



International Assignees

Legal Issues for Relocation Professionals

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Presenters

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Agenda

- **U.S. Immigration: Comprehensive Immigration Reform and Enforcement Initiatives**
- **International Update – Legal/Immigration Developments**
- **Developments in L-1 Intracompany Transferee Visa Category**
- **Trends in Short-Term Assignments and Stealth Expats**
- **Recent Developments: Travel Initiatives**



Return of Comprehensive Immigration Reform

- Comprehensive reform endorsed by President Obama
 - Item 3 or 4 on national agenda (Healthcare, Energy and Supreme Court nomination)
 - “Immigration Summit” scheduled for June 25, 2009
 - Current focus on legalization program for undocumented workers
 - Other aspects: temporary workers; family/employer based visa reform; and enhanced border and worksite enforcement
 - Labor Union support of immigration reform
 - Legalization of the status of illegal immigrants;
 - Opposition to temporary or guest-worker programs;
 - Establishment of national commission to determine the number of permanent and temporary workers allowed based on labor market demand



Recent Immigration Legislation

- Stopping Trained in America Ph.Ds from Leaving the Economy Act (STAPLE Act) (H.R. 1791)
- Reuniting Families Act (S. 1085)
- Uniting American Families Act (H.R. 1024/S.424)
- New Employee Verification Act (NEVA) (H.R. 2028)
- Illegal Immigration Enforcement and Social Security Protection Act of 2009 (H.R. 98)
- H-1B and L-1 Visa Reform Act (a/k/a Durbin-Grassley Bill) (S.887)



Impact of Economic Stimulus on H-1B Provisions

- Employers that receive funds under the Troubled Asset Relief Program (TARP) or Section 13 of the Federal Reserve Act (FRA) subject to newly-enacted hiring requirements for H-1Bs.
 - Good faith recruitment
 - Non-displacement of U.S. workers
- Does not apply to employees currently working for the employer in H-1B status or another nonimmigrant classification.



Change of Course for Worksite Enforcement

- Target employers for arrest and prosecution rather than employees.
 - February 24th raid of Yamato auto part plant in Bellingham, Washington
 - 27 of 28 employees released
 - Ongoing investigation of employer
- Secretary Napolitano announced new guidelines for workplace immigration enforcement.



International Update

- Global economic downturn = foreign governments controlling access to their labor markets
 - Quotas restricting access
- Increased focus on compliance and revenue generation



Canada

- Effective February 2009, employers seeking a labor market opinion (LMO) are required to advertise on Service Canada's National Job Bank for a minimum of 14 calendar days, or during the 3 months prior to applying,
 - Must make recruitment efforts that are consistent with the practice for the occupation.
 - Replaces regionally-based Occupations under Pressure List system – required only demonstration of reasonable recruitment efforts.
- Employers must demonstrate ongoing efforts to recruit workers from communities that traditionally face employment barriers (e.g. older and disadvantaged workers).



European Union

- May 25, 2009 - the Council of the European Union (EU) approved the creation of the "EU Blue Card".
 - Allows qualifying, highly-skilled non-EU nationals to reside and work for up to 4 years (renewable) in any EU member state, except for the United Kingdom, Ireland and Denmark.
 - Valid only for one EU country
 - Blue Card holder and family can live, work and travel in the EU
 - Permanent residence after 5 years of legal and continuous residence in EU
 - Probably effective by 2011/2012 in most EU countries



United Kingdom

- New restrictions for Tier 1 workers (highly skilled foreign nationals)
 - **Increase requirement from Bachelor's to Master's degree**
 - **Minimum level of prior earnings raised from £16,000 to £20,000**
- Tier 2 (general workers)
 - **Enhanced resident labor market test requirements**
 - **Advertise position through JobCentre Plus and use 1 other advertising method under the UK Border Agency's industry-specific Codes of Practice.**
 - Labor market tests do not apply to intra-company transferees
- Migration Advisory Committee: current review of immigration policy in light of economic circumstances
 - Tier 2 only available for Shortage List Occupations?
 - Removal of Intra-company transferee provision and require labor market test for all assignees?



China

- **Shenzhen: New Immigration Regulations**

- Employers sponsoring foreign nationals for work permits in Shenzhen are now required to attest that no Chinese nationals are available for the proposed position.
- In addition, employers are now required to submit a copy of a letter of termination when canceling a work permit.



