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Immigration Law Update

Current Developments in Immigration

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

Visa Processing for Third-Country Nationals in Canada Temporarily Suspended

U.S. Embassies and Consulates in Canada have temporarily suspended the processing of visas for third-country nationals due to increasingly heavy demand by Canada-based visa applicants. The seven U.S. visa processing posts in Canada have indicated that they will be unable to accept such cases from June-August 2014.

Canadian posts encourage such applicants to seek appointments elsewhere in the world, such as in the applicant's home country. The Department of States has advised that emergency cases may still seek consideration for scheduling an interview at a Canada post.

Visa Bulletin Advancement

The Department of State has indicated that significant advancement in the employment-based second preference visa category is possible for Indian nationals in the coming months. In the July 2014 Visa Bulletin, the EB-2 category for Indian nationals advanced nearly four years to September 1, 2008 bringing welcome relief to the thousands of individuals waiting for permanent residency. Rosner, Ortman and Moss Partners, LLC keeps close track of the Visa Bulletin and foreign nationals' priority dates and will alert impacted individuals of any progress as this issue unfolds.

Tax Reminder for Employers with Employees Moving from F-1 to H-1B Status

This is a reminder to employers that employees in F-1 status working pursuant to authorized optional practical training (OPT), are not subject to FICA taxes. However, any individual who subsequently changes status to H-1B will be subject to FICA taxes. Employers are urged to contact Rosner, Ortman and Moss Partners, LLC to confirm when a change of status is effective for specific employees.

FDNS Site Visit Season

With the H-1B Cap Season now over, and several freshly-minted H-1B employees set to start on October 1, 2014, the USCIS Office of Fraud Detection and National Security (FDNS) is continuing its practice of conducting unannounced site visits at H-1B worksites. Site visits are being conducted by private contractors hired by the FDNS and are likely to take place after an H-1B petition has been approved for an employee. The investigators prefer to "surprise" petitioners, usually arriving without any warning. Investigators are generally looking to confirm two things: (1) the employer actually exists, and (2) the H-1B beneficiary is a "legitimate" employee. They will usually take a picture of the building as evidence the employer exists. They may ask how many employees the company has, if they can speak to the H-1B employees and check their pay records. They have the power to ask to inspect the "public file" set-up for each H-1B worker. Investigators are reported to be professional and polite and do not inquire as to the nature of the business beyond the simple H-1B inspection. In the event that your business is subjected to an FDNS onsite visit, we strongly suggest that you contact our office before speaking with investigators. Investigators are instructed to cooperate with outside counsel if requested by the employer. Our experience speaking to investigators has been generally positive. Be sure to ask for the investigator's name and employer in the event of a visit. If you would like further advice on how to handle an H-1B site visit or on proactively reviewing H-1B files in anticipation of such a visit, we encourage you to contact us. Please note that similar inspections for L-1A and L-1B status holders are on the horizon.

For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.

Sincerely,
Rosner, Ortman & Moss Partners, LLC

The Caxton Building
812 Huron Road, Suite 601
Cleveland, Ohio 44115
T: (216) 771-5588
F: (216) 771-5894
immigration@rosnerlaw.com

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