

# IMMIGRATION NEWS

## Our Firm Can Assist You With:

- ◆ Employment based immigrant and nonimmigrant petitions
- ◆ Family based immigrant petitions
- ◆ Naturalization applications
- ◆ Follow up with USCIS on pending petitions
- ◆ I-9, LCA and PERM audits
- ◆ Form I-9 training for HR staff and review or drafting of I-9 compliance procedures



**Don't wait for ICE to show up at your business before getting your I-9s in order.**

## ICE Announces Increase In Worksite Enforcement

In testimony before Congress shortly after the start of Fiscal Year 2012, John Morton, Director of Immigration and Customs Enforcement (“ICE”) announced record numbers of worksite enforcement investigations, criminal prosecutions, and administrative-fine awards.

Morton testified that as part of its immigration enforcement efforts, ICE has been pursuing a comprehensive worksite enforcement strategy to deter unlawful employment and drive a culture of compliance with the nation’s immigration-related employment laws. ICE’s strategy has been designed to: (1)

penalize employers who hire illegal workers; (2) deter employers who are tempted to hire illegal workers; and (3) encourage all employers to take advantage of easy to use and well-crafted compliance tools.

In FY 2010, ICE issued a record number of Notices of Inspections (“NOI”) for I-9 audits and as a result levied more than \$9 million in fines for I-9 violations. ICE also arrested 196 employers for criminal worksite related immigration violations. In addition, FY2010 worksite investigations, including I-9 audits resulted in a record \$36.6 million in judicial fines, forfeitures and restitu-

tions. Morton closed his comments to Congress by stating, “We are committed to being smart and tough with our enforcement...”

It is anticipated that FY2012 will bring an even greater number of I-9 audits by ICE. Just last month, ICE issued a substantial number of NOIs to employers for whom it had previously done an inspection and issued a warning or Notice of Intent to Fine.

Before ICE shows up at your business with a NOI, make sure that you have had your I-9s audited and your employees properly trained. Call our office for more information.

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## We Are Moving to a New Location

Next door and up one floor!

Later this month, our firm will relocate to the second floor of the building next door to our current location. This move has been necessitated by the sale of our current building.

We will still be located in the

same block as the New Orleans District Office of Citizenship and Immigration Services.

We are taking advantage of this unexpected move by improving our conference room facilities for our I-9 training seminars.

We will send out formal notices of our move but we ask that you please note our new address (3636 S. I-10 Service Road W., Suite 200, Metairie, LA 70001). Our telephone numbers and email addresses will remain the same.

## DHS Proposes Change to Unlawful Presence Waiver Processing

On January 6, 2012, the Department of Homeland Security (“DHS”) announced that it will be issuing new regulations for how unlawful presence waivers will be processed for certain immediate relatives who are filing immigrant visa applications abroad. When the new regulations are issued they will allow the unlawful presence waiver to be filed while the foreign national is in the United States and for USCIS to grant a provisional

waiver. The foreign national would then leave the U.S. and go to the consulate in their native country to process for the immigrant visa.

Currently, the waiver must be filed at the consulate after the initial interview for the immigrant visa. The process currently requires the foreign national to be out of the country for months, sometimes years before the waiver is adjudicated. The foreign nation-

al would still be required to show that their U.S. citizen or permanent resident spouse or parent will experience “extreme hardship” if the waiver is not granted.

The new rule will only apply to immediate relatives whose U.S. citizen spouse or parent will suffer extreme hardship unless the waiver is granted.

These procedures will not go into effect until a final rule is issued by DHS.



**Spouses of U.S. citizens who require a unlawful presence waiver may soon be able to process the waiver in the U.S.**

***Employers can file a petition for a Fiscal Year 2013 H-1B visa on April 1, 2012.***

## FY 2013 H-1B Quota Expected to Fill More Quickly Than Past Years

Employers who want to file for a Fiscal Year 2013 H-1B visa need to be aware that it is anticipated that the quota will fill more quickly this year than in the past few years.

The earliest effective date for a FY 2013 H-1B is October 1, 2012, which is the first day of the U.S. government’s new fiscal year. Employers may

begin filing for FY 2013 H-1B visas as early as April 1, 2012. There are 65,000 H-1B visas available and an additional 20,000 visas for beneficiaries who have obtained a Masters Degree or higher at a U.S. institution of higher education. Last year the quota filled on November 22, 2011. This year, improvements in the economy and the number

of OPT holders who have used their 17 month STEM extension has caused practitioners to believe that the quota will fill more quickly this year.

If you have an employee or potential employee for whom you want a FY 2013 H-1B, you should contact our office now to discuss beginning the H-1B process.

## San Diego Bakery Owner Sentenced for Hiring Illegal Workers

In December, 2011, both the owner and manager of a San Diego bakery were sentenced for knowingly hiring illegal workers. Both were sentenced to supervised probation. In addition, the owner was fined \$396,575.

