal policy will have an “implicit effect on how most States view these cards.” In the letter to Secretary Ridge, the members noted that the government and consulates of Mexico have no centralized and/or interconnected databases to verify that multiple cards are not issued to the same individual, that cards are issued based upon documents that are easy to obtain fraudulently or to falsify, and that in some cases, a Mexican national without the required breeder documents may obtain a card by simply completing a questionnaire that satisfies the official that they are who they claim to be. The congressmen, one of whom is Rep. Harold “Hal” Rogers of Kentucky, repeated the assertion, mentioned in other articles as well, that no major bank in Mexico accepts the matricula consular to open an account, and that only a minority of the Mexican state governments consider it

⁷ An ITIN number is issued by the IRS, and resembles a Social Security numbers; the digits appear as 9XX-XX-XXXX. Unlike the matricula consular, there are legal international visitors to the United States who are issued ITINs for a variety of purposes. However, these numbers may also be obtained by aliens who are illegally working, but whose employers fear prosecution by the IRS for failure to report income paid, and who require their employees to obtain ITINs to allow those employers to report their income to the IRS. More information about ITINs is available at the following link:

<http://www.irs.gov/individuals/article/0,,id=96287,00.html>

⁸ Stephen Dinan, Mexican ID not valid, a ‘threat,’ FBI says. at <http://washingtontimes.com/national/20030627-120946-7472r.htm>.

⁹ U.S. Border Patrol: Matricula Card Worthless as ID, Could Benefit Terrorists, Criminals at <http://www.fairus.org/html/07439403.htm>.

to be valid for identification purposes. Finally, the letter writers stated that only the Mexican government, through its consulates, has any records to authenticate (or invalidate) the cards and law enforcement is “wholly reliant upon the Mexican government” to provide information. They concluded with the statement that “federal government acceptance of unreliable identification cards from person resident in the United States compromises our homeland security.”¹⁰

DRIVING PRIVILEGES IN KENTUCKY

In Kentucky, a legal foreign national who is temporarily resident in Kentucky may apply for a Kentucky operator’s license or a non-driver identification card upon presentation of the appropriate visa and passport to designated offices of the Kentucky Transportation Cabinet. These documents are valid for the duration of time listed on the visa.¹¹ At this time, by a statute that limits the documents that are acceptable to those that are listed in the statute, the Kentucky Transportation Cabinet, Driver’s Licensing Bureau does not accept the matricula consular as a valid form of identification for any purpose related to driver’s licensing or for issuing a non-driver’s identification card.

In addition, foreign nationals who are temporarily in Kentucky may drive on their home country operator’s license.¹² The law is essentially silent as to whether this privilege extends to illegal aliens present in Kentucky. Foreign drivers may also present a valid International Driver’s Permit, along with their home country license, but an IDP is not required in Kentucky. Foreign drivers are fully subject to the traffic and other laws of Kentucky.¹³ On a practical note, of course, most of the time officers will have no idea of the length of time any person has actually been in Kentucky, but since issuance of a matricula presumes a period of time in residence in the consular district, possession of a matricula may be a rebuttable presumption, at least, that the holder considers themselves to be a resident of Kentucky.

USE AS IDENTIFICATION IN KENTUCKY

No private business (such as grocery stores, banks, etc.) is required to accept the matricula consular card as valid identification; in fact, each company makes an individual decision as to the documents it will accept for identification for check cashing purposes, for example. It is unknown, however, how many do, in fact, accept it for any business purpose. As discussed above, identification for banking purposes is not within the purview of local governments, but is within the authority of the U.S. Treasury. A general acceptance by a local government of the matricula consular card does create a

¹⁰Committee Leaders Urge Curbs On Acceptance of Consular ID Cards at <http://www.house.gov/judiciary/news0710.htm>.

¹¹ KRS 186.412

¹² KRS 186.430

¹³ However, consular and diplomatic officers , carrying U.S. State Department-issued identification that will indicate the level of immunity of the holder, are immune from arrest. Not all diplomatic/consular personnel carry the same level of immunity, however, and officers should check with the U.S.State Department concerning the status of the individual detained.

de facto validation of the card by the local government, however, and may encourage other business to accept the card as identification, as well.

CONCLUSION

Currently, only Mexico issues matricula consular cards, but other Central and South American countries, such as Guatemala, have indicated that they may do so in the future. Presumably, other countries, including Middle Eastern countries, may attempt to do so as well. It will prove difficult for the United States, under the traditions of international relations and consular practice, to accept consulate-issued identification cards from some countries and to refuse to accept the card from others, for the same purpose. While some U.S. State Department employees have raised the issue of reciprocity as a concern for agencies in refusing to accept the card, the United States does not routinely offer a similar document to U.S. citizens in other countries, although presumably the local consulates will assist a U.S. citizen illegally in another country to return home.

The decision as to whether local governments in Kentucky choose to accept these documents as proof of identity is best left to the local governments. Certainly, they may prove useful to officers as a starting place in determining the identity and home address of a foreign national. However, it is critical that local governments make this decision with a full understanding of the limitations of the matricula consular card, particularly the ongoing concerns about their reliability, and the ramifications inherent in accepting the cards because of the ease of obtaining the cards and the inability of local governments to verify the information on the card, as well as the potential federal legislation concerning the acceptability of the cards.

There are other documents originating in the Mexican government that are generally considered to be more reliable, such as Mexican operator's licenses and voter identification cards, and officers are advised to look beyond the proffered ID card for other identification documents, when necessary. (For example, legal foreign nationals may be unaware that they are permitted to drive on their home operator's license in Kentucky, pursuant to KRS 186.430, and it may not occur to them to present that document.) Because the matricula consular cards are such a new occurrence in Kentucky, there are no statistics as yet as to how commonly officers encounter them, and how valid the information on the cards has proven to be. Agencies are urged to keep an ongoing record of these types of details¹⁴ and to contact the Kentucky Department of Criminal Justice Training, Legal Section with any concerns or comments.

¹⁴ As an example, officers might note on the citation as to the source of the information listed on the citation, for all cited or arrested subjects. Then, if the individual does not appear in court, and an officer attempts service on an address that proves to be false, it will be useful to know if the false information was contained on a matricula consular card, an operator's license (from Kentucky, another U.S. state or a foreign country) or another form of identity card, or was given verbally. This type of documentation may lead to additional criminal charges of forgery, criminal possession of a forged instrument, failure to update address in motor vehicle records, or other charges. As of now, it is impossible to know if the majority of these cards (or other types of documents, for that matter) are reliable for the purpose of providing identity and addresses.

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Website of Congressman Tom Tancredo at <http://www.house.gov/tancredo/>

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