Greenberg Traurig

Immigration Observer

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Comprehensive Immigration Reform: What is the Status of the Guest Worker Program?

People across the United States would agree that 2006 has been the year of comprehensive immigration reform. Politicians, legal practitioners, interest groups, religious organizations and citizens from all walks of life have engaged and closely followed the debate regarding immigration after the House of Representatives passed a strict enforcement only bill (H.R. 4437) in December 2005. Many advocates of comprehensive immigration reform were saddened that H.R. 4437 had passed in the House, as it did not include provisions for a guest worker program nor did it address the issues of 12 million undocumented immigrants currently living and residing in the U.S. Many hoped that the Senate would pass a bill that addressed these issues. In fact, in a rare instance of true bi-partisan collaboration, the Senate moved forward with balancing enforcement and border security with the economics and realities of the undocumented, but critical, workforce. Specifically under the leadership of Majority Leader Frist (R-TN) and Minority Leader Reid (D-NV) the full Senate spent the past few months proposing, debating and revising legislation. Finally on May 25th , the Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611) with a vote of 62 Yeas (23Rs/39Ds) and 36 Nays (32Rs/4Ds).

The legislation is a bipartisan compromise that includes a much needed guest worker program, which includes a pathway to earned permanent resident status for qualifying undocumented immigrants currently residing in the U.S. The bill also includes increased border and national security measures and a new employment verification and eligibility system. Though there were several amendments offered to the bill, the legislation largely survived and remained in tact.

The House of Representatives and the Senate will now prepare to go to conference where the Senate bill, S. 2611 and the House bill, H.R. 4437 will hopefully be reconciled. In the coming weeks, the Senate and House will name their respective conferees who will meet to work out the final agreement. The conference will prove to be challenging as the House bill is an enforcement only piece of legislation and the Senate bill is a comprehensive package. Though the exact timing for conference is not known, Capitol Hill staff has told GT attorneys that the conference should begin shortly and it will be well underway during the summer. GT will continue to update our readers and clients on the progress of the legislation as soon as we learn more about named conferees and the timetable for conference.

Department of Homeland Security Announces the Proposal of Two Federal Regulations Aimed at Improving Worksite Enforcement

On June 14, 2006 the Department of Homeland Security ("DHS") published proposed federal regulations aimed at improving worksite enforcement, preventing the use of fraudulent Social Security numbers by illegal aliens and assisting employers in verifying the employment eligibility of workers. The SS mis-match regulation clarifies the legal obligations of an employer when s/he receives a no-match letter from the Social Security Administration ("SSA") or written notification from the Department of Homeland Security ("DHS"). The regulation expands the definition of constructive knowledge to include an employer's receipt of a Social Security mis-match letter. It states that, the "[E]mployer's obligations under current law, which is that of the employer fails to take reasonable steps after receiving such information, and if the employee is in fact an unauthorized alien, the employer may be found to have had constructive knowledge of that fact." Two specific examples illustrate what would constitute constructive knowledge under the proposed regulation: 1. Written notice from SSA that the combination of name and SSN submitted for an employee does not match SSA records; and/or 2. Written notice from DHS that the immigration status document, or employment authorization document ("EAD"), presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to anyone. Regarding the latter situation, DHS will take into account the *totality of relevant circumstances* when making a determination whether the employer had constructive knowledge that the alien was unauthorized to work.

The regulation explains the safe-harbor procedures that an employer can follow in order to limit or negate liability based upon the employer's actual or constructive knowledge that the alien was ineligible to work in the U.S.

According to information published by DHS regarding the proposed regulation, we have outlined the steps below noting what an employer should do if s/he receives a mis-match letter from DHS or SSA:

If an employer receives a mis-match letter from SSA or written notification from DHS the employer should respond in a reasonable manner in order to avoid liability and mitigate potential penalties. The employer should take the following steps, as enumerated in the proposed regulation:

1. Check their records immediately after receiving a no-match letter, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error in the employer's records or in its communications to the SSA or DHS.

   a. If it is determined that it is only a clerical error, the employer should take action to correct the error and inform the necessary agencies within 14 days from receipt of the no-match letter. The employer should make certain that the name and number, as amended, matches the records.

   b. If it is not simply a clerical error, the employer should confirm the records on file with the employee, make any necessary corrections, inform the agencies involved and confirm that the information matches the agency's records. This should be done within 14 days from receipt of the no-match letter.[1] *The discrepancy will only be considered "resolved" if the employer follows up with SSA to confirm*[2] *the name and social security number match and with DHS to verify that the individual is authorized to work.*

2. If the discrepancy is still not resolved within 60 days from the receipt of the of the no-match letter the employer and employee should refile the Form I-9 within 3 days. Therefore, the employer has a total of 63 days from receipt of the no-match letter to check the records, resolve discrepancies and complete a new I-9.

