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

HEAVY SCRUTINY CONTINUES FOR B-1 BUSINESS VISITOR VISA PROGRAM

As FosterQuan reported in a recent Immigration Update© bulletin, the B-1 business visitor visa program has come under fire from critics and under scrutiny from the U.S. Department of State and the U.S. Department of Homeland Security.

Business visitors to the United States may be admitted in B-1 status under a B visa or B-1/B-2 visa. Ordinarily such admissions do not involve work activity and are for the purpose of engaging in business meetings with clients or colleagues or for attending seminars or conferences.

The Seattle Times reported that U.S. Customs & Border Protection (CBP) recently refused admission to 15 Russian engineers who were allegedly traveling to the United States to work as contractors for Boeing. The engineers were refused admission and returned to Russia. While U.S. CBP officers offered few details, the *Times* reported more details offered by the engineers union at Boeing, the Society for Professional Engineering Employees in Aerospace (SPEEA). According to the *Times*, SPEEA union officials alleged that the Russian engineers were lower-paid contractors who rotate into the United States to perform work alongside Boeing's union engineers, with "anywhere from 100 to 300" of the contractors working in the United States at a given time. The picture painted by the union officials is one of regular, systematic use of lower-paid foreign engineers to perform work ordinarily performed by U.S. workers, in lieu of recruiting and hiring additional U.S. workers.

In some limited circumstances, the B visa may be used properly for certain limited work activity so long as the worker will not be paid by U.S. sources and would otherwise meet the general requirements for H-1B nonimmigrants. The U.S. Department of State Foreign Affairs Manual specifically allows for such use of the B visa program, and some U.S. Consulate websites offer specific, detailed information concerning proper admission with a B visa in lieu of an H-1B visa to perform short-term work in the United States.

The Boeing story is one of a handful that have surfaced this year concerning what is alleged to be widespread abuse of the B-1 in lieu of H-1B visa program. One U.S. Consular Official recently indicated off the record that the consular post would no longer be issuing specially annotated "B-1 in lieu of H-1B visas". Rather, the visas would be issued as simple B-1/B-2 visas. Without the special annotation, the decision to admit a visitor under the B visa program in lieu of requiring an H-1B visa would be entirely left to the discretion of the U.S. CBP immigration inspectors upon admission to the United States.

The Department of State's reluctance to issue the special "B-1 in lieu of H-1B" visa annotation, coupled with the CBP's high scrutiny of business visitors and refusal of admission to high-profile arrivals

should serve as a warning that employers should be on guard against inappropriate use of the B visa program. Systematic use of the B visa program for the regular rotation of foreign workers to the United States to fill positions that would otherwise be filled domestically in the employer's regular workforce is deemed inappropriate. Employers should avoid use of the program for:

- recurring assignments of the same or similar nature;
- assignments involving the same type of work as an employer's regular U.S. workforce;
- large numbers of transferees during a short period of time;
- lengthy assignments;
- assignments when the apparent goal of the transfer would be the circumvention of the requirements of an appropriate work-authorized visa.

Whenever any visa program faces the heightened scrutiny that the B-1 visa program now faces, both technical compliance *and* appearances are important. Before using the B-1 visa for short-term work, FosterQuan recommends that each individual applicant and his or her intended work assignment be vetted to ensure that:

(1) the particular B-1 admission would be appropriate under the Foreign Affairs Manual; and,

(2) the admission, when viewed together with the company's overall profile and record of visa usage, will not likely risk establishing a usage pattern which may call into question the employer's overall immigration compliance.

For assistance in evaluating the propriety of proposed business visitor travel, or to initiate the process for a work-authorized visa petition and application, please contact a FosterQuan attorney. As always, FosterQuan will continue to monitor the latest enforcement initiatives and will provide additional information via our firm's website and future **Immigration Updates©** as appropriate.