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PARTNERS

COUNSEL FOR CORPORATE IMMIGRATION

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New Rule Affecting H-1B, L-1, and Other Petitions Begins February 20th

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Employers must certify their compliance with the U.S. Department of Commerce's and Department of State's "deemed export" rules, which govern the release of controlled technology to foreign persons, begins February 20, 2011.

The new rule affects petitions for Nonimmigrant Workers in the H-1B, H-1B1 Chile/Singapore, L-1 or O-1A categories. This new rule will require the petitioner to certify that either:

1. A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release proscribed technology or technical data to the foreign person; or
2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Employers must take into account that forms of exportation are not only limited to the traditional sense (shipping overseas), but also to the release of certain technology or technical data to any Foreign National within the United States. Any "Deemed" exports must have the correct authorization through a specialized export license issued by the corresponding government agency. This requirement will be enforced by the Export Administration Regulations (EAR) of the Department of Commerce and the International Traffic in Arms Regulations (ITAR) of the Department of State.

To understand how these rules apply to you or your company, please contact us for further consultation.

H-1B Filing for FY 2012 to Commence Soon!

The filing date for H-1B petitions for beneficiaries who are subject to the annual quota is quickly approaching. If you are sponsoring such an employee for H-1B status or are seeking sponsorship for yourself, now is the time to get started. New H-1B petitions for employment starting dates of October 1, 2011 can be submitted starting on April 1, 2011.

It is anyone's guess how long the H-1B quota numbers will last this year. The H-1B quota for FY2011 was reached on January 26, 2011. In previous years, the quota was reached on the very first day that filing period opened.

As most of our readers are all too well aware, the number of H-1B visas available for each fiscal year is insufficient to meet the needs of U.S. businesses that rely on the contributions of foreign workers. At Rosner Partners, we are constantly urging our clients to plan ahead in initiating the H-1B petition process for new hires who do not currently hold H-1B status with another employer.

Employers who have not done so already must evaluate company needs for the next year and determine if H-1B workers may be required to meet business needs. In particular, we urge our clients to consider the company's needs with regards to interns and employees currently working pursuant to F-1 Optional Practical Training who may require an H-1B petition to extend their employment authorization beyond its current expiration date.

"Plan ahead!"

In the event that H-1B candidates are identified, kindly send us the necessary information to get started, including the foreign national's resume, job title, job description, job location and salary. The sooner we receive this information, the sooner we can prepare the petition for timely submission to USCIS.

USCIS to Issue Combined Employment Authorization and Advance Parole Card for Adjustment of Status Applicants.

On February 11, 2011 USCIS announced that it is now issuing a combined Employment Authorization (EAD)/Travel Authorization on a single card for certain Adjustment of Status applicants. The card will resemble the current EAD, but it will include text stating, "Serves as I-512 Advance Parole." The issuance of this combined card will not happen in all cases for all applicants. It will only be issued when the I-765 and I-131 applications are filed concurrently with or after the filing of an I-485, Application for Adjustment of Status (a "green card").

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