



WORMSER, KIELY, GALEF & JACOBS LLP

IMMIGRATION HIGHLIGHTS - June 2011



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Latest Round of Immigration Audits

In keeping with the administration's strategy of investigating employers to ensure that American businesses employ a lawful workforce, Immigration and Customs Enforcement (ICE) recently announced that it will be auditing the employee records of 1,000 employers in the coming weeks. As in the past, the latest round of audits are expected to target employers across the country in industries with large numbers of undocumented workers, including the agriculture, hospitality and construction industries, as well as sectors where employees have access to sensitive government information, including financial services, healthcare, transportation and infrastructure, and nuclear/chemical.

Although ICE claims that the audits will be random, companies that have already received "no match" letters from the Social Security Administration (alleging that the social security number of workers used for tax purposes do not match with the SSA's actual records) or those that are the subject of a government investigation or whistleblower complaints can expect to receive a closer look from the government.

During this era of enhanced workforce enforcement, every employer must be able to document the legality of its workforce and compliance with all applicable employment laws. Proper and timely recordkeeping is essential, as are regular reviews of the company's immigration-related policies, procedures and documentation.

Our Immigration Practice Group is available to conduct a spot check of your I-9 forms to make certain that the forms are being correctly completed and that the procedures in place for maintaining them meet the regulatory requirements. These internal audits can be done very cost-effectively with a few hours of time. We can also review your H-1B documentation files and visit your workplace to provide training to human resources and other staff on relevant issues, including best practices for I-9 completion and maintenance, and off-site employee procedures.

Visa Lottery Update

Due to a computer glitch that voided the initial results of this year's visa lottery, the State Department will randomly select new winners on or around July 15. The new drawing is expected to proceed as planned even though dozens of the "mistaken" winners have filed a lawsuit against the government demanding the reinstatement of the initial results.

H-1B Cap Update

Reflecting the state of the economy, new H-1B applications continue to trickle in at a very slow pace. As of June 17, 2011, the USCIS had received only 16,300

H-1B cap-subject petitions (out of 65,000 available), and 10,800 petitions for individuals with advanced degrees (out of 20,000 available). Based on the small number of filings since the application period began on April 1, it is expected that H-1B visa numbers will continue to be available during the upcoming months.

As a reminder, the annual quota of H-1B visa numbers available does not apply to individuals currently working in H-1B status in the U.S., who are seeking to extend their current employment or seeking to change employers. In addition, individuals seeking employment with institutions of higher education, nonprofit research organizations, government research organizations and certain related entities are also exempt from the annual H-1B "Cap."

Visa Processing Update: Nassau

The American Embassy in Nassau, Bahamas reminds applicants that it will process visa applications of third country nationals (i.e., not Bahamian citizens) residing in the US who are renewing their student, exchange or temporary worker visa if their current visa was issued at an American embassy or consulate in their country of citizenship or legal residence. Spouses may apply with the principal visa holder as long as the principal meets this criteria. Although the embassy has the discretion to accept visa applications from third country nationals who are not renewing a visa, applicants are reminded that there is no guarantee that processing will be completed within a reasonable period of time or that a visa will be issued.

Spotlight On...

Kevin M. Hirson, Partner - Real Estate, Alcohol Beverage Control and Hospitality Law

Kevin M. Hirson is a Partner at WKGJ and practices in the Real Estate, Alcohol Beverage Control and Hospitality Law groups at the firm. He provides services to a diverse group of clients, comprised of individuals and closely-held businesses that invest primarily in commercial real estate in the New York Metropolitan area. Kevin represents clients in the acquisition, financing, leasing, and alcoholic beverage licensing of such properties and also advises clients concerning the ongoing legal issues affecting business-related operations. Many clients represented by him are in the hospitality field, including hotels, restaurant, nightclubs, and catering establishments. Kevin's retail leasing practice has led to the firm's ongoing representation of a number of retail store clients with numerous locations in New York City and the Northeast.

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