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Immigration Law Updates

October 21, 2009

H-2B Visas for 2nd Half of Fiscal Year 2010 – Employers Start Preparing

The H-2B numerical limit set by Congress per fiscal year is 66,000. 33,000 is allocated for employment beginning in the 1st half of the fiscal year (October 1 to March 31st) and 33,000 allocated for employment beginning in the 2nd half of the fiscal year (April 1 to September 30). The second half of Fiscal Year 2010 for H-2B visas begins on April 1, 2010. For employers planning to utilize temporary, seasonal, non-agricultural foreign workers for the spring and summer season of 2010, it is a good time to begin preparations for obtaining a temporary labor certification for an H-2B visa.

The applicable regulations state that mandatory recruitment must take place no more than 120 days before the H-2B employment start date. For example, if your company is requesting a start date of May 1, 2010, your recruitment can begin no earlier than January 1, 2010.

The U.S. Department of Labor issued rules in December 2008 revising the procedures for obtaining a temporary labor certification on behalf of H-2B workers. The December 2008 rule amends the application filing and review process by centralizing processing within the DOL. It also requires employers to conduct pre-filing recruitment of U.S. workers, and includes post-adjudication audits and procedures for penalizing employers who fail to comply with program requirements. The rule went into effect on January 18, 2009.

Nationals from the following countries are eligible for the H-2B visa program:

Argentina, Australia, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Indonesia, Israel, Jamaica, Japan, Mexico, Moldova, New Zealand, Peru, Philippines, Poland, Romania, South Africa, South Korea, Turkey, Ukraine, United Kingdom

Current H-2B visa holders from other countries are not affected by the December 19, 2008 notice, effective for one year beginning January 18, 2009.

For more information on this topic, please contact our law firm.

FINAL RULE – Safe Harbor Procedures for Employers who Receive No-Match Letters is Rescinded by the DHS

The Department of Homeland Security is rescinding amendments promulgated on August 15, 2007 and October 28, 2008, relating to procedures that employers may take to acquire a safe harbor from receipt of No-Match letters. The DHS is amending its regulations as proposed on August 19, 2009, without change.

Implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. After further review, DHS has determined to focus its enforcement efforts relating to the unauthorized employment of aliens in the United States on increased compliance through improved verification, including participation in E-Verify, Immigration and Customs Enforcement (ICE) Mutual Agreement Between Government and Employers (IMAGE), and other programs.

For more information, please contact our law firm.

Michigan Secretary of State Announces Changes to the Issuance of Drivers Licenses and Personal ID Cards

The Michigan Secretary of State's office is changing drivers licenses, with the implementation of a single, non-changing customer identification number for Michigan residents.

Effective September 12, 2009, all existing and newly issued drivers license numbers become permanent regardless of a future change in name or correction to other information, such as a date of birth. As a result, the letter that begins the license number may not always match the first letter in the driver's surname. This new numbering policy will also apply to the issuance of personal identification cards.

Also, all personal identification numbers will change from eleven to thirteen characters, consistent with drivers license numbers.

For more information, please contact our law firm.

U.S. Department of Labor - Update on the Processing of PERM Applications

The Atlanta Processing Center of the U.S. Department of Labor, which handles the adjudication of all PERM applications, has slowed its processing times to 10+ months for even the most straightforward applications. If your PERM application has been selected for an audit, you may now expect a two-year processing period, which runs from the date that your response to the audit request has been received by the Center.

According to the USDOL, the slow processing times are the result of a massive turnover of personnel at the Center, however there is suspicion that there are also investigations being conducted by the Office of Fraud Detection National Security (FDNS), which seems to be increasingly involved with several federal agencies. The USDOL has given no assurance of any improvement in processing times.

For more information, please contact our law firm.

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