

# Patricia A. Bollman, A Professional Law Corporation

May, 2009

Volume 3, Issue 1

## Inside this issue:

|   |   |
|---|---|
| <b>DREAM Act</b>                            | 2 |
| <b>Firm to Attend AILA Conference</b>       | 2 |
| <b>New DS-160</b>                           | 2 |
| <b>Modified E-Verify Program Post-poned</b> | 3 |
| <b>Immigration Reform Likely</b>            | 3 |
| <b>New H-2B Regs</b>                        | 3 |
| <b>Worksite Enforcement</b>                 | 4 |

## Our Firm Can Assist You With:

- **Employment based immigrant and nonimmigrant petitions**
- **Family based immigrant petitions**
- **Follow up with USCIS on pending petitions**
- **I-9, LCA and PERM audits**
- **I-9 compliance training programs for staff**
- **General immigration questions and document review**

## New I-9 Form Goes Into Effect

The implementation of the regulation requiring employers to use a new Employment Eligibility Verification Form (Form I-9) went into effect on April 3, 2009. The new form was originally scheduled to become effective on February 2, 2009 but the United States Citizenship and Immigration Services ("USCIS") delayed its implementation for 60 days at the request of the Obama Administration.

The new I-9 is the ONLY version of the form employers can use to satisfy the employment eligibility verification process. The new I-9 as well as the new *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* are available on the USCIS website.

Aside from using the form itself, the most important changes are:

- The new I-9 must be used for new hires and reverifications when required for existing em-

ployees.

- All documents presented must be valid and unexpired. Expired documents allowed under previous versions are no longer acceptable.
- Form I-766 will be the only Employment Authorization Document acceptable as a List A document. The other EADs are no longer acceptable.
- Foreign passports containing certain machine readable immigrant visas

have been added to the List A documents. This has very limited applicability as it applies only to certain immigrant visas containing a temporary I-551 notation, which is evidence of an individual having received permanent residence status (a "green card").

It is important for all employers to make sure that they are using the current version of the I-9 and that their personnel are properly advised of the new changes. If you have any questions regarding the changes in the I-9 or the I-9 compliance procedure in general, we would be happy to assist you. We can answer your questions as well as provide training to management and staff on I-9 compliance procedures. Having the appropriate I-9 procedures in place will protect you in the event Immigration and Customs Enforcement ("ICE") initiates an I-9 Inspection of your company's I-9s.

## Fiscal Year 2010 H-1Bs Still Available

Unlike the past two years, the FY 2010 H-1B quota was not filled on the first day on which filings were allowed (April 1, 2009). The fact that the H-1B quota has not been met is a reflection of the current economic conditions in the

country. Some feel that this is an indication that a quota is not needed for H-1Bs. This is because H-1B filings reflect the realities of the marketplace and the marketplace regulates the numbers by its current conditions.

Although the H-1B quota is likely to fill in the next several weeks, anyone still contemplating filing an H-1B for an employee can still do so. If you have any questions about the H-1B quota or H-1B filings, please contact our office.

# DREAM Act Introduced in Congress

Senators Dick Durbin (D-IL) and Richard Lugar (R-IN) and U.S. Representatives Howard Berman (D-CA) and Lincoln Diaz-Balart (R-FL) introduced the Development, Relief and Education for Alien Minors Act ("DREAM Act") on March 26, 2009. This legislation gives thousands of young undocumented immigrants, who have grown up in the United States an opportunity to secure legal status.

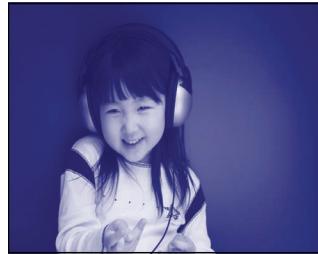
The DREAM Act would allow undocumented immigrant adults to obtain citizenship by meeting certain criteria: They must have come to the United

States before they turned 16, be under the age of 30, have lived in the United States for at least five years, graduated from high school or passed an equivalency exam, have "good moral character" and

either attend college or enlist in the military for two years. It is estimated that this legislation would impact 65,000 undocumented young people each year.

