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A Professional Law Corporation

Immigration News

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Change in H-1B Work Location Requires Amended Petition Court Rules

A change in the place of employment where a foreign national on an H-1B visa is employed is a material change that requires that a new or amended petition be filed. This finding was made by the U.S. Citizenship and Immigration Services' ("USCIS") Administrative Appeals Office ("AAO") in a precedent decision, *In re: Simeio Solutions, LLC, AAO, 26 I&N Dec. 543, 4/9/15.* A precedent decision becomes legally binding on USCIS and has the effect of law.

The AAO ruled that where the H-1B beneficiary's place of employment is changed to a geographic area not covered by the original LCA, the petitioner (employer) is required to immediately notify USCIS and file an amended or new H-1B petition, along with a corresponding LCA certified by the DOL, with both documents indicating the relevant change. This requirement is due to the fact that the prevailing wage that must be paid to the worker is tied to the geographic area of employment pursuant to the Immigration and Nationality Act.

The AAO also stated that where the worksite is moved to a new location within the geographic area of the original LCA, then the original LCA must be re-posted at the new worksite.

The AAO stated "Full compliance with the LCA and H-1B petition process, including adhering to the proper sequence of submissions to DOL and USCIS, is critical to the U.S. worker protection scheme established in the Act and necessary for H-1B visa petition approval."

AAO issues precedent decision for H-1B workers whose work location is changed

Certain H-4 Spouses Eligible For Employment Authorization

Effective May 26, 2015 dependent spouses of certain H-1B workers will be eligible to apply for employment authorization. H-4 spouses where the H-1B visa holder has an approved I-140 or has had his/her H-1B visa extended beyond the original six years under AC21 are eligible to apply for employment authorization.

The rationale behind this rule was to help reduce the personal and economic burdens on H-1B workers whose spouses can't work while they are awaiting a green card.

To apply for employment authorization, the spouse must file an I-765 with the supporting documentation and filing fee with USCIS.

I-9/E-Verify Services:

- *I-9/E-Verify consultations to determine how to improve your compliance procedures*
- *I-9 and E-Verify Training*
- *Audit your Form I-9s*
- *Assist your company with E-Verify Registration*
- *Draft I-9 and E-Verify Policies and Procedures or review your company's existing written policies*
- *Represent your business in the defense of a Notice of Inspection (ICE I-9 Audit)*

Inside this issue:

Form I-9 Q & A

Q : An employee has attested to being a U.S. citizen on Section 1 of the Form I -9, but has presented me with Form I-551, Permanent Resident Card (commonly referred to as "green card"). Another employee has attested to being a lawful permanent resident, but has presented a U.S. passport. Should I accept these documents?

A: In these situations you should first ensure that the employee understood and properly completed the Section 1 attestation of status. If the employee made a mistake and corrects the attestation, he or she should initial and date the correction. If the employee confirms the accuracy of his or her initial attestation, you should not accept a "green card" from a U.S. citizen or a U.S. passport from a lawful permanent resident. Although you are not expected to be an immigration law expert, both documents in question are inconsistent with the status attested to, therefore, they are not documents that reasonably relate to the person presenting them.

Remember that if you sign Section 2 for the employer, you are attesting under the pains and penalties of perjury that you believe that the documents presented by the new hire appear to be genuine and reasonably relate to the person presenting them.

The Bollman Firm can help with all your I-9 questions.

Fiscal Year 2016 H-1B Cap Filled

For the third year in a row, the Fiscal Year H-1B cap was met in the first week that employers were allowed to file petitions. The United States Citizenship and Immigration Services ("USCIS") announced that it received 233,000 petitions for H-1B specialty occupation visas this year. Since, under current law, only 65,000 H-1B visas are available each year with an additional 20,000 for workers with advanced degrees from U.S. colleges and universities, a lottery was held to determine which petitions to accept and process.

Employers had a 36 percent chance of having their H-1B petition chosen in the FY 2016 H-1B lottery.

