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

1. U.S. SOCIAL SECURITY ADMINISTRATION RESUMES SENDING "NO-MATCH" LETTERS TO EMPLOYERS

2. U.S. EMBASSY IN NEW DELHI CRACKS DOWN ON PERCEIVED BUSINESS VISITOR VISA FRAUD

1. U.S. SOCIAL SECURITY ADMINISTRATION RESUMES SENDING "NO-MATCH" LETTERS TO EMPLOYERS

On April 6, 2011, the Commissioner for the U.S. Social Security Administration directed the Administration to resume issuance of "No-Match" letters to employers, notifying employers of discrepancies between the Social Security Administration's records and the employer's records on employees, and thus alerting employers to a potential issue with an employee's authorized employment status.

The Social Security Administration (SSA) had discontinued such "decentralized correspondence," so-called "DECOR letters," to employers. The letters were discontinued following a lawsuit that challenged Federal regulations requiring insertion of "safe harbor" language notifying employers to take certain additional steps in order to avoid prosecution for knowingly employing unauthorized workers. That regulation has since been rescinded.

The SSA has decided to omit the offending language concerning the "safe harbor" provision that was the subject of litigation, and announced that letters will resume in accordance with prior practice before the failed regulatory effort.

Employers are reminded that an employer's failure to take appropriate action in response to a "DECOR" letter from SSA has always been a factor in any investigation alleging an employer's constructive knowledge that a worker's employment is not authorized. From this perspective, employers are not freed from potential liability for failure to respond to a DECOR letter and should always consult qualified immigration counsel concerning the appropriate response.

As always, FosterQuan will continue to monitor changes in SSA policies and procedures impacting on an employer's workforce compliance obligations and will provide further updates via future Immigration Updates© and on our firm's website at www.fosterquan.com.

2. U.S. EMBASSY IN NEW DELHI CRACKS DOWN ON PERCEIVED BUSINESS VISITOR VISA FRAUD

Following a finding of business visa fraud in applications filed by employees of several Information Technology companies in India, the U.S. Embassy in New Delhi suspended the companies from participating in the Embassy's Business Executive Program which allows for expedited visa appointment scheduling and interviews for employees of qualifying employers that send high volumes of business visitors to the United States each year.

The Embassy found that employees were applying for business visitor visas when employees should have applied for work-authorized visas. Embassy officials also reported an increase in L-1 and business visa denials at posts in India, alleging that the categories were used to circumvent the requirements of the H-1B visa, which fall under enforcement by both the U.S. Department of Labor and U.S. Citizenship & Immigration Services, and which require an employer's attestation that the hiring of an H-1B employee will not adversely impact the wages or working conditions of U.S. workers.

As always, employers are encouraged to ensure that all visa applicants abroad are applying for a visa that authorizes the type and scope of activity contemplated in the United States. B-1 visas in lieu of H-1B visas are, in limited circumstances, appropriate for short-term admissions to the United States when the individual otherwise would qualify for an H-1B visa but will receive all compensation from foreign sources. Even applicants who legitimately meet these requirements have encountered greater resistance to B visa issuance in recent years. U.S. consular officers are increasingly scrutinizing such applications, particularly in countries with high immigration rates and lower costs of labor, such as India.

An employer should take mental note of the frequency with which employees are asked to provide additional information, are issued "221(g) notices," and are denied business visas or other types of visas at U.S. consular posts abroad. A relatively high rate of visa denials, or even requests for further documentation could be a signal that the consulate is scrutinizing applications by a particular employer. If an employer notes a change in either the company's use of the business visitor visa as an option for multi-national employees, or in the U.S. Consulate's treatment of applications filed by employees, employers are advised to consult with qualified immigration counsel.

As always, FosterQuan will continue to monitor changes in practices and trends at U.S. Consulates abroad and will provide further information via future Immigration Updates© and on our website at www.fosterquan.com.