The DREAM Act would afford these young adults, who have grown up in the United States the opportunity to contribute to America in a productive way and achieve lawful permanent resident status.

We will continue to monitor this important piece of immigration legislation and keep you advised of its progress in future newsletters.



The DREAM Act will help young undocumented adults who came to the U.S. as children.

**Watch for our next newsletter where we will share with you the important information that we learned at the American Immigration Lawyers Association Annual Conference.**

## Firm to Attend AILA Annual Conference

Our firm will travel to Las Vegas, Nevada the first week of June to attend the American Immigration Lawyers Association's ("AILA") Annual Conference. This three day conference is a premier educational event and the largest interaction of the immigration law community. AILA's 2009 Annual Conference offers close to a 135 educational sessions

covering all areas of immigration and naturalization law.

The Annual Conference also provides access to Interagency Government panels which will allow us to obtain the most current information on procedures and practice tips from the United States Citizenship and Immigration Services, the Department of Labor, the Depart-

ment of State and Immigration and Customs Enforcement. In addition, we will also be updated on pending and anticipated immigration legislation.

The entire firm will be attending this event so that we can "divide and conquer" and attend the majority of the sessions offered in our practice areas.

## DS-160 Replacing DS-156 and DS-157

The new DS-160 Online, Non-immigrant Visa Electronic Application will eventually replace current nonimmigrant application forms DS-156, 157, 158 and related forms. The roll out of the new DS-160 will be gradual. Therefore, not all U.S. Embassies and Consulates will be required to use the form at the same time.

U.S. Embassies and Consulates currently using the new DS-160 are the following: CANADA: Vancouver and Montreal only, IRELAND: Dublin, LIBYA: Tripoli, MEXICO: Nuevo Laredo, Ciudad Juarez, Matamoros and Monterrey only and HONG KONG.



Hong Kong is now using the DS-160

If you are a foreign worker planning to travel outside the U.S. and need to get a new visa, it is important to check the embassy website for an updated list of Embassies and Consulates that have implemented use of the DS-160 and to access that form online if necessary.

# Modified E-Verify Program Postponed

The U.S. Chamber of Commerce announced on January 27, 2009, that an agreement had been reached with the Department of Homeland Security ("DHS") to delay implementation of the modified E-Verify Program until May 21, 2009. In addition, the DHS has asked that proceedings challenging the modified E-Verify Program be halted in order to allow the Obama Administration to review the modified rule.

The agreement in the court challenge to the modified E-Verify Program came after the new White House Chief of

Staff Rahm Emanuel stated in a memo that agencies should "consider extending for 60 days the effective date of regulations that have been published in the *Federal Register* but not yet taken effect." The Office of Management and Budget and the counsel

for DHS were asked to apply the Emanuel memo to the modified rule.

Under the modified E-Verify Program, most federal contractors and subcontractors would be required to reverify their current workforces. Moreover, primary contractors would be required to oversee subcontractors' compliance with the E-Verify Program and would be subject to vicarious liability for their subcontractors' failure to comply. If there are any additional delays in this regulation's effective date we will publish them in our next newsletter.



**Modified E-Verify Program Postponed until May 29, 2009**

## Comprehensive Immigration Reform Likely

All indications from the Obama Administration are that it will pursue its campaign pledge for comprehensive immigration reform. Going hand in hand with the concept of comprehensive immigration reform is the Department of Homeland Security's ("DHS") announced intention to recalibrate its

worksite enforcement actions to focus more on criminal prosecutions of employers who knowingly hire unauthorized workers. Likewise, the Senate Subcommittee on Immigration, Border Security and Citizenship has commenced hearings to examine common sense solutions to fixing America's broken immi-

gration system. The general concept being set forth is that once comprehensive immigration reform is implemented, there will be a zero tolerance for employer's who hire undocumented workers.