[1] If the employee states that the information is correct, the employer should ask the employee to go to the local SSA office and resolve the matter personally.

[2] Employers can confirm the SSN and name with SSA Reporting Branch by calling 1-800-772-6270 weekdays from 7am to 7pm.

More analysis is needed to determine what is the next step if after the employer has taken the all of the above necessary, "reasonable" steps to resolve any discrepancies, and there is still no resolution. Should the employer terminate the alien's employment or risk being found liable based on the DHS claiming the employer had constructive knowledge that the alien was unauthorized? ICE states it will look at the totality of the circumstances. What if the Social Security number was not used as an underlying Form I-9 document? Why does ICE want a new I-9 completed? There are still many questions we need to review.

These proposed regulations are part of a larger DHS initiative intended to strengthen the border and enhance interior enforcement. ICE will be seeking comments and notes its particular interest in the timing of the proposed system to deal with mismatch letters.

The second proposed regulation deals with electronic I-9s and is also discussed in this newsletter. These regulations are only a first step in what will likely prove to be a series of changes proposed by the Department. These proposed regulations will be subject to a 60-day public comment period, although the I-9 regulation will become effective on an interim basis as soon as it is published. GT will provide updates as we learn more about the proposed regulations and other changes from DHS officials. *The above analysis should not be considered a substitute for reading the actual language of the regulation.*

Bush Calls for Border Security, What Can We Expect at Our Borders?

On May 15, 2006, President Bush addressed the nation in an unprecedented televised speech calling for enhanced border security and comprehensive immigration reform. Through his speech, the President sought to launch a secure border initiative, the most technologically advanced border enforcement initiative in American history. In an effort to protect the nation, the President called for heightened security and enforcement along the borders. In order to achieve this, the President's strategy to secure our borders includes:

- Increasing the number of Border Patrol Agents and technology and infrastructure to support existing border security;
- Deployment 6,000 National Guard Members for a period of one year to temporarily support border security efforts;
- Increasing federal funding for state and local authorities to assist with border patrol, providing them with specialized training to apprehend and detail illegal immigrants;
- Ending "catch and release" along the southern border by increasing the number of beds in detention facilities and decreasing the average deportation time;
- Implementing a Guest Worker Program to provide a legal mechanism for foreign workers to be employed legally in the U.S.;
- Developing an Employer Identification System for employers to verify the employment of legal foreign workers through a new identification card using biometric technology; and
- Dealing with illegal immigrants already in the U.S. by providing a mechanism for certain illegal immigrants to remain in the U.S. if they meet established criteria such as paying a penalty, paying taxes, learning English and working in a particular job for a set period of time.

The President believes that all of the above strategies must be addressed together and urged members of Congress in his speech to establish a comprehensive immigration reform bill. The Senate responded by passing the Comprehensive Immigration Reform Act of 2006 (S. 2611) on May 25, 2006 by a vote of 62-36. (Note that the passage of the bill by the Senate by itself does not change existing immigration laws).

Securing the border. Will it happen? As demonstrated in his address to the nation, the President seeks to launch the most technologically advanced border security initiative in American history. As a result of this initiative, America can expect that the borders will be tightened, security will be increased and the number of illegal immigrants entering the U.S. will decrease. This will be accomplished by increasing technology and infrastructure long the border; constructing high-tech fences in

urban corridors; building new patrol roads and barriers; and utilizing motion sensors, infrared cameras and unmanned aerial vehicles to detect and respond to illegal crossings.

An integral portion of Bush's border security plan is the deployment of 6,000 National Guard troops along the U.S.–Mexico border. Earlier in May, Bush traveled to the border towns in Arizona and New Mexico to press his case for tougher border controls combined with reforms. Supporters of tougher U.S. immigration measures agreed with the President that the only means by which they can protect American jobs is by securing the border.

Many business groups, however, believe that the United States needs foreign workers and stationing troops on U.S. borders sends the world the wrong message. Furthermore, not everyone is pleased with the presidents proposals regarding the means by which the border will be secured. Following the President's speech, Mexican Foreign Minister Luis Ernest Derbez said Mexico would send a note protesting the plans to build new walls. Additionally, the Governors of California, New Mexico, Arizona and Texas expressed surprise, hope and concern in response to the President's speech.

The "Border Governors" are divided in their opinions on immigration and the President's proposal. Arizona Gov. Napolitano (D) and Texas Gov. Perry (R) favor Bush's proposal, while New Mexico Gov. Richardson (D) and California Gov. Schwarzenegger (R) expressed their doubt as to its feasibility.

