



Immigration and Nationality Law

Insights and Developments in Immigration Law

Spring 2007

Immigration Legislation Developments-- 2007

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Within weeks of the start of the 110th Congress, two significant immigration bills were introduced. The Agricultural Jobs, Opportunity, Benefits, and Social Security Act of 2007, introduced by Senator Patrick Leahy (D-VT) has gained strong bi-partisan support. More importantly, Senator Majority Leader Harry Reid (D-NV) introduced the Comprehensive Immigration Reform Act of 2007 announcing that immigration reform was one of the Senate's top 10 priorities and should include a path to earn legalization for undocumented immigrants.

On February 28, 2007 while testifying before the Senate Judiciary Committee, Commerce Secretary Carlos M. Gutierrez and Homeland Security Secretary Michael Chertoff vowed to work with Congress to ensure passage of immigration legislation this year but publicly distanced themselves from proposals that would place most undocumented immigrants on a path to citizenship.

The hope is that legislation similar to last year's Senate Bill 2611 which was introduced by Senator Arlene Specter (R-PA) bill will be passed. S. 2611 was supported by many immigrant right groups because there was a proposed path to citizenship. This would allow undocumented immigrants who have been in the country for more than five years, estimated to be 7 million in number, to apply for citizenship by paying fines and back taxes. However, undocumented aliens would be required to pay taxes for only three of the previous five years. U.S. citizens or permanent residents who tried to pay only three of the previous five years of taxes would be violating the law and subject to prosecution. Undocumented aliens who have been in the country for 2 to 5 years, numbering around 3 million, would be allowed to stay in the country without fear of deportation, but after 3 years would have to leave the U.S. and could apply for citizenship at border check points.

Those in the country for under 2 years would be required to return to their original nations. Thus, with some waiting, 10 million undocumented immigrants can become citizens, if they so desire. The fine is around \$2000.00, but some sources say it might be higher. Furthermore, under S.2611, undocumented aliens would be forgiven their Social Security fraud, even though such fraud is normally punishable by fines of up to \$500,000.00 and five years in prison.

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US Crackdown on Employers of Illegals Intensifies

Historically, immigration enforcement has focused on people who are in the United States illegally. During 2006, immigration became a very heated political topic and focused more attention than usual on the issue.

Some surprising statistics began to emerge as people began to debate what to do about illegal immigration.

While enforcement of legal immigration has not lessened, one aspect of enforcement has increased dramatically. Increasingly the U.S. Department of Homeland has been investigating and prosecuting employers that have undocumented foreign workers. While some business interests have lobbied the U.S. Congress hard to reduce the penalties, their arguments have become weaker as more information comes to light. Among the reasons that politicians and the public are becoming less sympathetic are the unfair business practices and the tax evasion represented by undocumented workers.

This week, federal agents moved in on illegal operations in 17 states and Washington D.C., arresting more than 195 people.

While the operators of some very prominent businesses were charged with employing illegal immigrants, the real story was the staggering amount of money represented by the methodical tax evasion.

One company was charged with pocketing \$18.6 million in federal taxes during 2006 alone.

Another firm based in Florida is charged with more than \$54.3 million in federal tax evasion between 2001 and 2005. These numbers do not include the state taxes and other associated expenses used to pay for luxury homes, yachts, cars, racehorses

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and other items.

The Florida company made its money by providing maintenance, janitorial and maid services to very prominent chains of hotels and restaurants, such as Hard Rock Cafe, ESPN Zone and House Of Blues. More than 23 specific federal charges were brought against the firm for harboring illegal immigrants, tax evasion and conspiracy. In 2006 there was an effort at immigration reform, largely stalled by draconian demands by the Republican-controlled House of Representatives. As the year wore on, the effort was deadlocked going into the November elections.

With a new, Democratically controlled 110th Congress in power, immigration reform is once again near the top of the agenda. With 12 to 13 million illegal aliens estimated to already be in the United States, the effort is a delicate one.

Enforcement and penalties for being in the U.S. illegally has been increased, but now also are efforts against one of the reasons that enables illegal immigration - access to jobs.

In all of 2005, approximately 190 or fewer employers were arrested and charged with illegal immigration-related activities. It was a record year, until 2006, when approximately 720 were arrested and charged.

With February not quite finished yet, already well more than 200 have been arrested and charged.