Both owner and manager of

The French Gourmet admitted that they had continued to hire illegal aliens even after they were fined in the 1990s by the former Immigration and Naturalization Service for employing illegal aliens.

The French Gourmet had employed 91 illegal aliens unlaw-

fully between 2005 and 2008 and the charges resulted after a four year investigation by ICE.

**Immigration working with the Justice Department are cracking down on employers who hire illegal workers.**



### U.S. Passport Card Online Application Now Available

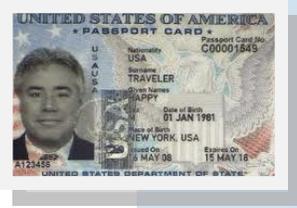
On January 24, 2012, the Department of State announced that it has launched a 90 day pilot program allowing adult U.S. citizens living in the U.S. or Canada to apply for a passport card online. By applying online, customers will not need to mail in any of the documents as is normally required.

make an online payment. The Department of State has said that online applications will be subject to the same strict adjudication standards as in-person and mail in applications.

low cost alternative to the passport book. The U.S. passport card costs \$30 and is valid for land and sea travel to and from Canada, Mexico, the Caribbean, and Bermuda. It is not valid for international air travel.

The Department of State began producing the passport card in 2008 in response to travel document requirements imposed by the Western Hemisphere Travel Initiative. The wallet sized passport card is a

Applicants must possess a 10 year passport book, upload an acceptable digital photo and



Online Applications for the Passport Card are now being accepted.

### U of CA San Diego Medical Center Settles I-9 Charges with DOJ

The University of California San Diego Medical Center and the Department of Justice announced a settlement on January 4, 2012 to charges that the Medical Center subjected newly hired non-US citizens to excessive demands for documents during the I-9 process. Excessive documentary practices in connection with the I-9 process is a violation of the

Immigration and Nationality Act.

Under the terms of the settlement, the Medical Center paid a fine of \$115,000. The University of California also agreed to train all of its human resource staff in proper I-9 procedures including the anti-discrimination provisions of the law.

In announcing the settlement, the Assistant U.S. Attorney stated "Federal law protects people who are authorized to work in the United States from facing barriers and discrimination when seeking employment."

This case settled less than a month after the initial complaint was filed.

**The Medical Center paid a \$115,000 fine for requiring excessive documents of non-U.S. citizens during the I-9 process.**

### DOL Statistics for PERM Applications for First Quarter of FY 2012

The Office of Foreign Labor Certification of the U.S. Department of Labor issued its statistics for the first quarter of Fiscal Year 2012, on its Permanent Labor Certification Program ("PERM").

electronically and the remaining 200 were mailed in. In the first quarter of Fiscal Year 2012, 9,500 cases were certified and 2,400 were denied. There were also 500 cases that were withdrawn.

10% under appeal. The remaining 3% are in some other stage of administrative review.

Currently, analysts are working on PERMs filed in October, 2011, the audit section is working on PERMs filed in April, 2011 and appeals are being reviewed from April, 2010.

The total number of applications received in the first quarter of FY 2012 was 13,200: 13,000 of which were filed

As of January 3, 2012, there were 20,900 cases in process, with 50% under analyst review, 33% under audit review,

DOL Analysts are working on PERMs filed in October, 2011



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## Just a Note....

In late January, I attended a seminar on I-9 Compliance and learned about the current trends in both case law and enforcement. I-9 enforcement is expected to grow with each Fiscal Year. It is clear that in order for a company to have good business practices it must have written I-9 compliance policies and procedures, it must train all of its staff that completes I-9s and it must do regular audits of its I-9s. Anything less exposes a company to substantial liability.

If you have questions on how to implement proper I-9 procedures or need I-9 training, please call our office.

*Patricia*



**Requiring additional documentation during the I-9 process from a new employee with a green card is a violation of federal law.**

## BAE Systems Ship Repair, Inc. Settles I-9 Document Discrimination Charges

In December, 2011, the Justice Department (“DOJ”) announced that it had reached a settlement with BAE System Ship Repair, Inc. (“BAE”) for charges that its Alabama subsidiary had engaged in a pattern and practice of discrimination by imposing additional documentary requirements on work authorized non-US citizens during the I-9 employment eligibility verification process. The Justice Department alleged that the Alabama subsid-

iary of BAE required all newly hired lawful permanent residents to produce their Permanent Resident Card (“green card”) during the I-9 process even if they chose to produce other valid documentation.

The Immigration and Nationality Act requires employers to treat all authorized workers in the same manner during the I-9 employment eligibility verification process regardless of their national origin or citizen-

ship status. BAE was required to pay a fine of \$54,000 to the DOJ, develop I-9 procedures for its subsidiaries that ensured proper employment eligibility verification procedures, train its HR employees in proper I-9 procedures and submit its I-9s for inspection over the next three years.

Every business needs to make certain its employees handling I-9s have proper training to avoid these types of issues.