Gov. Napolitano has requested the White House and Congress to use the National Guard in securing the Southern U.S. border for the past year. "They allowed this problem to fester for far too long," she said "this should have been dealt with years ago." She went on to state that "That was a cry from the country saying we want an immigration system that works and can be enforced."

New Mexico Gov. Richardson was surprised that none of the governors had been asked to offer their thoughts or input on the President's plan prior to it being announced in a nationwide speech. "There has been no consultation. Zero, zero, zero, none." Richardson went on to state that Bush's proposal was a "stopgap" measure that would not be successful in preventing illegal aliens from continuing to cross the border into the United States. Richardson also questioned what concrete action the National Guard would take on the border. "What exactly are they going to do? What are their rules of engagement? Those questions have not been answered."

Schwarzenegger also expressed skepticism of the President's proposal. "I have not heard the President say that our objective is to secure the borders no matter what it takes. That's what I want to hear. He went on to state "So what if they have 6,000 National Guards at the border and we find out that the same amount of people are coming across? Does it mean he will increase it to 12,000 to 15,000 to 50,000? We don't know, we have no idea. We were not consulted on that, and we have not really been included in the decision making process, so I cannot tell you." The California governor later stated in a letter to Department of Homeland Security Secretary Michael Chertoff that he would like to cooperate with the Bush Administration, but wanted assurances that the Federal government would be committed to fully funding the cost of posting the National Guard at the border. Schwarzenegger also requested that the Federal government establish specific criteria for ending the National Guard deployment when their goals have been achieved.

The cost of deploying National Guard troops to the border is expected to be a major issue for all of the states affected by Bush's proposal. Border state governors are already dealing with the costs associated with providing education, medical care and other public services to the million of illegal immigrants in the United States. If the deployment of federal troops is added to these amounts it may prove to be too much for state budgets to handle.

Also in his speech, President Bush said that the nation can expect faster deportation procedures. Expedited removal is already in place as deportation proceedings are becoming more streamlined allowing for faster processing times and thereby sending a message to illegal immigrants that when caught, they will be sent home. By integrating resources and manpower never used before, the Administration believes that the border will become more secure.

It is important to note, however, that developing a smart and secure border and catching and deporting illegal immigrants along the border is only part of the equation. Comprehensive

immigration reform is essential to improve the enforcement of laws for those already inside the borders and to deal with the millions of illegal immigrants already here. The President has repeatedly advocated the creation of a new guest worker program to create a legal way for foreign workers to fill jobs that Americans will not do. Such a program endeavors to relieve pressure at the border by creating a legal mechanism for those who enter America to work legally, in positions Americans don't want. The legalization of such day labor reduces the appeal of sneaking across the border.

A true comprehensive immigration reform will combine both border security and a mechanism for dealing with the millions of illegal immigrants already within our borders. At present, the House and Senate have very different views on immigration solutions. The two must now work to merge their bills (S. 2611 and H.R. 4437) and negotiate the matter in conference until agreement is formed. Only when both chambers pass the final package may the President sign any legislation into law. It is hoped that any legislation derived from the conference will seek to not only secure our borders, but will also establish a guest worker program and strive to deal with the illegal immigrants already in the U.S.

H-1B Cap Met Early

Much earlier than had been expected, USCIS announced that it had reached the H-1B cap for foreign nationals seeking H-1B status for individuals who hold a bachelor's degree or the equivalent for the new fiscal year 2007 (FY2007) as of May 26, 2006. In fact the agency indicated that all petitions received on May 26, 2006, the "final receipt date", will be subject to a computer-generated random selection process and many will be returned unadjudicated. Any petitions received after the "final receipt date", will be rejected and returned along with the filing fee(s). The lag time in the announcement is due to the time it takes the Service Center to in-put data into their computer system and count the cases.

Unfortunately without Congressional intervention, the earliest date to file an H-1B petition for bachelor's degree holders will be April 1, 2007 with an employment start date of October 1, 2007. For many companies, who had not anticipated that the cap would be met so early and who require the services of foreign workers, this news is quite concerning.

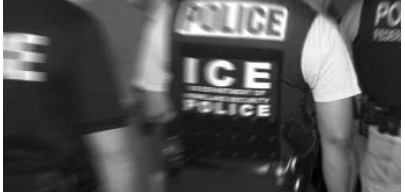
USCIS will continue to process H-1B petitions for foreign nationals that are exempt from the general cap allocation. Foreign nationals exempt from the general cap include:

- Foreign Nationals who already hold H-1B status and are extending their existing status;
- Foreign Nationals who already hold H-1B status and are changing the terms of employment or employers; and
- Foreign Nationals who will be hired for positions at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. For FY07, USCIS has received approximately 5,830 exempt petitions.

