Immigration Update

Spring 2009

Leete, Kosto & Wizner, LLP

ATTORNEYS AT LAW

Leete, Kosto & Wizner, LLP is pleased to provide clients and friends information about recent changes in immigration law.

We have been practicing immigration law since 1981.

Please feel free to contact one of our attorneys with any related questions or to schedule a consultation.

Elizabeth B. Leete
Andrew L. Wizner
Eric Fleischmann
Virginia E. Carstens

999 Asylum Avenue
Suite 202
Hartford, CT 06105

Tel. (860) 249-8100
Fax (860) 727-9184
Lkw@Lkwvisa.com

H-1B Visas Are Still Available: Apply Now

U.S. Citizenship and Immigration Services (USCIS) announced on May 4, 2009 an updated number of filings for H-1B petitions for the fiscal year 2010 program. USCIS has received approximately 45,000 H-1B petitions counting toward the Congressionally-mandated 65,000 cap. The agency continues to accept petitions subject to the general cap.

It appears that the agency is receiving approximately 1,000 petitions per week, and the cap may be reached soon. Accordingly, employers should submit their petitions as soon as possible in order to obtain a cap-subject number. Petitions for new H-1B employment are exempt from the annual cap if the beneficiaries will work at institutions of higher education or a related or affiliated nonprofit entities, or at nonprofit research organizations or governmental research organizations. Thus, employers may continue to file petitions for these exempt H-1B categories seeking work dates starting in FY 2009 or 2010.

New Administration, New Worksite Enforcement Policy

On April 30, 2009, U.S. Immigration and Customs Enforcement announced a new policy regarding its worksite enforcement program. The new policy states that, effective immediately, ICE will focus its resources in the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration. The purpose of the program is to reduce employment of unauthorized workers, such as foreign workers who are in the U.S. without documentation. This new policy places the emphasis on employer compliance and is expected to bring about a reduction in the highly publicized raids that targeted the workers and resulted in thousands of arrests and deportations.

All Signs Point to Comprehensive Immigration Reform

President Barack Obama has renewed his Administration's pledge to pursue comprehensive immigration reform. Meanwhile, the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship commenced hearings on the topic. On March 18th, the President met with the Congressional Hispanic Caucus, where he discussed how the Administration and the CHC could work together to address immigration concerns. In April, President Obama traveled to Mexico to meet with President Calderon to discuss how the United States and Mexico can work together toward effective, comprehensive immigration reform.

Employers Signing Future Federal Contracts Must Begin using E-Verify on June 30, 2009

The applicability date of the final rule requiring federal contractors and subcontractors to begin using U.S. Citizenship and Immigration Services' E-Verify system has been pushed back by six weeks to June 30, 2009. As a condition of each future federal contract, employers must agree to use the E-Verify system.

Employers entering into these contracts will need to sign onto E-Verify and submit data online on all new employees (but not on current or prospective employees). The system will determine whether the individuals are authorized to be employed in the United States. If the system does not confirm the person as work-authorized, then the employer must take certain other steps to determine whether the person is work-authorized, and terminate the employment if the steps are not successful.

Employers should consider carefully before deciding to participate. To do so, the employer must waive certain constitutional rights and agree to permit DHS and Social Security Administration officials to enter their work sites to review E-Verify records and other employment records.

The rule directs federal contracting officers not to include the new E-Verify clause in any solicitation or contract prior to June 30, 2009.

Employers Must Use New 1-9 Employment Verification Form

Effective April 3, 2009, the USCIS began requiring employers to use a new version of the I-9 Employment Verification Form. The new form implements a December 17, 2008 final rule that requires employers to accept only unexpired documents (except in the case of certain F-1 students). The rule also removes certain documents, such as old forms of work authorization documents, that employers may accept as proof of both identity and work authorization. The new form is available at www.uscis.gov/forms.
USCIS also updated the *Handbook for Employers – Instructions for Completing Form 1-9* to reflect the requirements of the revised Form I-9.

Court Invalidates USCIS Widow Penalty

On May 1, 2009, the Ninth Circuit Court of Appeals issued an order invalidating a memorandum by the Acting USCIS Deputy Director that had directed adjudicators to deny green cards to surviving spouses whose U.S. citizen petitioners died during the immigration process. The court also invalidated a USCIS regulation directing USCIS adjudicators to revoke the I-130 immigrant petition on the basis of the death of the alien's U.S. citizen spouse. That regulation required the alien to petition for humanitarian reinstatement. For now, the ruling is limited to individuals within the jurisdiction of the Sixth and Ninth Circuit Courts of Appeals.

DOL Revamping Online Application Process

The U.S. Department of Labor's Office of Foreign Labor Certification recently announced that it will phase in a new online application tool to file temporary Labor Condition Applications as well as Applications for Permanent Employment Certification. The new system is known as the iCert Visa Portal System.

In the permanent labor certification program (PERM), DOL must certify that qualified U.S. workers are not available at the time of application for a visa and admission to the United States. The H-1B nonimmigrant program provides a means for U.S. employers to employ foreign workers on a temporary basis in specialty occupations. A test of the labor market is required for a PERM application but not for an H-1B petition. Currently, each program has an independent, web-based electronic application system.

