



Immigration News

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A Professional Law Corporation**



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Inside this issue:

Comprehensive Immigration Reform	2
ICE serves 180 NOIs on Random Employers	2
Report Shows E-Verify Does Not Work	2
Recent Case on I-9 Paperwork Violations	3
FY2011 H-1Bs to be Accepted on April 1st	3
PERM Statistics	3
I-9 Training Seminar Available	4

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
- Employment authorization and advance parole extensions
- Immigration related training sessions for HR staff
- General immigration questions and document review

USCIS Begins H-1B Onsite Investigations

The United States Citizenship and Immigration Services' ("USCIS") Office of Fraud Detection and National Security ("FDNS") has recently commenced an H-1B assessment program. The purpose of this program is to detect, deter and combat immigration benefit fraud.

The H-1B assessment program involves an unannounced site visit by a FDNS Officer. FDNS has contracted with several private investigative firms nationwide to conduct the onsite investigations. The purpose of the onsite visit is to verify information contained in an H-1B petition that is either pending or has been approved. The onsite visit can occur at either the employer's principal place of business or the H-1B nonimmigrant's work location listed on the I-129 petition.

FDNS does not need a subpoena to conduct these investigations as the regulations governing the filing of the H-1B petition by the employer allow the USCIS to conduct broad investigations relating to the petition.

The employer is allowed to have immigration counsel present by telephone and should request same when the investigator first arrives.

Most site audits last less than an hour. USCIS has referred 20,000 cases for onsite audits. The cost of site investigations is funded by the \$500 fraud fee paid with the filing of the initial H-1B petition.

The investigators have a standard procedure that they follow during these onsite investigations. If you have H-1B



USCIS is conducting onsite inspections to verify the accuracy of H-1B petitions.

employees, it is important that you have your public access files available and that the H-1B employee is working at the location listed on the H-1B petition and at the stated wage or higher. If you have any questions regarding your H-1 petitions or how these onsite investigations are conducted, please contact our office.

ICE Continues I-9 Enforcement Strategy

In November, 2009 Immigration and Customs Enforcement ("ICE") served 1000 Notices of Inspection ("NOIs") on businesses nationwide. These NOIs advise employers that ICE will audit their Form I-9s and related records in order to determine compliance with employment eligibility verification laws.

This follows on the heels of ICE

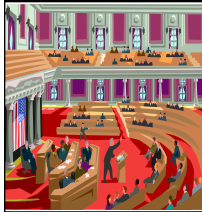
serving over 600 NOIs on businesses in July, 2009. These NOIs are part of the Obama Administration's directive to crack down on employer I-9 violations.

Due to this increased ICE activity, it is imperative for employers to review their Form I-9s, together with their policies and procedures for completing and retaining them.

Employers need to be sure that they are satisfying all legal requirements with respect to their I-9s before being served with an NOI.

See the article on page 4 of this newsletter regarding the services our firm can provide to help your business make certain it is fully compliant with I-9 regulations.

Comprehensive Immigration Reform



Congress is expected to take up Comprehensive Immigration Reform in the upcoming months.

With the passage of the healthcare bill, it is expected that comprehensive immigration reform will now move to the front burner.

In anticipation of that, Senators Graham and Schumer have presented their blueprint for what is expected to be comprehensive immigration reform legislation. Their proposal is based on a four pilared framework as follows:

- Ending illegal employment through biometric Social Security cards;

- Enhancing border and interior enforcement;
- Managing the flow of future immigration to correspond to economic realities; and
- Creating a tough but fair path toward legalization for the 11 million people currently in the U.S. without authorization.

The senators' legalization plan for the 11 million undocumented immigrants clearly indicates that those applying

will have to register, undergo background checks, and pay a fine and back taxes as well as other steps to become eligible for the program. These components are essential to distinguishing legalization from an amnesty program.

The plan also mentions that those applying for legalization will have to go to the "back of the line" in terms of the immigrant visa quota. Those who filed family or employment petitions and have been waiting for years for green cards would be processed first.

ICE Serves 180 Notices of Inspection in Five States – Random Employers



This initiative is part of ICE's increased focus on holding employers accountable for their hiring practices.

On March 2, 2010, Immigration and Customs Enforcement ("ICE") issued Notices of Inspection ("NOIs") to 180 businesses in Louisiana, Mississippi, Alabama, Arkansas and Tennessee. The notices alert business owners that ICE will be inspecting their hiring records to determine whether or not they are complying with employment eligibility verification laws and regulations. These NOIs were random au-

ditions and are not targeted at employers who were previously under investigation.

Employers are required to complete and retain a Form I-9 for each individual they hire for employment in the United States. This form requires employers to review and record documents which establish the individual's identity and ability to work in the United States.

"ICE is committed to establishing a meaningful I-9 inspection program to promote compliance with the law. This effort is a first step in ICE's long term strategy to address and deter illegal employment," said Raymond R. Parmer, Jr, acting special agent in charge of the ICE Office of Investigations in New Orleans.

Independent Evaluation Finds E-Verify Does Not Work



Inaccuracy rate of E-Verify for unauthorized workers is about 54%

An evaluation of the E-Verify program conducted in December, 2009 by Westat, an independent research company, confirms what many immigration practitioners have been saying for years—E-Verify does not work!

The new evaluation of the federal employment authorization program found that E-Verify only detected unauthor-

ized workers about half of the time. The evaluation found the program could not confirm whether the documents workers were presenting were their own. As a result "many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify" according to Westat's report.

Westat found that the

"inaccuracy rate for unauthorized workers is about 54%".

A full copy of Westat's evaluation can be found on the U.S. government's E-Verify website.