The message is clear - employing illegal immigrants is not a safe business practice anymore. Numerous fully legal businesses are cheering, hoping that finally business owners that obey the law can compete in a fair an open market.

http://www.workpermit.com/news/2007_02_23/us/crackdown_illegal_employers.htm

What Is a Labor Certification?

Foreign nationals who are skilled or educated and who have job offers have the possibility of immigrating to the United States. Typically, the prospective employer must first obtain a labor certification and approval of a petition. The labor certification process is one of the most complex of all immigration-related procedures. This article will make you aware of some of the requirements and procedures in this intricate and time-consuming process, but it's not a substitute for legal advice. Be sure to consult with an attorney experienced in immigration matters to be certain that your case is prepared correctly.

An approved labor Certification (LC) is a document issued by the U.S. Department of Labor (DOL) certifying that:

(See p. 3)

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- An employer needs the foreign worker's skills and abilities.
The employer has tried to recruit U.S. workers for the position. The employer must advertise and perform other recruitment efforts to try to find someone who is already a U.S. worker and who is ready, willing, and able to fill the open position.
- The employer has offered the position at the normal or prevailing wage.
- The employer has found no qualified U.S. workers
- Candidates who respond to the recruitment are presumed to qualify; the employer must convince DOL that they do not. If DOL is not convinced, the LC will not be issued and the foreign national will not be able to immigrate to the United States.

The Labor Certification Process:

Establish a valid employee/employer relationship.

Although the LC process can be done for persons who are outside the United States, most LCs are begun for persons who are already in the United States working for an American employer.

Determine the minimum requirements

The key to the LC process is to decide what the true minimum requirements to the position are. The requirements generally must be normal to the occupation, must not be overly restrictive, and not more than the worker had when hired into the job offered.

Determine the prevailing wage

The salary offered must be at least the prevailing wage, as determined by DOL.

Analyze responses to recruitment

Any responses to the recruitment must be evaluated carefully.

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The employer can reject applicants only for lawful, job-related reasons.

Processing times

Processing times vary from a few months to a few years, depending on the location of the position.

The New PERM Labor Certification Process:

In March 2005, DOL implemented a new way to process LCs. The program Electronic Review Management (PERM) program is an attestation and audit process whereby employers seeking permanent labor certification conduct advertising and recruitment prior to filing the LC application.

The application process consists of one form, the "Application for Permanent Employment Certification" (Form ETA 9089), which requires a number of attestations as well as

Common Misunderstandings:

An approved LC is proof there is a shortage of U.S. workers. It is only a first step in obtaining permanent residence (Green Card) status.

- It does not give authorization for a foreign national to remain in the United States.
- It does not "legalize" anyone's stay in the United States.
- Its does not guarantee permanent residence.
- It does not grant permission to work.

Proposed Increases of Immigration Fees

On January 31, 2007, U.S. Citizenship and Immigration Services (USCIS) officials announced proposed fee increases that would mark the largest spike in history.

USCIS says the fee hikes will allow it to hire more staff and upgrade its creaky system so applications can be approved faster. Among its proposals is to raise the application fee for citizenship from \$330 to \$595 and the fee for legal permanent residency from \$325 to \$905.

The justification given by the USCIS for this proposed increase is that the additional revenue is necessary to reduce processing delays, strengthen security and fraud prevention and investigation efforts, and to clear the extensive backlog of applications. This rationale, however, contains very serious flaws.

The USCIS determines its backlog by counting only those applications that are ready for USCIS adjudication. However, all permanent resident and naturalization applications are subject to FBI review.

Because those applications (*see p.4*)

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awaiting this review are not yet ready for adjudication, they are determined by the USCIS to be out of its control, and therefore are not reflected in its estimation of backlogged cases. Furthermore, in 2006, the USCIS had already received appropriated funds to supplement filing fees and ease backlogs on applications.

The Bush administration has proposed increasing immigrant application fees by an average of 66 percent — some as high as 80 percent:

Application type	Current fee	Proposed fee	Change
I-190: Replacement of Green Card	\$190	\$290	+53 percent
I-129: Petition for Alien Fiancé	\$170	\$455	+167 percent
I-485: Application for Permanent Residence	\$325	\$905	+178 percent
N-400: Application for Naturalization	\$330	\$595	+80 percent
I-130: Petition for Alien Relative	\$190		

Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Illinois law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matter by this newsletter.