

# Labor Audit Frustrates Companies

Review Will Delay Green-Card Process For Some Big Firms

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Some of the nation's biggest companies are expected to face delays in securing green cards for some foreign workers due to a Labor Department audit that has sparked anger in legal and business circles.

The Labor Department announced this month that it was auditing labor applications filed by immigration law firm Fragomen, Del Rey, Bernsen & Loewy LLP of New York, which the department alleged had improperly advised some clients seeking permanent resident status, or green cards, for foreign workers.

People familiar with the firm said it has about 3,000 green-card applications pending on behalf of companies, including International Business Machines Corp., General Electric Co. and Bank of America Corp.

The audit is expected to delay those applications, the department said. GE said it has 70 applications subject to the audit.

"Our actions on behalf of our clients have at all times been lawful and proper," said Austin Fragomen Jr., the firm's chairman.

Gregory Jacob, the Labor Department's solicitor, said the department routinely audits applications for green cards "to ensure the integrity of the program." The audits typically delay the applications by no more than eight months, he said. The department hasn't indicated that Fragomen's clients engaged in wrongdoing.

At issue are Labor Department regulations that limit the extent to which immigration attorneys can advise companies in the green-card application process. Many companies recruit highly skilled foreign workers, especially in certain fields such as engineering and physical sciences. Foreign workers typically can remain in the U.S. on temporary visas only up to six years, prompting companies to sponsor the workers for green cards that would allow them to remain indefinitely.

As a condition for such green cards, companies must first certify to the Labor Department they haven't been able to find "minimally qualified" U.S. workers willing to fill the jobs at issue. The Labor Department contends its regulations limit the role lawyers can play in advising companies as to whether American workers can be deemed minimally qualified. In a recent statement, the department said these regulations safeguard "against the use of attorneys to find reasons not to hire U.S. workers."

The department's "new interpretation of the regulations has no basis in law and deprives the [Fragomen] firm's clients of their constitutional right to counsel," said Aaron R. Marcu, who represents the firm in the audit.

The Labor Department said the Fragomen firm improperly instructed some clients to contact Fragomen lawyers before hiring apparently qualified U.S. workers.

"There is no legitimate reason to consult with immigration attorneys before hiring apparently qualified U.S. workers," the department said in announcing it would audit every application Fragomen lawyers had filed for companies seeking green cards for foreign workers.

"We do not tell our clients whom to hire or not hire," said Mr. Fragomen.

The audit, according to immigration lawyers, could deter companies from asking attorneys to help them decipher Labor Department rules. "Attorneys need to be involved in [the green-card] process," said New York immigration lawyer Philip Kleiner. "It's more complicated than tax work."

The U.S. Chamber of Commerce has met with the Labor Department to voice its concerns about the audit. It could "adversely impact top companies," said Randy Johnson, a chamber vice president, who specializes in labor and immigration issues.

Mr. Jacob, the Labor Department's solicitor, said the department understands that companies need to talk to lawyers to ensure they abide by their legal duties. But "the assessment of whether someone is qualified for a job is not, as a general matter, a legal question," he said. Often, he said, companies don't really want to find qualified U.S. workers, because they already have a foreigner in the job. "We have to be particularly cognizant of the fact that there can be real incentives for employers to not make good-faith assessments of U.S. workers," Mr. Jacob said.