FOSTERQUAN, LLP
THE COMPREHENSIVE IMMIGRATION LAW FIRM

IMMIGRATION UPDATE©

April 26, 2011

This Immigration Update© from FosterQuan, LLP contains important information regarding the following:

1. SENATOR GRASSLEY CALLS FOR B-1 VISA PROGRAM INVESTIGATION

2. DOL ORDERS MILLIONS IN FINES AND BACK WAGES FOR H-1B LCA VIOLATIONS

1. SENATOR GRASSLEY CALLS FOR B-1 VISA PROGRAM INVESTIGATION

Senator Charles Grassley (R-Iowa) has called on the Departments of State and Homeland Security to investigate the B-1 visa program and its alleged use by employers "to recruit foreign workers who are then not subject to the [annual H-1B] cap and the prevailing wage requirements of the H-1B program." In a letter to Secretary of State Hillary Clinton and Secretary of Homeland Security Janet Napolitano, Sen. Grassley questioned the "B-1 in lieu of H-1B" policy currently in place. In his letter he asserted, "Under this low threshold [for the B-1 visa], a company could import workers via the B-1 business visitor visa and evade the H-1B visa cap and prevailing wage requirements that would otherwise apply to such workers so long as the workers could show that their paychecks were still coming from the foreign company."

Sen. Grassley referred to a U.S. employee's formal complaint against Infosys which recently received publicity for its allegations that Infosys management in India used the B-1 business visitor visa program to circumvent H-1B program restrictions. According to Sen. Grassley, the U.S. worker's complaint alleged that Infosys was importing foreign workers as B-1 business visitors under the guise of attending meetings rather than working for wages as employees of a U.S. company, which is forbidden under the statute and regulations governing the B-1 visa program.

In past sessions, Sen. Grassley has introduced more restrictive H-1B legislation and has called on the Department of Homeland Security to apply greater scrutiny in the adjudication of H-1B visa petitions. Following the Senator's previous letter complaining of lenient CIS adjudications, the CIS implemented more restrictive protocols and procedures for inquiring into the bona fides of H-1B jobs and the employer-employee relationship between H-1B petitioners and beneficiaries. Judging from CIS reaction to previous complaints by Sen. Grassley, we might expect his recent inquiry to result in greater scrutiny or additional protocols in the review of B visa applications and the admission of B-1 business visitors at the U.S. ports of entry.

Employers who have previously made use of the B-1 visa program, particularly in lieu of pursuing H-1B visas for professional workers who perform work in the United States, should examine their companies' use of the B-1 visa program to ensure that the program is used in accordance with its purpose and limitations. Business visitor visa applicants may also expect a

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greater level of scrutiny during the visa application process and could be asked to supply additional information.

If your employee is refused a visitor visa or requires assistance in the visa application process, contact your FosterQuan immigration attorney. Your attorney is prepared to assist in preparation of the necessary supporting documentation to demonstrate the company's lawful use of the B-1 visa program for legitimate business purposes as provided in the Immigration & Nationality Act and the Foreign Affairs Manual.

As always, FosterQuan will continue to monitor Department of State and Department of Homeland Security enforcement activities and will provide additional information as it becomes available via future Immigration Updates© and on our firm's website.

2. DOL ORDERS MILLIONS IN FINES AND BACK WAGES FOR H-1B LCA VIOLATIONS

The U.S. Department of Labor (DOL) recently ordered the Prince George's County School District to pay $1.7 million in penalties and $4.2 million in back wages to more than 1,000 foreign school teachers employed under the H-1B visa program. The DOL found that the school district had illegally required the teachers to pay the expenses associated with their H-1B petition process.

At issue are the requirements that employers bear certain costs associated with the H-1B petition process. Generally, private employers, and some public employers, must bear the cost of the American Competitiveness and Workforce Improvement Act (ACWIA) H-1B filing fee of $1,500, or $750 for employers with 25 or fewer employees. The DOL has recently indicated that employers must also pay the required $500 Fraud Prevention and Detection filing fee. Generally, employers are prohibited from passing these costs on to the H-1B employee.

Employers are also not permitted to recoup the legal fees and other government filing fees associated with the H-1B petition process if doing so would reduce the H-1B employee's wage or salary below the required "prevailing wage" for the position in the geographic location. Violations are punishable by fines, back pay awards, and potential debarment from future filings. Additionally, petitioners found to be "willful violators" must first recruit for U.S. workers and make additional attestations prior to filing an H-1B petition.

Prince George's County School District plans to appeal the DOL findings and has noted that, since becoming aware of the requirement, the school district has paid the required fees for H-1B petition filings rather than passing those on to the school teachers.

If your company has agreements in place with H-1B employees concerning the payment or reimbursement of legal fees or filing fees associated with the H-1B petition process, please contact your FosterQuan immigration attorney to ensure that the agreement is proper and does not seek payment or reimbursement beyond that permitted by regulation. As always, FosterQuan will continue to monitor DOL enforcement activity and will provide future updates via FosterQuan Immigration Updates© and on our firm's website.

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