
Major immigration law firm under scrutiny

Did it help companies improperly disqualify Americans and hire immigrants?

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WASHINGTON - The nation's largest immigration law firm is under federal scrutiny over whether it helped major U.S. corporations disqualify American job applicants and give thousands of high-paying positions to immigrants.

The unprecedented Labor Department inquiry centers on Fragomen, Del Rey, Bernsen & Loewy — a New York firm at the forefront of a political effort to ease hiring of skilled foreign workers.

The Labor Department is auditing all pending applications for legal immigrant workers the firm has filed on behalf of its corporate clients.

Fragomen's prestigious client roster includes General Electric Co., IBM Corp., Cisco Systems Inc., Intel Corp. and Bank of America Corp., according to company publications and trade journals. The firm also represents The Associated Press on immigration issues.

The inquiry focuses on what advice the law firm gave its corporate clients. There was no indication the companies themselves are under scrutiny.

Improper advice may have been given

The Labor Department said that Fragomen may have improperly advised clients to contact a Fragomen attorney before hiring "apparently qualified" U.S. workers. The agency said lawyers can advise employers on how to follow the law in hiring immigrants but can't dissuade them from deciding a U.S. worker is qualified.

The audit focuses on what is known as the permanent foreign labor certification, or PERM, process. Companies normally use it to permanently hire legal immigrants who have been working for them on temporary visas. It essentially allows companies to sponsor workers for green cards, the first step to U.S. citizenship.

Before applying, companies must recruit and try to find a qualified U.S. worker for the same job. If they do, they can't hire the foreigner.

Fragomen said its lawyers have complied with the law and rejected the idea that lawyers can't give critical legal advice about the complicated process for permanently hiring legal immigrants.

"We do not tell our clients whom to hire or not to hire," the firm said in a statement, adding that it is negotiating with the Labor Department to end the audit.

The Fragomen statement also says that if the Labor Department interpretation of regulations is correct, it will bar "employers from getting the critical legal advice they need to navigate and comply with this complex regulatory process."

Thousands of applications may be part of audit

It's unclear exactly how many of Fragomen's applications the Labor Department is auditing as a part of the inquiry that was announced in early June, but the number is easily in the thousands.

With more than 200 attorneys, Fragomen is overwhelmingly the biggest player in an industry where firms with several dozen immigration attorneys are considered large firms.

In 2004, the last year the Labor Department made such information about law firms public, Fragomen lawyers filed more than 3,600 labor certifications — more than twice as many as its largest competitor.

The firm's managing director has also said Fragomen represents about half of the Fortune 100 companies. Last year, Fortune 100 companies submitted more than 5,300 applications. The jobs listed in the applications pay an average of \$80,000. And the largest group of applicants were from India.

The Labor Department audit is lending firepower to workers, unions and other groups, that for years have said U.S. workers are being replaced with cheaper immigrant labor.

"The reason an employer pays its lawyer \$3,000 to \$5,000 is because they need help in not finding qualified American workers," said Kim Berry, president of the Programmers Guild, an advocacy group that believes immigrant hiring rules are too lax.

The audit also has drawn objections from immigration attorneys, unnerving some who fear it could restrict when they can advise clients seeking to hire immigrant workers.

"The Department of Labor said this firm had engaged in something improper and then went on to describe something that no one in this field, employer or attorney, finds improper," said Crystal Williams, programs director for American Immigration Lawyers Association.

Some applications could be denied

The Labor Department said Fragomen may have broken the rules because some immigrant recruiting forms the law firm provides to the corporate clients say: "After an interview, should any of the applicants appear to be qualified for the position, please contact a Fragomen attorney immediately to further discuss the candidate's background as it relates to the requirements stated for said position."

The department said it would decide whether any of the pending applications submitted by Fragomen clients should be denied or subjected to additional government oversight.

"The department takes seriously its responsibility to ensure that American workers have access to jobs they are qualified and willing to do and that their wages and working conditions are not adversely affected by the hiring of foreign workers," the department said in its news release.

Labor Department officials refused interview requests. Spokesman Terry Shawn said the agency does not comment on ongoing legal matters, despite issuing news releases on the matter.

The American Immigration Lawyers Association criticized the audit and news releases announcing the inquiry.

"It is crystal clear that attorneys have a legitimate role in counseling employers during PERM recruitment, a highly structured process governed by detailed regulations and complex administrative case law," executives of the association said in a letter to Labor Secretary Elaine Chao.

Aman Kapoor, founder of Immigration Voice, whose membership includes many immigrant workers going through the labor certification process, fears the only outcome will be even longer waits for green cards.

"No matter which way you look at it," Kapoor said, "whether it's the fault of the lawyer, or the fault of the agency or the employer, the person who is going to suffer at the very end is going to be a legal, law-abiding, high-skilled immigrant."