Ignorance of the Law Not a Defense to I-9 Paperwork Violations

In *US v. LFW Dairy Corp.*,¹⁰ OCAHO 1120 (July 1, 2009), the Department of Justice’s Office of Chief Administrative Hearings Officer (“OCAHO”) ruled that a “good faith” defense was unavailable in I-9 paperwork violation cases.

OCAHO also ruled that complying with an Immigration and Customs Enforcement (“ICE”) subpoena or Notice of Inspection (“NOI”) was not a defense to a Notice of Intent to Fine (NIF) issued by ICE after an I-9 inspection.

The Administrative Law Judge

observed that while ignorance or inadvertence of the law may be considered a mitigating factor when ruling on the NIF, it was not a defense to liability on an I-9 paperwork violation.

This ruling suggests that employers will not be able to avoid significant fines based on cooperation after the fact with ICE, good faith or ignorance of the law.

The ruling underscores the importance of businesses making certain that its I-9s are completed correctly and that an I-9 has been completed for

every current employee. Internal I-9 audits and appropriate training of HR or personnel staff is critical in order to avoid paperwork violation fines in the event of an I-9 NOI .

Fines for I-9 paperwork violations can be substantial. The cost of being proactive and obtaining training for your staff and conducting an internal audit is small when compared to the fines that can be assessed for each I-9 which contains a paperwork violation. These fines range from \$400 to \$900 per I-9.



Recent Administrative Law Judge Ruling on I-9s eliminates ignorance of the law as a defense to I-9 paperwork violations.

Fiscal Year 2011 H-1Bs to be Accepted Beginning April 1st

The United States Citizenship and Immigration Services (“USCIS”) announced that it will begin accepting FY 2011 H-1B petitions beginning April 1, 2010. There is an annual quota of 65,000 H-1B visas with an additional 20,000 H-1B visas allocated for beneficiaries who have a masters degree or higher from a United States educational institution.

In past years the quota has filled on the first day of filing.

Last year the quota did not fill until December, 2009, a reflection of the economic struggles of many US businesses.

Employers contemplating hiring someone on an H-1B visa which would be part of the FY 2011 quota should be aware that preparation time for an H-1B petition is substantially longer than in the past. Changes in the regulations and procedures for obtaining prevailing wage determinations

and LCAs (the first two steps of the H-1B process) have changed and now take much longer.

Although USCIS had allowed a grace period which allowed H-1B petitions to be filed without a certified LCA, that grace period has ended and USCIS has rejected requests that this be extended. Therefore, employers should begin the process as soon as they have settled on a qualified candidate.



“USCIS announced it will not extend the period in which it accepted H-1B petitions with uncertified LCAs.”

Current PERM Statistics

The Department of Labor (“DOL”) has provided the following statistics regarding the current processing of PERM applications. Approximately 58,000 PERM applications are currently pending. Of these, 54% are under final review, 38% are in audit, 6% are on appeal and the remainder are awaiting business existence checks.

Many clients with pending PERM applications find the current processing times, particularly on those applications that have been chosen for audit, frustrating. We continue to work with professional organizations to lobby for more staffing at the DOL to handle the processing and review of these PERM applications.


Extended processing times

defeat the purpose of the online PERM system which was to make the system more efficient and to process applications in a reasonable period of time.

Be assured that we monitor all pending PERM applications of our clients regularly and will contact you as soon as we receive any information on the status of your application.



The Department of Labor backlog on PERM applications is frustrating.


PATRICIA A. BOLLMAN,
A PROFESSIONAL LAW
CORPORATION

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WE ARE ON THE WEB!

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Just A Note...

Thanks to your continued patronage and referrals our firm is growing and to accommodate our growth we will be relocating our New Orleans office on April 17, 2010. Our new office is conveniently located in Metairie in the office building next to the New Orleans District Office for the United States Citizenship and Immigration Services.

Our new address will be:

3616 South I-10 Service Road W.

Suite 111

Metairie, LA 70001

Our telephone numbers and email addresses will remain the same.

We look forward to working with you and seeing you at our new location. As always, if there is anything we can do to assist you, please contact us.

Patricia

I-9 Training Seminar Available

Patricia A. Bollman, APLC now offers a comprehensive 3 hour PowerPoint presentation which we use to train your HR and Personnel staff in all of the regulations related to Form I-9. This includes how to correctly complete the Form I-9, retention and destruction policies for Form I-9, how to correct an I-9, reverification rules as well as reviewing common errors made on the I-9.

The presentation also contains information on appropriate corporate immigration compliance policies, tips for setting up required office procedures for the calendaring of reverification dates, the maintenance of active and terminated employees' I-9s and calculation of the destruction date for I-9s.

Each person attending the seminar receives a handout designed to be used as a reference source after the seminar.

The I-9 training seminar can be presented at your business office to as many members of your staff as you choose or you can send members of your staff to one of the seminars we hold in the area at local hotels and which are open to our clients.

Our firm also has other services which are designed to assist your business in I-9 compliance. We can perform an I-9 audit of your business's I-9s, we can work with your staff to assist them in setting up the procedures required in order to properly update and

maintain I-9s and we can assist in preparing an Immigration Compliance Policy for your business or review your policy to make certain it is fully compliant.

Immigration and Customs Enforcement ("ICE") conducted over 1600 I-9 Notices of Inspection in 2009. Random audits are now the protocol for ICE based on policy directives from the current Administration. The cost of the I-9 seminar is substantially less than the fines for incorrect I-9s.

If you would like to receive information on any of our I-9 services, please contact Patricia Bollman or Mike Greaney at our office.



This article provides all the details of our comprehensive I-9 training seminar.