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IMMIGRATION ATTORNEYS

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Employment Authorization for Certain H-4 Spouses

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Beginning May, 26, 2015, certain H-4 dependent spouses may apply for employment authorization. H-4 dependent spouses are spouses of H-1b specialty occupation visa holders. In order for the H-4 spouse to qualify, th H-1b principal must be seeking employment-based permanent residence in the United States.

Specifically, an H-4 spouse may apply for employment authorization whe the H-1b principal visa holder:

- **Is the principal beneficiary of an approved Form I-140 Immigrant Petition for Alien Worker, or**
- **Has been granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 as amended by the 21st Century Department of Justice Appropriations Authorization Act (AC21). AC21 permits H-1B non-immigrants seeking lawful permanent residence to work and remai in the United States beyond the six-year limit on their H-1B status.**

When to file an amended H-1b Petition

Recently the Administrative Appeals office (AAO) issued a precedent decision, which held that employers must file an amended H-1b petition when a new Labor Condition application (LCA) is required due to the H-1b employee changing worksite location.

Typically, a change in worksite location may change the workers eligibilit for H-1b status and may constitute a material change. When there is a material change in employment the H-1b petition must be amended.

Consultations/Inquiries

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OR
EMail

You must file an amended H-1b petition if your employee moves outside the metropolitan statistical area (MSA) for which the original LCA was approved. Once you file the amended petition your employee may move an commence work immediately at the new location and you do not have to wait for the final USCIS decision.

You do not have to file an amended H-1b petition if the H-1b worker moves within the MSA, for short term placements, or non-worksite locations.

July 2015 Visa Bulletin

Many of the visa categories have advanced, but there are no significant advances. This is an annually recurring theme as we are nearing the end of the government's fiscal year (September 30) and most visa numbers in mos categories have been used up for the year. Although unpredictable, historically, visa number advances slow down, come to a halt, and sometimes even retrogress towards the end of the year.

July 2015 Visa Bulletin

USCIS is Re-opening the 2nd Half FY 2015 Cap for H-2B Petitions

The USCIS provides 66,000 H-2b temporary worker visas each fiscal year, allocating 33,000 visas from October 1 to March 30 and 33,000 visas from April 1 to September 30.

Although USCIS thought it had received enough applications to satisfy th 66,000 annual cap; it determined on June 5, 2015 that it had not. Accordingly, USCIS re-opened the H-2b application period for the second half of fiscal year 2015.

ALERT – CAP FOR SECOND HALF OF FISCAL YEAR 2015 REACHED TODAY (6/16)

In addition, USCIS will consider petitions received on or after Oct. 1, 201 and/or requesting a start date on or after Oct. 1, 2015, towards the FY16 H 2B cap. These petitions will be subject to all eligibility requirements for FY1 H-2B cap filings. USCIS started accepting FY16 H-2B cap petitions on June 2015.

Washington Apple Orchard Fined Millions Following ICE Audit

SEATTLE – U.S. Immigration and Customs Enforcement (ICE) reached a multimillion dollar settlement Tuesday with Prescott-based Broetje

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Orchards, LLC, for its civil violations of the Immigration Reform and Contro Act related to verifying U.S. employment eligibility.

The Eastern Washington company will pay $2.25 million in civil penalties. This will remedy Employment Eligibility Verification form (Form I-9) issues uncovered during an administrative audit by ICE's Homeland Security Investigations (HSI). The latest audit conducted last summer revealed that nearly 950 of the company's employees were suspected of not being authorized to work in the United States.

"All businesses are expected to comply with the law and to ensure the information provided on a Form I-9 is accurate," said ICE Director Sarah R. Saldaña. Under the settlement agreement, Broetje Orchards does not admit to any criminal wrongdoing, but does acknowledge HSI auditors found that it continued to employ unauthorized workers after being advised by ICE those employees did not have permission to work in the United States. The agreement further calls for the firm to pay a lump sum fine to ICE within 30 days from the time the government invoices the company. On paying the fine, Broetje Orchards will be fully released from any further civil or crimina liability associated with conduct alleged by HSI to date.

"ICE weighs various factors when considering the appropriate penalty, including the interests of the community and local economy," said Raphael Sanchez, ICE's chief counsel in Seattle. "We believe this is a reasonable conclusion that holds this business accountable, but does not cripple its ability to provide jobs to lawful workers." Attorneys with ICE's Office of Principal Legal Advisor in Seattle negotiated the settlement on behalf of the government. Employers are required by the Immigration Reform and Contr Act to maintain for inspection original Form I-9s for all current employees. In the case of former employees, retention of forms is required for a period of at least three years from the date of hire or for one-year after the employee is no longer employed, whichever is longer. HSI conducts these audits in an effort to protect employment opportunities for the nation's lawful workforce and to target businesses that knowingly employ unauthorized workers.