In addition, processing of H-1B petitions for numbers set aside and limited exemptions also continues. These include:

- Chilean and Singaporean nationals under the additional quota designation under the Free Trade Agreements with those countries; and
- FY07 H-1B petitions filed on behalf of foreign nationals who have earned a U.S. Master's or higher degree. In this category, USCIS has now indicated that there are just under 14,170 cap numbers for FY07 (employment start date before October 1, 2006) and 20,000 cap numbers for FY07 (employment start date after October 1, 2006).

Greenberg Traurig will continue to monitor the availability of H-1B numbers and provide related updates.



Electronic I-9s: The Wait is Over After All These Years

It is expected that the Federal Register will publish the long-awaited rule on the electronic storage of Form I-9.

Prior to 1986, U.S. labor and employment laws had done little to minimize the incentives of unauthorized employment for foreign nationals in the United States. Consequently, in 1986, Congress passed the Immigration Reform and Control Act (the "IRCA"). The IRCA imposes both civil and criminal penalties on employers who knowingly hire, recruit, refer for a fee, or continue to employ foreign nationals who are not authorized to work in the United States. In order to enforce the obligations that were then imposed upon employers – such that they are now restricted to hiring only individuals who are authorized to work in the U.S. – the law requires employers to verify both the identity and employment eligibility of all new employees. Consequently, at the time of hiring, every employer must examine and record the evidence offered by the foreign national of his/her identity and employment authorization on the Department of Homeland Security's ("DHS") Form I-9, according to its instructions.

Since the passage of the IRCA, several pieces of legislation have been passed which attempt to control the unauthorized employment of foreign nationals. In particular, not long after the passage of the IRCA, as widespread employer discrimination and the availability of fraudulent documents began undermining the effectiveness of these new laws, Congress further amended these employer sanctions and anti-discrimination provisions with the passage of the Immigration Act of 1990 ("Immact '90"). The regulations incorporating the Immact '90's improvements to the law subsequently became effective on November 21, 1991, the same date that the legacy INS issued a new version of the *Handbook for Employers*, the official book instructing employers on how to comply with the law.

In addition to verifying and recording each employees identity and employment eligibility, the employers are also required to retain their original, completed I-9 forms in either paper, microfilm or microfiche format. This documentation must be kept on site for the longer period of either three years after the date of hire or one year after the date of termination. Still, despite these alternatives, most employers nevertheless choose to keep paper versions of the form for the sake of convenience. As a result, since the original implementation of this I-9 requirement in 1988, the accumulation of paper documents by employers has reached nearly unmanageable levels, especially for larger businesses. Still, given the U.S. government's renewed interest in enforcing these employment verification requirements – particularly in situations involving either security-sensitive industries or specific complaints related to unauthorized workers – it is imperative that employers continue to verify, complete and retain their I-9 documentation.

In response to the increasing frustration of U.S. employers, on October 11, 2004, the U.S. Senate approved H.R. 4306, the "I-9 E-Storage/E-Signature Bill" – a bill that permits employers to store, complete and sign versions of Form I-9 *electronically*. Without question, the passage of this legislation greatly reduces the burden that employers often face when trying to comply with these I-9 requirements. Clearly, this newer system would improve efficiency and save on resources currently spent processing and storing paper documents. Fortunately, the legislation was successfully passed by Congress and, on October 30, 2004 H.R. 4306 was signed into law by President Bush.

Included among the terms of this new legislation is a provision which provides DHS with 180 days to promulgate regulations before the electronic storage and signature provisions are implemented. In accordance with this provision, DHS drafted its suggested regulations and provided them to the Office of Management and Budget (the "OMB") for review and comment. However, these draft regulations were then withdrawn from the OMB. Finally, in February of 2006, revised draft regulations were resubmitted to the OMB by DHS' Immigration and Customs Enforcement branch ("ICE"), and on May 12, 2006, the OMB cleared this rule for final approval by ICE. ICE has approved this final rule for publication in the Federal Register in June.

Although the benefits of this new law to employers are undeniable, exactly how this new electronic system will be

implemented remains unclear, as the legislation raised a number of points that are expected to be addressed in the implementing regulations, once finalized. First, the law does not specify exactly which types of electronic storage would be permitted under this new system. Secondly, the legislation does not indicate how electronic signatures will be handled. For instance, although USCIS has recently implemented an electronic signature mechanism for its electronic filing program, which requires users to "e-sign" electronic documents by selecting a checkbox that indicates the user's approval of the information contained in the form, it is not yet known whether a comparable method will be adopted for purposes of electronically filing the Form I-9. Finally, the legislation does not clearly indicate whether it will have a retroactive effect. In other words, it remains unclear as to whether or not electronic storage will be an option for retaining existing I-9 forms.

