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Immigration Law Updates

September 24, 2009

Safe Harbor Procedures for Employers Who Receive a No-Match Letter

The Department of Homeland Security proposes to amend its regulations by rescinding amendments from 2007 and 2008 related to procedures employers may take to acquire a safe harbor from receipt of no-match letters. DHS has determined to focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs.

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

TPS Registrant Sue for Refund of Fees

Nationals of El Salvador, Honduras, and Nicaragua who applied to register for TPS sued the government for charging them more than the required amount in fees. Under INA 244(c)(1)(B), "the amount of any fee shall not exceed \$50," but TPS registrants must pay an \$80 biometrics fee for each re-registration.

The plaintiffs seek refunds of fees higher than \$50 and an order enjoining DHS from imposing fees higher than \$50. On July 9, 2009, the court granted plaintiffs' motion for class certification. The class is defined as "all nationals of El Salvador, Honduras, and Nicaragua who have applied to register or re-register for Temporary Protected Status (TPS) at any time from August 16, 2001 to the present."

For more information, please contact our law firm.

Court Rejects Applicability of Consular Non-Reviewability Doctrine; Reviews "Material Support" Provision

The Second Circuit held that the doctrine of consular non-reviewability did not bar the district court from considering a lawsuit challenging the denial of a visa petition for an Islamic scholar. The consular officer denied the visa based on a finding that the applicant was inadmissible under the "material support" of terrorism ground, INA 212(a)(3)(B)(iv)(VI).

The court relied on a 1972 case in which the Supreme Court recognized a First Amendment right to "hear, speak, and debate with" a visa applicant. Applying the decision from the 1972 case, the court held that the visa denial was not "facially legitimate and bona fide." Specifically, the court found that INA 212(a)(3)(B)(iv)(VI)(dd) provide a visa applicant an "opportunity to demonstrate by clear and convincing evidence that he did not know, and reasonably should not have known, that the recipient of his contributions was a terrorist organization." It was unclear whether the applicant was afforded this opportunity.

Read more about this case at <http://www.aclu.org/safefree/exclusion/index.html>

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