



A newsletter on all things Immigration-related.
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ANNOUNCEMENTS

1.1 USCIS UPDATES

USCIS announced a process allowing a petitioner whose pending H-1B petition on behalf of an F-1 student was randomly selected to receive an H-1B visa number for Fiscal Year 2009 to request change of status in lieu of consular processing.

1.2 CONSULAR ISSUES

The United States and Korea recently signed a Visa Waiver Program (VWP) Memorandum of Understanding (MOU). The security enhancements outlined in the agreement puts Korea on the path toward visa-free travel to the U.S., and potential designation as a VWP member as early as later this year.

1.3 BUSINESS CORNER

If you have any foreign workers in your business, you must comply with I-9 verification procedures. You should consider a voluntary records audit to ensure compliance. Ask me how. ...An audit by the Labor Dept. or ICE is not a good time to find out flaws in your employees' records.

1.4 Q & A ... DID YOU KNOW?

USCIS announced a revised Form I-693, Report of Medical Examination and Vaccination Record?

Dear Valued Reader, It's been a very busy month since my last newsletter, I apologize to my readership for being late on this month's issue.



It was quite humorous to me see several regular recipients of my newsletter emailing me, in what appeared to be varying stages of withdrawals, brought on by my later than usual publication of this monthly feature, which I typically try to get out by the middle of each month. As this edition will make its way to all of its recipients worldwide, -- now numbering nearly 800, -- travelling through the ethers of cyberspace, many a reader will be experiencing levels of excitement and anticipation, as they peruse the monthly dose of my musings.

I-9 Compliance, necessary evil or undue burden ? (both?)

As part of the ongoing frustrations felt by the U.S. public and immigrants alike, American businesses are feeling the pressures of the Fed, who is taking active steps to beef up worksite enforcement and to curb illegal employment, all with some major immigration reform looming on the horizon, in the wake of the ongoing presidential election process. Virtually all sectors of the U.S. econ-

omy in some form feel the effects of having foreign workers on their payroll, whether legal or illegal. While in the past, many employers willfully took on immigrant workers, even when the proper documentation could not be provided, under the ever-watchful eye of the Fed, and a new set of enforcement tools, including stiff fines and the threat of criminal indictments, employers who may have turned a blind eye in the past, are now beginning to think twice about their hiring (and retention) practices. The problem is that the Fed is now expecting would-be U.S. employers to do their detective work for them.

The Fed is hanging the threat of punishment over employers, essentially requiring Human Resource managers, if the U.S. company even has one, to now become part-time foreign document examiners, to ascertain the validity of documents presented to them by a new hire. Adding insult to injury, the Fed is now following up potential or actual violations of the so-called I-9 regulations with a view of "you should have known", meaning the employer was presumed to have known that the worker was not authorized to work.

Prior to the Fed's drive to significantly step up I-9 enforcement, its fines were symbolic slaps on the wrist. Now, the fines have increased to such a level, that a small "Mom-and-Pop" business could potentially be put out

of business, certainly in the case of repeated violations. The criminal prosecution aspect is fairly new.

While these prosecutions have their proper use and purpose, particularly in a "sweat-shop" -like situation, as things usually go, when enforcement increases, potentially, it will be the little guy who may feel the strong arm of the law the most.

While these measures are justified by the Fed as being an effective deterrent to employers and workers alike, many experts in the immigration law feel that these recent measures are overaggressive.

Truth of the matter is that most employers don't like finding out that they were given phony proof of legal status, or permission to work in the U.S. Nobody likes being lied to. But the hard truth for each employer is, that he or she has to weigh their need, or their business' need, for this foreign worker. Can their business continue without that worker? What about a business whose entire workforce comprises of foreign workers, whose work status is not verifiable?

Contrary to a wide-spread perception shared by many Americans, foreign workers will often take jobs which employers cannot fill by hiring domestic workers.

These industries are easy to pinpoint, when you think about it: landscaping businesses, construction companies, restaurants, hotels and resorts, and farming.

Small business owners essentially are caught in a lose-lose situation. Their business depends heavily on foreign workers, and their I-9 compliance efforts are handled poorly and their level of documentation management is often poor and incomplete.

Add to this, our anti-discrimination laws. Sounds like a catch-22 to you?

... It should.

A word of the wise for those who will be travelling (internationally) this summer.

Whether you are a U.S. citizen or foreign national, if you have plans to travel outside the United States this summer, please be prepared, particularly if you do not travel frequently beyond our borders.

Be aware of documentation requirements and make sure you and those travelling with you comply with them. Make sure your photo identification is up-to-date. Is your driver license in order? Are you required to present a passport? Is your passport still valid? Does your passport comply with current documentation standards? Do you require a visa to enter the foreign destination? Do you have a valid visa to re-enter the United States, if you are required to have one? A day before your scheduled departure for your vacation destination is a little late to realize that some aspect of your vital documentation is not in order.

My recommendation is, particularly with foreign nationals living in the United States, check with an immigration lawyer, like myself. In the case of U.S. citizens travelling overseas (esp. for "first-timers"), the U.S. State Department website (<http://travel.state.gov/>) contains a myriad of helpful information for Americans engaging in foreign travel. Also, the State Department recommends that U.S. citizens register with the local U.S. Embassy or Consulate at their vacation destination.

You may also want to check USCIS and State Department sources on travelling to Canada, Mexico and the Caribbean, as there are special provisions under the so-called Western Hemisphere Travel Initiative (WHTI), requiring all travelers to present a passport or other document that denotes identity and citizenship when entering the U.S.

The goal of the initiative is to strengthen U.S. border security while facilitating entry for U.S. citizens and legitimate foreign visitors by providing standardized documentation that enables the Department of Homeland Security to quickly and reliably identify a traveler.

Potentially good news for our friendly neighbors to the north and south.

USCIS just announced a proposal to increase periods of stay for holders of TN visas. (TN visas, under the provisions of NAFTA, are limited to professional workers from Canada or Mexico).

USCIS is seeking to increase the maximum amount of time a Trade-NAFTA (TN) professional worker from Canada or Mexico can remain in the United States before seeking readmission or obtaining an extension of stay. The proposal will extend the maximum period of admission for TN workers from one year to three years, the same term currently available to all H-1B specialty occupation workers.

The proposed rule will further allow eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years, as opposed to the current maximum of one year.

Once implemented as a final rule, this proposed change would ease renewal efforts (and costs) on TN visa holders and also benefit U.S. employers by increasing the period of time beneficiaries are allowed to remain in the United States. The proposed changes would also apply to spouses and unmarried, minor children of TN nonimmigrants.

I hope you have enjoyed this issue. Keep your comments coming.