The new iCert Visa Portal System will provide a single online application tool for employers who file either PERM applications or temporary Labor Condition Applications in support of H-1B petitions. The system will be located at http://icert.doleta.gov. Use of the new system for the H-1B program becomes mandatory on May 15th, and for PERM Applications on October 1st. The DOL is providing a one-month transition period for each program, and employers may file applications on both systems during that time.

Applications Delayed Due to Background Checks

The USCIS conducts background checks on all applicants, petitioners and beneficiaries seeking immigration benefits. Last year, the USCIS implemented an initiative to eliminate the backlog of such checks, most of which were pending at the FBI. At that time, the USCIS issued a directive to its adjudicators advising them to approve applications or petitions where the background check was delayed more than 180 days. On March 9, 2009, USCIS issued a new memo stating that it had reduced the backlog to no more than 90 days, and that adjudicators must now seek permission from Headquarters prior to approving any application or petition where a background check is not complete.

Despite news that the background checks are current, our office continues to see long-delayed applications. Relief may be available through federal district court.

New H-2B Temporary Worker Regulations

Both the USCIS and the DOL have published new regulations regarding temporary H-2B workers. The H-2B Program permits employers to bring foreign workers to the U.S. for non-agricultural labor. The petitioner's need is considered temporary if it is a one-time occurrence, a seasonal need, a peak-load need, or an intermittent need. The new rules allow H-2B workers to stay for an uninterrupted period of up to three years. Once the three-year limit is reached, the H-2B worker need only spend three months instead of six months outside the U.S. to qualify for a new H-2B visa. The new rule also allows employers to identify a specific one-time need of up to three years.

In the new system, employers will conduct pre-filing recruitment to demonstrate that U.S. workers are not available and will file temporary labor certification applications directly with the DOL National Processing Center in Atlanta instead of the State Workforce Agency.

Conrad Program Extended for Foreign Medical Graduates

On March 20th, President Obama signed into law an extension of the Conrad Program. Foreign Medical Graduates who come to the U.S. as J-1 Exchange Visitors for graduate medical education, such as medical residency training, are required to complete a two-year foreign residency requirement upon completion of their J-1 stay.

The Conrad program permits these U.S.-trained physicians to remain in the U.S. and change their status to H-1B specialty occupation worker if they agree to work in a Health Professional Shortage Area or Medically Underserved Area for a period of three years. The program, which was due to expire this Spring, is extended until September 30, 2009. Each state is entitled to thirty Conrad waivers annually.

New Document Requirements for Crossing Borders Effective on June 1st

On June 1, the Western Hemisphere Travel Initiative will go into effect at land and sea ports of entry, requiring travelers – including U.S. and Canadian citizens – to present an approved travel document to enter the United States. The WHTI is already in effect for all persons arriving by plane. The approved documents include a passport, a passport card, a NEXUS, SENTRI or FAST trusted traveler program card or a state- or province-issued enhanced driver's license.

Permanent Residents Now Subject to US-VISIT Program

Permanent residents must now participate in the US Visitor and Immigrant Status Indicator Technology Program (US-VISIT), which verifies the identities and travel documents of aliens by requiring fingerscans, photographs, or other biometric identifiers upon arrival at the United States.

Economic Stimulus Law's New H-1B Rule

On February 17, 2009, President Obama signed the *American Recovery and Reinvestment Act of 2009*, also known as the stimulus bill. The new law treats employers who accept TARP funds as H-1B "dependent" employers. These "dependent" employers must first test the labor market to prove that U.S. workers are not available, and they must also attest that a U.S. worker has not been displaced as a result of filing the H-1B nonimmigrant petition with the USCIS.

Leete, Kosto & Wizner, LLP

999 Asylum Ave., Suite 202 www.Lkwvisa.com
Hartford, CT 06105 Tel: (860) 249-8100

Leete, Kosto & Wizner, LLP provides a wide range of immigration legal services to businesses and individuals throughout the United States and around the globe.

This newsletter is advertising material and is intended for general information purposes only. This newsletter should not be construed as legal advice or opinion on any specific fact or circumstance.

Attorneys Recognized in Publications

Elizabeth Leete, Andrew Wizner and Eric Fleischmann were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2009 for immigration law (Copyright 2008 by Woodward/White, Inc. See Bestlawyers.com/aboutus/selectionprocess).

Andrew Wizner was selected for inclusion in 2009 Connecticut *Super Lawyers*® for immigration law. Virginia Carstens was selected for inclusion in *Super Lawyers*® 2009 as a Rising Star in immigration law (for Selection Process see Superlawyers.com/Connecticut).

Winning the Hard Cases

We continue to have success in bringing cases in Federal District Court to compel USCIS to adjudicate long-delayed naturalization applications. For example, Dr. F, a former Soviet scientist, who is now a renowned researcher in the United States, filed an application for naturalization in 2002, and attended an initial interview in 2003. USCIS had advised him during the ensuing years that "mandatory security checks have not been completed."

Following the filing of the complaint in Federal District Court, we were able to negotiate an agreement with USCIS to adjudicate his case. The adjudication resulted in approval, and Dr. F was sworn in as a U.S. citizen in Federal District Court this spring. He is now able to attend conferences in his field in Europe, without first obtaining the necessary visas often of Russian citizens. He is also eligible to petition for family members to immigrate to the U.S.