We will continue to monitor this situation closely and advise you of any pending legislation.

**"The stars seem to be aligning for a major push toward comprehensive immigration reform legislation this year."**  
**Charles H. Kuck,**  
**President**  
**American Immigration Lawyers Association**

## New H-2B Regulations in Effect

New H-2B regulations became effective January 18, 2009 and substantially change the rules governing the application process for H-2B visas.

Some of the key areas of change in the regulations are as follows:

- Allowing petitions to be for unnamed workers with a showing of cause.
- Reducing from 6 months to 3 months the time an H-2B worker who has spent 3 years in the U.S. must spend outside the U.S. before being eligible for another H-2B visa.
- Requiring an approved temporary labor certification in connection with all H-2B filings.
- Workers must be from one of the 26 countries eligible for participation in the H-2B program.
- Prohibiting H-2B employers from imposing certain fees on prospective H-2B workers and requiring H-2B employers to notify USCIS when a worker is no longer employed on his H-2B visa.

**Patricia A. Bollman,  
A Professional Law  
Corporation**

3414 Canal Street  
Suite B  
New Orleans, LA 70119

987 Howard Avenue  
Biloxi, MS 39530

Mailing Address:  
P.O. Box 13707  
New Orleans, LA 70185-3707

Phone: 504-218-5887  
Fax: 504-304-0890  
E-mail:  
patricia@bollmanfirm.com

**Specializing in  
employment based  
and family based  
Immigration and  
Naturalization law  
and the general  
representation of  
small businesses.**

**We are on the web!**

**[www.bollmanfirm.com](http://www.bollmanfirm.com)**

### **Just a note....**

***This issue of the newsletter is filled with articles on recent changes in immigration law as well as potential future changes in the law. The expectation among immigration practitioners is that there will be comprehensive immigration reform in the next year or two which will be a program of amnesty or legalization for undocumented foreign nationals coupled with more stringent worksite enforcement provisions. In addition, there are ongoing efforts to resolve some of the problems in the current immigration regulations. We should expect to see extensive changes in immigration law in the foreseeable future with an emphasis on change in the areas of employment based visas, worksite enforcement and undocumented foreign nationals.***

***We want you to know that we monitor these changes on a daily basis and, in addition to updating you in our newsletters, we always contact our clients when a change in the law will impact their individual situation. However, if you have any concerns about any issues related to you or your company's immigration matters, please feel free to contact us and we will be happy to help you assess the situation.***

**Patricia Bollman**

## Worksite Enforcement—The Trend Continues

U.S. Immigration and Customs Enforcement ("ICE") and Border Patrol officers are continuing the trend of using aggressive enforcement tactics in order to discourage the employment of undocumented foreign workers. Department of Homeland Security Secretary Janet Napolitano has stated that future worksite enforcement operations would be more focused on the employer, not the employee.

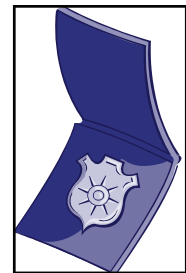
Given this statement, employers need to take the time now to make sure that they have a comprehensive immigration compliance policy in place. As part of the compliance policy, Human Resource and other administrative employees should be thoroughly trained

in I-9 compliance issues. Written policies on I-9 compliance should be in place and I-9 audits should be conducted regularly. If the company uses subcontractors, all subcontract agreements should be reviewed to make sure that they are consistent with the company's immigration policies. Taking these steps will be considered mitigating factors in the event of a worksite enforcement operation.

Despite their best efforts, companies can become the target of a worksite enforcement operation. Thus, a response plan is another critical element of a company's comprehensive immigration policy.

Our firm has extensive experi-

ence in working with companies to develop immigration compliance policies, conducting I-9 audits and training personnel in I-9 compliance issues. We are also experienced in dealing with ICE in the event of a workforce enforcement operation. Call our office if we can assist you in any of these areas.



**ICE continues to step up its worksite enforcement actions in the Gulf Coast area.**