In a press release issued by DHS they stated that their main purpose in issuing the rule is to clear that standards consistent with those utilized by the Internal Revenue Service for electronic storage of tax accounting records may be applied to the execution and storage of Form I-9. The "Electronic I-9 Rule" codifies the existing standards used by the IRS – the performance standards that taxpayers use for electronic tax accounting records storage. DHS expects that many employers will experience cost savings by storing these forms electronically rather than using conventional filing and storage methods. In addition, because of the automated way in which electronic forms are completed and retained, they will be less likely to contain errors. Electronically retained forms will be more easily searchable, which is important for verification, quality assurance and inspection purposes. Furthermore, improving the management of I-9 employment verification forms will enhance ICE's ability to perform its worksite enforcement responsibilities, and bring greater accountability to the system.

In a press release issued by DHS Homeland Security Secretary Michael Chertoff stated "Most businesses want to do the right thing when it comes to employing legal workers. These new regulations will give U.S. businesses the necessary tools to increase the likelihood that they are employing workers consistent with our laws. They also help us to identify and prosecute employers who are blatantly abusing our immigration system."

Again ICE has indicated we will see the Federal Register's publication of the final regulations implementing the I-9 E-Storage/E-Signature Bill in mid-June. However, for purposes of interim guidance, ICE has issued guidelines related to the electronic storage process, and, in doing so, has referred to the IRS' current process for storing electronic documents as noteworthy. For more information, please refer to the Agency's website at: http://www.ice.gov/index.htm.

GT continues to track the progress of these implementing regulations and will provide updates on the latest developments in this area, once additional information becomes available to.

Many States Have Their Own Agenda on Immigration Laws, and the Divide Widens

As the immigration debate continues to remain unresolved in Congress and with the increasing worksite enforcement operations performed by ICE, states have begun to react to the federal government's failure to reach a timely agreement on immigration. Many state legislators have been vocal in their disappointment with the federal government's lack of attention especially in the area of employment of immigrants and undocumented workers. Farrel Quinlan of the Arizona Chamber of Congress and Industry summed up this sentiment by stating "Our position has been the employment of immigrants is a federal issue, and it deserves a federal response. But if the federal government doesn't act, you're going to see the states try to fill the void." As a result, this year state legislative bodies have been busy introducing legislation addressing undocumented aliens, employer penalties and employment eligibility verification responsibilities, as well as the assignment of the enforcement of these new laws to local law enforcement agencies.

The states' efforts to legislate in the area of immigration has resulted in a myriad of legislation, leaving many employers to navigate through a labyrinth of differing requirements from state to state, adversely affecting small and large business alike. Additionally, immigrant advocate groups and others harmed by the newly adopted legislation have vowed to challenge these measures in court under the Federal Preemption Doctrine, which prohibits states from legislating in areas expressly reserved for the federal government. The result? A nation and that stands divided on immigration.

In 2006, 463 states have introduced immigration legislation in forty-three states, the largest amount of state legislative proposals ever dealing with this issue. This legislation has primarily been focused on illegal workers, employers who hire undocumented workers, employment verification procedures and worker's compensation laws for the undocumented. More than half of the states are considering employment legislation and many of these proposals are expected to pass. More than a dozen are considering legislation that would require proof of immigration status for anybody seeking a driver's licenses. Other state governments have proposed to have officials assist employers in filling out the Form I-9 required of all employers to verify employee work eligibility. Furthermore, states that have had recurring problems with illegal immigrants and border security issues have introduced and been successful in passing legislation that is very punitive towards the undocumented. Other more liberal states have passed legislation protecting the rights of undocumented workers, especially in regards to the workplace.

Some of the noteworthy legislation proposed this session includes:

ARIZONA:

In mid-May, the Arizona Senate approved legislation that would have made it a crime for undocumented aliens to be present in Arizona under the local trespassing laws. Gov. Janet Napolitano vetoed the legislation as an enforcement only measure. This legislation if passed would have had an adverse impact on the estimated 300,000 to 500,000 undocumented aliens presently in the state. The legislation which would have cost $160 million to enforce proposed to impose penalties on employers that knowingly hire undocumented workers. Repeat offenders, would have been subject to the suspension of their business licenses. The measure also permitted employers to fire undocumented workers without penalty. The legislation included provisions that would permit the state to audit up to five percent of companies that have state licenses to ensure that they are complying with the law. Finally, the legislation would have made it a felony for a worker to provide false documentation to employers and subject them to three years in prison for doing so. Earlier this year, Gov. Napolitano vetoed SB 1157 which would have made it a class 1 misdemeanor for immigrants to enter the state illegally.

