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SEPTEMBER 2009

Immigration Legal Update

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E-Verify Federal Contractor Rule Implementation on Track for September 8, 2009

On August 25, 2009, a federal district judge for the District of Maryland denied the U.S. Chamber of Commerce's challenge to an amendment to the Federal Appropriation Regulation--originally mandated by an Executive Order from President Bush and recently adopted by the Obama administration. As a result, as of **September 8, 2009**, the Federal Appropriation Regulation will require that participating federal vendors (and flow-down subcontractors) sign up for E-Verify. While the plaintiff's counsel sought an emergency injunction, pending appeal of the district court's decision, at this time there has been no indication that the implementation of the rule is delayed.

The E-Verify system, www.uscis.gov/e-verify, is administered by the Department of Homeland Security (DHS) as a means for an employer to verify that its employees are eligible to work in the United States.

Those employers who are already enrolled in E-Verify for more than 90 days are required to continue to initiate verification of newly hired employees within three business days of their start date *but have 90 days from the effective award date to begin using E-Verify for each employee already on their staff* who is performing work upon an existing federal contract. (Any transition to using the system as a federal contractor does not allow a client to stop using E-Verify for its new hires on the standard three-day schedule).

For those clients not already enrolled, the contractor and any covered subcontractor will be required to enroll in E-Verify within 30 calendar days of the contract or subcontract award date. New enrollees will be provided an additional 90 days--for a sum total of 120 days--to enroll and initiate verification queries for employees already on their staff assigned to fulfill a federal contract and to begin using the system to verify all newly hired employees.

The U.S. Citizenship and Immigration Services is also data mining E-Verify, resulting in the identification of compliance failures, such as failure to E-Verify all employees and failure to terminate employees after a final nonconfirmation of employment eligibility. The monitoring will result in referrals to Immigration and Customs Enforcement (ICE) for follow-up inspection. Accordingly, noncompliant employers may increase the prospect of ICE inspection.

To sign up for E-Verify or to find more information about this program, please visit the DHS' website at www.uscis.gov/e-verify.

Expiration Date of Form I-9 Extended to August 31, 2012

On August 27, 2009, the U.S. Citizenship and Immigration Services (USCIS) announced that the Office of Management and Budget has extended its approval of Form I-9 (Employment Eligibility Verification) to August 31, 2012. Consequently, the USCIS has amended the form to reflect a new revision date of August 7, 2009.

Employers may use the Form I-9 with the revision date of either August 7, 2009, or February 2, 2009. The revision dates are located on the bottom right-hand portion of the form.

USCIS New Antifraud Initiative: Site Visits to Employers

As part of the larger antifraud enforcement efforts, the USCIS has started a new initiative of workplace visits to employers who sponsor foreign national workers (H-1B petitions) to confirm that the facts stated in a petition filed with the USCIS are true and that both the employer and the employee are in compliance with the regulations and conditions of the underlying petition. This initiative is an expansion of the Administrative Site Visit and Verification Program, which was launched at the beginning of this fiscal year. The USCIS has hired additional contractors to perform such visits. While the USCIS does not have authority to impose civil or criminal fines for the discovered violations, it may refer an employer to ICE, who may conduct further investigations into any suspected fraud or immigration violations. In addition, the USCIS may deny the pending petition or revoke an already approved petition if the employer or employee is found to be in violation of the terms or statements in the petition.

So far, the visited employers report that the USCIS' visits are usually cordial, and the USCIS' agents are usually interested in speaking with a company representative and the foreign national employee to confirm that the facts stated on the petition are true, usually using a list of standard questions. Because the USCIS does not have statutory authority to investigate compliance with the sponsored visa obligations by entering an employer's workplace (unlike, for example, the Department of Labor), employers are not obligated to cooperate with such visits; however, if the USCIS conducts such visit as part of its quest for additional information about an approved or a pending petition, the USCIS then may have a right to deny or revoke such petition, based on the lack of the sought-after information.

At this time, the immigration community is monitoring the development and implementation of the USCIS' new tactic, which may be challenged in the future.

Employers should assess their readiness for such visits by designating an immigration compliance officer/company representative, reviewing/auditing the company's immigration-related files, and establishing an action plan for such visits.

Visa Bulletin for September 2009

The Immigration and Nationality Act sets an annual minimum for both family-based and employment-based immigrant visas ("green cards") prescribed by categories and per-country limits. Prospective immigrants can apply to become a permanent resident only when a visa number is available in their respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers listing the cutoff priority. Only applicants who have a priority date earlier than the cutoff date may be allotted a number.

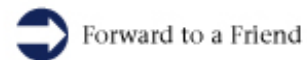
The complete Visa Bulletin is available at the Department of State's website at http://travel.state.gov/visa/frvi/bulletin/bulletin_4558.html. Below is an excerpt from the September 2009 Visa Bulletin pertaining to the employment-based categories.

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Employment-Based					
1 st	C	C	C	C	C

2nd	C	08JAN05	08JAN05	C	C
3rd	U	U	U	U	U
Other Workers	U	U	U	U	U
4th	U	U	U	U	U
Certain Religious Workers	U	U	U	U	U
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
"C" - current "U" - unavailable					

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