FOSTERQUAN, LLP
THE COMPREHENSIVE IMMIGRATION LAW FIRM

IMMIGRATION UPDATE©

September 17, 2010

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

1. IMMIGRATION AND CUSTOMS ENFORCEMENT CONTINUES TO STEP-UP WORKSITE ENFORCEMENT, WILL SERVE MORE THAN 500 NEW NOTICES OF INSPECTION
2. OLD DWI AND ALCOHOL-RELATED OFFENSES MAY IMPACT VISA APPLICATION AT U.S. CONSULATES WORLDWIDE
3. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) PROVIDES ADDITIONAL INFORMATION REGARDING FORM I-9 COMPLETION WITH PUERTO RICAN BIRTH CERTIFICATES
4. RELIEF FOR F-1 HAITIAN STUDENTS APPROVED BY U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (ICE)
5. NEW VISA APPLICATION SCHEDULING SYSTEM FOR U.S. CONSULATES IN CANADA

1. IMMIGRATION AND CUSTOMS ENFORCEMENT CONTINUES TO STEP-UP WORKSITE ENFORCEMENT, WILL SERVE MORE THAN 500 NEW NOTICES OF INSPECTION

FosterQuan attorneys have recently met with special agents and forensic auditors of the Work Site Enforcement Unit of U.S. Immigration and Customs Enforcement (ICE) in response to a noted recent increase of Notice of Inspection and Subpoenas for Form I-9 documents. These government officials have indicated that there is a headquarters directed push to re-invigorate and re-commit to worksite enforcement. The officials also indicated that there would be a focus on critical infrastructure with a particular focus on all phases of the U.S. energy industry.

In addition, ICE has confirmed to the American Immigration Lawyers Association (AILA) that the agency is serving more than 500 Notices of Inspection (NOI) to companies throughout the U.S. this week. This recent activity confirms that ICE intends to continue full pursuit of Form I-9 employer sanctions as a principal mechanism for immigration enforcement.

Enforcement efforts by ICE could lead to both civil and criminal penalties. This wave of large-scale ICE investigations continues the trend toward tougher employer sanctions. All employers are encouraged to seek counsel and an independent Form I-9 audit in order to take appropriate, proactive steps to mitigate potential liability before an audit notice is served.

Businesses that have already received audit notices or subpoenas should contact qualified, independent, immigration counsel for assistance in mitigating liability and avoiding potential criminal penalties in cases involving significant violations or patterns of compliance failures.

For more information on conducting an independent Form I-9 audit or for advice and consultation in connection with an audit notice, please contact your Foster Quan immigration attorney. Response deadline to a Notice of Inspection is usually only 3 days, so immediate action is required upon receipt of any ICE Notice of Inspection.

As always, Foster Quan will continue to monitor developments in the area of workforce compliance and will provide additional information via our firm's website and future Immigration Updates©.

2. OLD DWI AND ALCOHOL-RELATED OFFENSES MAY IMPACT VISA APPLICATION AT U.S. CONSULATES WORLDWIDE

All applicants for U.S. visas or for admission into the United States must demonstrate that they are not inadmissible, which includes demonstrating that there is no criminal or health-related ground of inadmissibility. Some criminal offenses do not constitute a criminal ground of inadmissibility, but may in fact lead to a finding of inadmissibility on health-related grounds.

Medical Examination Required before Visa Issuance for Applicants with DWI or DUI Offenses within Five Years Prior to Visa Application

Alcohol-related criminal offenses, such as driving while intoxicated and driving under the influence of alcohol, are offenses which in some cases, may result in a finding of inadmissibility on health-related grounds. At the very least, such an offense within five years prior to visa application will likely result in additional scrutiny and a mandatory examination by a physician prior to issuance of a nonimmigrant or immigrant visa. Panel physicians will be required to determine whether the individual's use of alcohol constitutes abuse and thus potentially a danger to the applicant or others.

The U.S. Department of State has recently revised the guidance to consular officers adjudicating visa applications for applicants with alcohol-related offenses. Officers are now instructed to refer applicants to a panel physician for examination on health-related grounds of inadmissibility if they have had a single DWI or DUI in the past *five* years, or any two such offenses in the past ten years. Previous guidance called for examination only in the event of a single offense in the past *three* years, or multiple offenses in the past ten years. The impact of the new guidance will be the referral of many more applicants to physicians for purposes of undergoing a required medical examination.

Applicants Should Plan for Additional Delay in Visa Issuance

Applicants with a previous DWI or DUI offense within the past five years, or multiple offenses in the past ten years, should be prepared, at a minimum, to undergo additional inquiry and a medical examination before issuance of a nonimmigrant or immigrant visa at any U.S. Embassy or Consulate worldwide. Such applicants should schedule their visa application appointments well in advance of their desired travel dates in order to accommodate the additional delay in visa issuance.

Applicants with any criminal offenses should always consider the potential impact of those offenses on their immigration status and on eligibility for a nonimmigrant or immigrant visa. For more information and an evaluation of the immigration-related impact of criminal offenses under both the criminal and health-related grounds of inadmissibility, contact your FosterQuan immigration attorney. As always, FosterQuan will continue to monitor procedural changes and will make such information available via future Immigration Updates and on our firm's website at www.fosterquan.com.

3. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) PROVIDES ADDITIONAL INFORMATION REGARDING FORM I-9 COMPLETION WITH PUERTO RICAN BIRTH CERTIFICATES

On July 1, 2010, the Vital Statistics Office of the Commonwealth of Puerto Rico began issuing new, more secure certified copies of birth certificates to U.S. citizens born in Puerto Rico because of a new Puerto Rico birth certificate law. After September 30, 2010, all certified copies of Puerto Rico birth certificates issued before July 1, 2010, will become invalid. However, U.S. Citizenship and Immigration Services (USCIS) noted in recent guidance that employers should not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for I-9 purposes and whose employment eligibility was verified on the Form I-9 before October 1, 2010.

USCIS noted that the new law does not affect the U.S. citizenship status of individuals born in Puerto Rico. It only affects the validity of certified copies of Puerto Rico birth certificates. The guidance notes:

New Employees

- All certified copies of Puerto Rico birth certificates are acceptable for Form I-9 purposes through September 30, 2010.
- Beginning October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.
- Beginning October 1, 2010, if an employee presents for List C a birth certificate issued by the Vital Statistics Office of the Commonwealth of Puerto Rico, the employer must look at the date that the certified copy of the birth certificate was issued to ensure that it is still valid.

Existing Employees

Employers must not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for Form I-9 purposes and whose employment eligibility was verified on Form I-9 before October 1, 2010.

Federal Contractors

Employers awarded a federal contract that contains the Federal Acquisition Regulation (FAR) E-Verify clause have special Form I-9 rules for the verification of existing employees.

- **If completing new Forms I-9 for existing employees,** certified copies of Puerto Rico birth certificates are acceptable as a List C document under the following circumstances:
    - Until October 1, 2010, all certified copies of Puerto Rico birth certificates are acceptable for Form I-9 purposes.

- Beginning October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.

- **If updating existing Forms I-9,** an employer must not ask an employee to present a new certified copy of a Puerto Rico birth certificate if the employee presented a certified copy of a birth certificate issued in Puerto Rico before July 1, 2010 that was valid and acceptable for the Form I-9 at the time it was presented.

How will this law affect the retention of documents with Form I-9?

The new law prohibits Puerto Rico employers from keeping original certified copies of birth certificates issued in Puerto Rico but allows employers to keep photocopies of these documents. Employers who choose to make photocopies of documents that their employees present when completing Form I-9 must do so for all employees, regardless of national origin or citizenship status.

For more information, employers may wish to review the newly-issued CIS guidance, released on September 9, 2010, which is available on the CIS website. As always FosterQuan will continue to monitor developments in connection with the completion of the Form I-9 Employment Eligibility Verification process and will provide additional information in future Immigration Updates©, and on our firm's website at www.fosterquan.com.

4. RELIEF FOR F-1 HAITIAN STUDENTS APPROVED BY U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (ICE)

U.S. Immigration and Customs Enforcement (ICE) has approved special relief for certain F-1 Haitian students who have suffered severe economic hardship as result of the January 12, 2010, earthquake in Haiti. This relief applies only to students who were lawfully present in the United States in F-1 status on January 12, and enrolled in an institution that is certified by ICE's Student and Exchange Visitor Program.

The suspension of certain regulatory requirements allows eligible Haitian F-1 students to obtain employment authorization, work an increased number of hours during the school term and, if necessary, reduce their course load while continuing to maintain their F-1 student status.

F-1 students granted employment authorization by means of the notice will be deemed to be engaged in a full course of study if they meet the minimum course load requirements specified in the notice.

"We want to ensure that students from Haiti, who were here at the time of January's tragic events, are able to concentrate on their studies without the worry of financial burdens created by the devastation of the earthquake," said Louis Farrell, director of the Student and Exchange Visitor Program. "These students have the full support of SEVP [the Student and Exchange Visitor Program] and designated school officials for assistance."

For more information, employers may wish to review the ICE press relief announcing the newly-approved relief measures, which is available on the ICE website.

As always FosterQuan will continue to monitor special immigration enforcement procedures and relief measures and will provide additional information in future Immigration Updates©, and on our firm's website at www.fosterquan.com.

5. NEW VISA APPLICATION APPOINTMENT SCHEDULING SYSTEM FOR U.S. CONSULATES IN CANADA

The U.S. Mission in Canada has transitioned to a new appointment scheduling system for applicants applying for U.S. visas. As of September 1, 2010, applicants may schedule an appointment, for no scheduling charge, on the new system's website. The Machine Readable Visa (MRV) application fee is still required and must be paid prior to scheduling an appointment.

Third Country Nationals Applying in Canada

Third country national applicants who reside in the United States are reminded that U.S. Consulates in Canada may refuse jurisdiction over an application and may require the applicant to return to his or her country of last foreign residence in order to apply for a U.S. visa. Applicants with criminal or immigration violations are generally encouraged to apply for U.S. visas in their home countries whenever possible.

As always, FosterQuan will continue to monitor changes in visa application procedures and will make new information available on our firm's website at www.fosterquan.com.