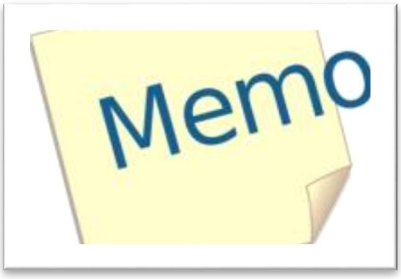
Over the past three years, the number of H-1B quota filings has continued to increase. USCIS received 124,000 petitions in 2013 for FY 2014 and 172,500 petitions in 2014 for FY 2015.

USCIS will continue to accept H-1B petitions that are not subject to the cap, including petitions filed on behalf of current H-1B workers who have already been counted against the cap, and H-1B cap exempt employers.

USCIS Issues Policy Guidance on L-1B Visas

U.S. Citizenship and Immigration Services ("USCIS") released an updated policy memorandum on L-1B intracompany transferees with "specialized knowledge", which it said was designed to aid businesses in bringing overseas employees to their U.S. offices. The memo becomes effective August 31, 2015 and supersedes and rescinds all prior memos on L-1B visas.

Business and immigration practitioners have been awaiting an updated L-1B memo for several years based on their complaints that USCIS adjudications of L-1B petitions don't reflect statutory and regulatory standards. The memo sets forth detailed guidelines for the filing of and adjudication of L-1B petitions and is meant to allow the process to be administered in an efficient way to facilitate the transfer of personnel for U.S. businesses.



USCIS issues memo on the filing and adjudication of L-1B petitions.

Labor Certification Facts from the DOL

Permanent labor certification ("PERM") applications rose during the second quarter of fiscal year 2015 according to recent U.S. Department of Labor ("DOL") statistics. The DOL announced that 18,992 PERM applications submitted during the second quarter of this fiscal year represent a 27 percent increase from the second quarter of fiscal year 2014.

During the second quarter of fiscal year 2015, the DOL certified 20,189 PERM applications and denied 1,333, while 1,092 were withdrawn.

Sixty percent of the jobs for which employers sought PERM certification are computer and mathematical. Other top occupations included architecture and engineering (10 percent), management (8 percent), business and financial operations (6 percent) and education, training and library (4 percent).

California is the top state for PERM applications (26 percent) and most of the workers who are the beneficiaries of the PERM applications are from India (60 percent).

In addition, the vast majority of the workers who are the beneficiaries of the PERM applications are currently on H-1B visas (82 percent). Finally, most of the PERM job positions require an advanced degree (52 percent).

DOL reports that PERM filings are increasing

The DOL also reported that it saw an increase in the second quarter of the fiscal year in temporary labor certifications for the H-2A and H-2B programs.

ICE'S Worksite Enforcement Continues

All indications are that the Obaman administration is continuing its ramped-up worksite enforcement of immigration laws. Immigration and Customs Enforcement ("ICE") audits of Form I-9s has continued to increase in each of the past five years. Additionally, the level of fines being imposed for violations of Form I-9 regulations has increased significantly. Furthermore, what we see is that ICE has gotten much better at conducting the Form I-9 audits meaning that ICE is able to perform the audits more efficiently and is better able to audit large employers.

In the last fiscal year, there was a 100% increase in referrals from DHS to ICE or OSC for investigations based on information obtained from E-Verify.

Employers should also be aware if they are using E-Verify, that the Department of Homeland Security has set up a monitoring and compliance unit that looks at how employers are using the system. DHS has increased its referrals to other enforcement agencies based on an employer's E-Verify use. Referrals could be made to ICE if there is a suspected employment verification violation or to the Office of Special Counsel for discrimination violations.

USCIS Issues Final Policy Memo on H-1Bs for Nurses

The United States Citizenship and Immigration Services ("USCIS") has issued its final policy memorandum governing the adjudication of H-1B specialty occupation visas for nurses.