COLORADO:

A state Senate committee endorsed HB 1343, which would require contractors doing business with the state to use a federal government database to check whether their new employees are legally eligible to work. Employers who fail to participate in the program would risk losing their state contracts. The bill now moves to the full Senate for consideration.

GEORGIA:

Gov. Sunny Purdue signed SB 529, the Georgia Security and Immigration Compliance Act into law on April 17, 2006. The legislation has been hailed as one of the toughest anti-immigration measures ever in the United States. SB 529 requires verification that adults seeking state-administered benefits are legal aliens. The measure also sanctions employers who knowingly hire illegal immigrants and mandates that companies with state contracts check the immigration status of employees. Furthermore, the law requires that police check the immigration state of those they arrest.

NEW JERSEY:

On April 4, 2006, Gov. Corzine directed state Treasury and Labor department officials to launch a two-pronged attack on employers that pay workers under the table or erroneously label them as independent contractors. Officials from these departments will work together to identify and penalize employers that avoid making unemployment and disability insurance and gross income tax withholding payments to the state for all of their employees.

PENNSYLVANIA:

HB 2319 was passed on February 13. The bill prohibits the use of illegal immigrant workers on projects that receive funding from the Department of Community and Economic Development (DCED). The bill requires that DCED have requirements in grant/ loan contracts that would require, if illegal workers are knowingly employed or if the person permitted a contractor on the project to use illegal labor, that the grant be repaid or that payment be made to the DCED of the different between the stated interest rate and the rate specified in §202 of the Loan Interest and Protection Law.

OHIO (BUTLER COUNTY):

County commissioners moved forward with a proposal to require home builders to sign pledges not to hire undocumented immigrants and to enforce the pledge with random worksite checks. The proposal would require applicants for building permits to sign a written, binding agreement that they will not hire or indirectly employ illegal aliens. Subcontracts would also be subject to this requirement. The legislation also provides for a county inspector to make random work-site checks to enforce the agreements. Inspectors would be charged with reporting suspected violators to federal officials. Violators will be subject to a $100 civil fine for each violation and could be charged with misdemeanor falsification, which carries a sentence of up to six months in jail and a $1,000 fine.

With this flurry of activity in state legislatures and the resulting broad range of proposals and recently enacted legislation, what will this mean for comprehensive immigration reform? Right now it is hard to tell whether these new state laws will withstand judicial challenges. In 1994 , for example the Mexican American Legal Defense Fund (MALDEF) successfully challenged California Proposition 187. MALDEF argued that the legislation passed by California was unconstitutional as it sought to introduce procedures on how employers in California should verify employment eligibility. In that case, the Court found that the federal preemption doctrine applied, thereby making the law unconstitutional. The Court also stated that the legislation also raised equal protection and due process concerns. Today, we are seeing many immigrant advocate groups express their discontent with harsh immigration related legislation being adopted by states and vowing to challenge their validity in court.

GT continues to not only work with federal legislators in Congress on developing a workable solution to comprehensive immigration reform but also closely monitors and provides analysis on state immigration legislation. For continued updates immigration legislation please visit our website at immigration.gtlaw.com.

Global Immigration: Preparing for the Summer Travel Rush and Electronic Passports

Summer's here! While we are planning for Fourth of July and Labor day getaways there are two things many of us tend to overlook: Do I have the visa I need to travel and when does my passport expire? U.S. citizens can visit many countries without requiring a visa to be stamped on their passports. However, many third country nationals are not as lucky and must have a visa prior to setting-off to their intended destinations.

Regardless of the purpose of the trip, if it is for business or pleasure, we must plan ahead and confirm whether we can travel without a visa. If we find out that a visa is needed, because we are going to visit exotic destinations such as India, China or Egypt, we must allow ourselves plenty of time to obtain the visa.

Visa processing for U.S. citizens normally only takes a couple of days, however because of the large number of people applying for visas during the summer months a couple of days can easily turn into a week or two. Furthermore, if the person traveling is not a U.S. citizen, chances are much greater that a visa will be needed prior to travel and processing times for third country nationals during the summer months vary greatly in some cases can take even up to eight (8) weeks depending on the country of destination.

When traveling we should also keep in mind holiday schedules abroad. For example, for travelers to Europe, it is important to note that many government offices in different EU countries are closed and the number of staff is reduced during the month of August. This can have a serious impact on visa processing if the Embassy or Consulate has to refer the foreigner's application back to the home country for approval and there is a reduced number of staff in the home country to review the visa application until they resume normal business activities the first week of September. This would no doubt ruin any holiday travel plans and seriously affect business travel plans.