International Update

- **Mexico** – Effective February 10, 2009, all visitor and work visa applicants must undergo a personal visa interview at a Mexican consular post.
- **Japan** – Due to high rate of unemployment, government is providing payouts of Y300,000 (\$3,111 USD) to immigrants to depart the country
 - Y200,000 (\$2,073 USD) is being paid for each dependent



Brief Overview of L Visa Category

- **Intracompany Relationship:**
 - Parent, subsidiary, affiliate, branch or joint venture
- **Prior Employment Abroad:**
 - 1 year within 3 years preceding transfer to U.S.
- **Qualifying Capacity:**
 - Executive, Managerial (L-1A)
 - Specialized Knowledge (L-1B)
- **Duration:**
 - L-1A = 7 years
 - L-1B = 5 years
- **Spousal work authorization available**
- **Petition can be processed at consulate, border or USCIS service center**



Developments in L-1 Visa Category

- L-1 Visa Reform Act and Off-Site Placement of L-1B Workers
- Increased remands/denials in L-1A and L-1B classifications
 - Initial petitions and extensions of stay
 - L-1As: Must submit extensive documentation demonstrating that position is executive/managerial in nature
 - L-1Bs: Specialized knowledge must be advanced, proprietary and narrowly held within the company
 - applying a standard similar to O-1 alien of extraordinary ability



Overview of B-1 Business Visitors

- Employed, paid from, and resident abroad
- Activity in U.S. benefits foreign employer
 - Business meetings, observation/training, joint development projects
 - Not to be used to come to U.S. to start work while work authorization petition is pending



Short-Term Assignments: L-1 vs. B-1

- Issues to Consider:
 - Purpose of trip
 - Length of trip
 - Maintaining a foreign residence with no intent to abandon it
 - Possess financial means adequate to stay in the U.S. without working



Other U.S. Visa Options

- H-1B for specialty occupations
- E-1/2 trade/investment visa
- TN NAFTA Professionals for Canadians and Mexicans
- H-1B1 for Singapore and Chile
- E-3 visa for Australia



Stealth Expats: Legal Issues

- Why does it occur?
 - Increased use of short-term assignments, extended business travel and commuters
 - Economic/Business Realities vs. Government/Political Realities
- Exposure risks include
 - Visa/work permit issues
 - Tax issues
 - Reputational
- Lack of tracking mechanisms during period of enhanced global enforcement



ESTA for B-1/WVP BUSINESS VISITORS

- Electronic System for Travel Authorization (ESTA)
- Visa Waiver Program
 - 34 participating countries
 - 90-day maximum stay
 - Ineligible for Change of Status
- Pre-travel clearance through the online application (<https://esta.cbp.dhs.gov/>)
- ESTA travel authorization valid for two years or until expiration of passport, whichever occurs first
- Valid for multiple entries
- B-1/B-2 visa from U.S. consulate required if ESTA application denied.



WESTERN HEMISPHERE TRAVEL INITIATIVE

Passport Requirements for Travelers

- As of June 1, 2009, citizens of U.S., Canada and Bermuda will be required to present a passport or other acceptable travel document when entering the United States by land or sea from Canada, Mexico, the Caribbean region or Bermuda.
- U.S. Passport Card valid for entry to the U.S. at land border crossings and sea ports of entry when traveling from Mexico, Canada, the Caribbean region, and Bermuda.



Trusted Traveler Programs

- **NEXUS:** expedited travel via land, air or sea for approved members between the U.S. and Canada.
- **SENTRI:** expedited travel for approved members between the U.S. and Mexico.
- **FAST:** expedited travel for approved commercial truck drivers between the U.S. and Canada and U.S. and Mexico borders.
- **Global Entry:** expedited screening and processing for pre-screened international travels entering the U.S.



US-VISIT

- **Entry controls at all U.S. airports and seaports**
- **Entry-exit controls to be implemented at all U.S. Border Crossings eventually**
 - **Pilot program for exit controls in Atlanta and Detroit**



Effects of H1N1 Flu on International Travel

- On June 11, 2009, the World Health Organization raised the worldwide pandemic alert level to Phase 6 in response to the ongoing global spread of the novel influenza A (H1N1) virus.
 - A Phase 6 designation indicates that a global pandemic is underway.
 - U.S. and international government agencies are advising travelers to take precautions and monitor the local situation for developments.
- Though the current virus is reportedly not as severe as previous flu strains (such as the avian flu), U.S. and foreign governments could take further travel and immigration-related measures as the situation evolves
 - Possibility of travel delays and/or quarantine.
- www.cdc.gov/H1N1Flu/



Questions?



Thank you!