The USCIS memo states that nursing positions generally are not considered to be "specialty occupations" because they tend not to require a bachelor's degree. However, the memo states that recent changes in the nursing industry demonstrate that there is an increasing preference for more highly educated nurses, that is nurses who have earned a BSN. Accordingly, depending on the specific facts of the case, some nursing positions may qualify as specialty occupations.

Some nursing positions may qualify for an H-1B visa

H-1B regulations require that to qualify as a specialty occupation, the job must require a bachelor's degree in order to perform the job duties.

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Specializing in employment-based and family-based Immigration and Nationality law
I-9 Compliance and Training

Just A Note…

In mid-June, Daphne, Yolanda and I traveled to National Harbor, Maryland (right outside of Washington, D.C.) to attend the American Immigration Lawyers Association's ("AILA") Annual Conference. The three day conference is a premier educational event and the largest interaction of the immigration law community. AILA's 2015 Annual Conference offered over 145 substantive sessions in fundamentals, intermediate, advanced and masters level tracks in all areas of immigration law. The Annual Conference also provided access to Interagency Government panels which allowed us to obtain the most current information on procedures and practice tips from multiple government agencies including USCIS, DOL, ICE and DOS.

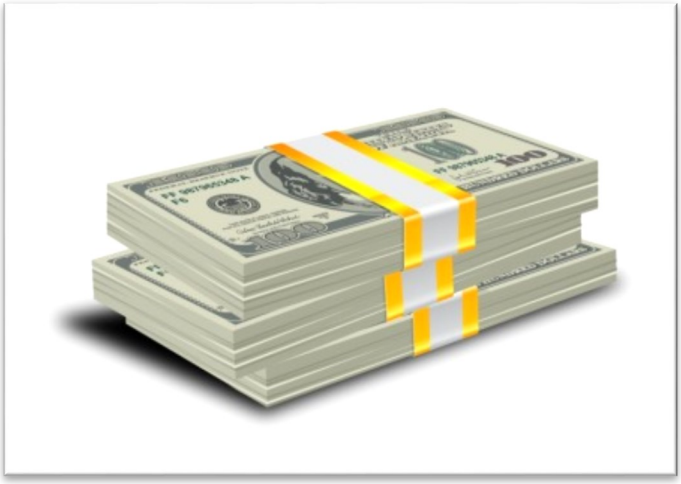
Over the course of the three days, we divided up to attend sessions in areas of immigration law most relevant to our clients in order to get the most up-to-date information on changes in the law, trends and practice tips. Some of the things we learned are contained in this newsletter. Others will be incorporated into our firm's protocols and/or will be applied to a client's individual case. This is all part of our commitment to our clients to provide individual and personalized service that is based on our knowledge of the most recent changes in the law and current trends in immigration law. We look forward to continuing to work with you in the future.

Patricia

DOJ Settles Cases on Workplace Bias in I-9 Process

The U.S. Department of Justice ("DOJ") continues its aggressive stance of investigating employers whom it believes are engaging in employment discrimination in the Form I-9 process. Two recent settlements were announced by the DOJ: one against a well known hotel chain and one against a California farm labor contractor, which represented the largest civil penalty secured to date by the DOJ.

In one case, the DOJ settled with Hilton Hotels after one of its hotels in Naples, Florida improperly rejected List B and C documents from a lawful permanent resident ("LPR") and, instead, required that he produce a List A document, his lawful permanent resident card. Under Hilton's settlement agreement with the DOJ, it was required to pay a civil fine, pay back pay to and rehire the worker and be subject to two years of monitoring by the DOJ. In addition, Hilton's Human Resources staff had to undergo I-9 training and amend its I-9 policies and procedures.



Discrimination in the Form I-9 process can result in large fines.

In a second case, the DOJ settled with a California farm labor contractor for $320,000, the largest civil penalty to date for I-9 discrimination violations. This employer also required that a LPR produce his LPR card during the Form I-9 process instead of accepting any acceptable documents produced by the new hire.

I-9 training for HR staff and written I-9 policies and procedures are necessary to reduce the risk of exposure for any company.