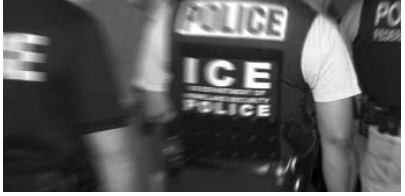
Another thing that is often overlooked is the expiration date on our passports. Most consulates require that passports have at least six months validity left before expiration in order to issue a visa. Furthermore, even when traveling to countries where no visa is required, many countries require that the foreigner hold a valid passport with at least six months validity remaining before its expiration in order to be admitted into the country.

The U.S. Passport Office offers expedited services for U.S. citizens with impending travel plans and in many cases new passports can be issued in only a matter of days. However, most foreigners that reside in the U.S. and find that their passport is about to expire and they need to apply for an extension often have lengthy processing delays depending on their home countries processing times for issuing new passports. The processing times for a foreigner to obtain a new passport or to apply for an extension of an existing passport can range from a few days to six months depending on their country of origin.

U.S. citizens should be aware that the Department of State ("DOS") is now issuing the new United States Electronic Passport (e-passport), as part of a pilot program, in an effort to strengthen security at American borders and to ease the travel of American citizens. So far only diplomatic passports have been issued in the new electronic format, however it is expected that all domestic passport agencies will be issuing e-passports by the end of the year.

The e-passport combines facial recognition software to increase border security and contactless chip technology. This chip contains the same information as the passport: the name of the passport holder, their date and place of birth, gender, date and place of passport issuance and expiration, passport number and a photo of the passport holder. Thankfully, U.S. citizens will be able to travel with their old passports until their date of expiration and will be issued e-passports upon passport renewal.

So please plan ahead. Sometimes travel plans have to altered or cancelled altogether because we forget to check the expiration date on our passports and overlook travel visa requirements. For our busy clients, GT coordinates the renewals of all various international travel documents, including foreign passports.



ICE Worksite Enforcement Actions Continue

In May and June, Immigration and Customs Enforcement (ICE) continued its worksite enforcement operations throughout the United States as well as its efforts to locate and remove illegal aliens. These operations are part of the Secure Border Initiative (SBI) which seeks to secure America's borders and reduce illegal migration. As GT has continued to report, under the direction of Assistant Secretary Julie Myers, ICE has significantly increased the volume and scope of their worksite enforcement operations in the past few months. ICE agents have stated that they are focused on all industries where employers knowingly hire undocumented aliens and seek to penalize both employers and undocumented aliens alike. Federal law imposes heavy financial penalties, and in some cases criminal prosecution on employers who knowingly hire illegal aliens.

On May 26, 2006 agents of Immigration and Customs Enforcement (ICE) in conjunction with the FBI and the Shelby County Sheriff's Office arrested twenty-five illegal aliens employed as contractors by Lucite International and Arkema Chemical Plants in Tennessee. The apprehended aliens had gained employment by using fraudulent documentation and by falsifying information as to employment eligibility to their employers.

The ICE investigation is part of an on-going post 9/11 worksite enforcement initiative focused on businesses with security sensitive sites such as airports, defense installations, bio-agricultural industries, shipyards and chemical plants. ICE stated that an important goal of the Tennessee investigations was to enhance public/ private partnerships to protect U.S. businesses against possible security breaches.

Michael A. Holt special agent in charge for ICE stated that "Protecting the integrity of the chemical industry in Tennessee is a crucial part of ICE's interior enforcement strategy. When an individual uses fraudulent or false documents to get a job, they hide their identity and possible criminal history."

In Kansas, On May 30, 2006 ICE agents arrested five undocumented workers from Mexico at a Cessna aircraft manufacturing plant in Wichita on immigration violations. In that case, the agents had been contacted by Cessna management regarding a possible discrepancy in the documents the aliens had presented upon hiring as proof of their employment eligibility. Based on this information ICE agents conducted a computer records check of the documents and determined that they were in fact fraudulent and that the employees were undocumented and not authorized to work in the United States.

Peter Baird, assistant special agent in charge in Kansas City stated that "Cessna management followed proper procedures. It is illegal for employers to knowingly hire or continue to employ illegal aliens. Employers can also be subject to criminal prosecution."

Also in Kansas on June 8, 2006 ICE agents arrested eleven illegal aliens working at three local scrap metal businesses. According to its press release, the Wichita police department targeted these locations following an undercover investigation based on reports that these businesses were cheating customers on the weight of recycled scrap metal being sold to the businesses.

