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Immigration Law Updates

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Form I-9 - Department of Homeland Security Amends Regulations Governing Documents Acceptable for Employment Eligibility Verification

The Department of Homeland Security (DHS) is amending its regulations governing the types of acceptable identity and employment authorization documents and receipts that employees may present to their employers for completion of the Form I-9. The interim rule takes effect on February 2, 2009.

Under current regulations, the U.S. passport and all List B documents (i.e. documents that establish only identity such as State-issued driver's license or identification card) are acceptable for Form I-9 purposes, even though they are expired.

The regulatory amendment provides that expired documents are no longer acceptable for Form I-9 employment eligibility verification. The DHS has determined that this action is necessary to ensure that acceptable documents reliably establish identity and employment authorization. Expired documents are prone to fraudulent use in the Form I-9 process by aliens seeking unauthorized employment.

The revised Form I-9 and list of acceptable documents will become available to the public online on February 2, 2009 at www.uscis.gov. An informational copy of the revised Form I-9 can be viewed online at www.regulations.gov.

Please contact our law firm if you have questions or require additional information on this topic.

Update on Social Security Administration (SSA) "No Match" Rules

In October 2008, the Department of Homeland Security issued an administrative rule setting new procedures for employers who receive "no match" letters from the SSA. If implemented, employers who do not follow the rules could face increased penalties for hiring unauthorized workers. Since the issuance of the "No Match" rules in 2007, the courts have blocked its implementation.

Last month, a federal judge in San Francisco denied a government request to quickly issue a final decision on whether the Bush Administration may implement its new Social Security Administration "No Match" rules. The lawsuit brought by labor unions and employers seeking to block the rule will move forward under a standard schedule.

A decision is not expected until late February or March of 2009. The incoming Obama administration will now have an opportunity to consider whether the "No Match" Regulation is a practical and cost effective program for the federal government to pursue.

Our firm will be closely tracking the progress of this continuing litigation and will report updates to our readers.

Citizenship and Immigration Service Ombudsman Recommends Improvements in the Processing of Schedule A Foreign Nurse Applications

Visa availability continues to be the principal obstacle for many immigrants and non-immigrants seeking employment in our country. The number of visas available can only be addressed through Congressional legislation.

As reported in our August 2008 e-newsletter, H.R. 5924 "Emergency Nursing Supply Relief" was introduced to the House Judiciary Committee and the Committee on Energy and Commerce in April 2008, and referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Health in June 2008. The Immigration Subcommittee passed the bill by a vote of 7-2 on August 7. It was then marked up for hearing by the full Judiciary committee.

Unfortunately, there has been no further action on this proposed legislation, although it does suggest that Congress is considering the recapture of previously unused employment-based visa numbers, including EB-3 numbers.

Apart from legislation, the CIS Ombudsman points out that the federal agencies still have the power to implement changes to facilitate the processing of pending immigration applications for foreign nurses. The CIS Ombudsman, in its report, set forth the following recommendations to the USCIS:

- Separate and prioritize Schedule A green card nurse applications so that they can be expedited, without the requirement of a written request, upon immigrant visa availability;
- Centralize Schedule A nurse applications at one designated USCIS service center to facilitate more efficient and consistent processing of Schedule A applications; and
- Regular communications between the USCIS and the U.S. Department of Labor to discuss concerns and direct inquiries regarding the processing of nurse immigration applications.

A copy of the full report can be accessed at www.dhs.gov/cisombudsman.

The information contained in this e-newsletter is intended as information only, and is not to be construed as legal advice.



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