Other ICE recent worksite enforcement operations include:

- June 7, 2006, The owner of a Chinese restaurant and his brother were indicted in Kentucky for illegally harboring, transporting and employing undocumented aliens as a result of an ICE investigation.
- May 12, 2006, Jose Neto, owner of Boston Cleaning Business, was convicted of knowingly harboring illegal aliens who worked in his cleaning business. Neto had previously pled guilty attempting to bribe an ICE agent, inducing illegal aliens to reside in the country and having a patter or practice of knowingly employing undocumented workers. Neto can be sentenced with up to fifteen years in jail, five years of supervisory release and a $250,000 fine.
- May 11, 2006, The owner of Dragon Buffet Restaurants, pled guilty to one count of hiring and harboring illegal aliens at this restaurants in Albany, New York. The investigation was part of a larger ICE operation concerning Kun Cheung, who owned six Chinese buffet restaurants in the Albany, New York area. That investigation resulted in the arrest of Cheung, the criminal arrest of nine people, the administrative arrest of eight-four illegal aliens and the seizure of approximately $1.4 million in assets.

- The owner of the Golden China Buffet in Louisville, KY was arrested on May 10, 2006 along with eight of his undocumented workers.
- On May 10, 2006, ICE agents in Missouri arrested the owner Julio's Mexican Restaurants with two locations in Missouri and Iowa for knowingly hiring illegal aliens, a criminal charge. ICE agents determined that the employees had not been asked to complete Form I-9 or provide any documentation verifying their employment eligibility. ICE agents also arrested twenty-one illegal aliens during the worksite enforcement operation.
- On May 9, 2006, ICE agents arrested four supervisors of Fischer homes as well as seventy-six illegal aliens working at their construction sites in Kentucky. The supervisors face criminal charges for aiding and abetting, harboring illegal aliens for commercial advantage or private gain and face up to ten years imprisonment and fines up to $250,000.
- Two managers of Midwest Airport were sentenced on May 9, 2006 as a result of ICE Operation Tarmac, an ICE plan that targets unauthorized employment at U.S. airports. Both individuals received federal prison sentences and both were subject to financial penalties. Midwest Airport Service and Service Performance Corporation were also subject to heavy financial penalties.
- On May 2, 2006, the owner of Stucco Design in Indiana was arrested on charges of money laundering, harboring and transporting illegal aliens and making false statements in connection with an illegal employment scheme. If convicted the owner can face up to forty years in prison and the forfeiture of $1.4 million.
- April 19, 2006, after a year long investigation of reports of illegal hiring, ICE agents performed the largest worksite enforcement operation in the United States. Seven managers and 1,187 illegal aliens working at IFCO, the largest pallet manufacturer in the U.S. , were arrested. The managers each face the possibility of serving jail time and are subject to financial penalties.

For more information on ICE, worksite enforcement operations, employer compliance and enforcement please visit http://www.gtlaw.com/practices/immigration/compliance/index.htm

Consular Corner

In planning international travel, all foreign nationals must ensure that they carefully review their current immigration documentation to make sure that they have all of the appropriate travel documentation required to return to the United States. Individuals in non-immigrant status, generally must have a valid visa in their passport for that category. Advance planning can make the visa application process smooth and relatively painless. Most visa applicants will be required to have an in-person interview at a U.S. Embassy/ Consulate abroad. Therefore, we suggest that the foreign national carefully review the current visa wait times for information on interview appointments availability and timelines for visa issuance at the embassy or consulate. In advance of travel, all supporting documentation should be carefully reviewed and the on-line application forms as well as fee payment instructions should be closely followed to avoid delays.

Remember, some Embassies and Consulates have significant visa appointment scheduling and issuance delays, therefore, advance planning is critical.

Immigration Seminar Update

Greenberg Traurig continues its tradition of providing presentations on I-9 compliance, hot topics including contractor/ subcontractor issues, PERM updates, global outbound immigration issues as well as discussions on money saving tax strategies for employees and employers. E-mail to register for our upcoming GT Webinar on I-9 Worksite Enforcement. Our seminars provide information, guidance and assistance to human resource professionals on employment verification compliance, strategies for the implementation of federal regulations and information on the penalties for failure to do so. GT also regularly convenes multi-national industry professionals for informational seminars focusing on visa matters relating to the international relocation of employees and executives to, and between, countries outside of the United States. Please contact luried@gtlaw.com for further information on seminars.

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The Business Immigration Observer is published by Greenberg Traurig's Business Immigration practice. Dawn M. Lurie serves as the editor. The newsletter contains information concerning trends and recent developments in immigration law and legislation analyzed and reported by immigration law professionals.

The Observer serves as an invaluable resource to individuals, human resource managers and recruiters, in-house legal professionals and company executives for whom keeping up with the most current immigration information is a professional imperative.

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