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## Immigration Law Update

### Current Developments in Immigration

Dear Julie,

*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.*

### The Top Seven Takeaways From The President's Executive Actions Announced Last Week

Last week the media reported on the President's executive actions and how these will affect the vast undocumented immigrant population in the United States. Left mostly unreported were the profound changes proposed for the legal immigration process for employment-based immigrants and key visa categories. Below we provide a summary, focusing on employment-based immigration matters. For those interested in the issue of undocumented immigration, skip to item #7.

1) **Employment Authorization for H-4 Dependents** - In the next month or two USCIS is expected to finalize a rule that will extend employment authorization to certain spouses of H-1B nonimmigrants. The proposed rule, which was published several months ago, restricted this group to spouses of H-1B nonimmigrants who were in the latter stages of the permanent residence process. It remains to be seen whether this group will be expanded further in the final rule.

2) **Adjustment of Status Applications Possible Even for People Stuck in the Immigrant Visa Backlog** -- This proposed rule, which will impact more than 400,000 people, will have far-reaching consequences for employment-based immigrants, particularly those from India and China, where backlogs easily reach 5-10 years. The rule would enable these immigrants and their dependents to file for adjustment of status before their priority date becomes current, which will allow for employment authorization for their dependents. It would permit increased job mobility during the permanent residence process for those affected. In addition, standards for green card portability will be articulated in a clearer, more predictable fashion, facilitating job promotions and job mobility. These changes will need to be made through the regulatory process, which is likely to take several months to complete. In tandem with these changes, USCIS and the U.S. Department of State are going to revamp the immigrant visa process/Visa Bulletin to ensure that all immigrant visas issued by Congress are issued to eligible individuals when demand is sufficient

3) **Promoting Entrepreneurship and Research and Development in the United States** - USCIS will seek to expand the National Interest Waiver route to permanent residence "with the aim of promoting its greater use for the benefit of the U.S. economy." A specific effort will be made to ease the immigration path for entrepreneurs, inventors and researchers who will bring innovation and job creation to the U.S. economy. This process will be accomplished by regulation. It is likely to take more than six months to be completed.

4) **The U.S. Department of Labor Will Review and Revise the PERM Labor Certification Program** - The goal of this review, which is expected to be completed by Spring 2016, is to speed up and improve the PERM process. Among the issues to be considered in this review are the following: (1) Identifying labor force occupational shortages and surpluses and aligning recruitment requirements accordingly; (2) Modernizing the U.S. worker recruitment requirements; (3) Establishing processes to clarify employer obligations to ensure PERM positions are fully open to U.S. workers; (4) Consideration of premium processing options and other varying processing timeframes; and (5) Revising the process for addressing immaterial errors in application preparation.

5) **USCIS Will Issue a New L-1B Policy Memorandum** - Responding to concerns of vague guidance and inconsistent adjudication standards concerning what constitutes "specialized knowledge," USCIS will issue a long awaited policy memorandum to provide clearer guidance on these issues.

6) **Increasing OPT Time for F-1 Students in the STEM categories** - USCIS will publish a new regulation that will increase the period of employment authorization for graduating students in the STEM (Science, Technology, Engineering, and Math) fields. This regulation, which is not likely to be published for at least six month, will make it easier for graduating students in those fields to work in the U.S. while waiting to switch to another visa status.

7) **Refining Enforcement Priorities for Undocumented Immigrants** - In recognition of the fact that the undocumented population (more than 11 million) vastly exceeds the Federal resources allocated for the deportation process (400,000 per year are deported) as well as the community ties, family ties, and contributions to the U.S. economy that undocumented immigrants make, the Obama administration has instituted a multi-faceted plan to establish deportation enforcement priorities and enhance border security.

- **Deportation Priorities/Prosecutorial Discretion** -- Top priorities for deportation will be in the following order (1) threats to national security, border security and public safety, (2) people convicted of significant misdemeanors or a series of misdemeanors and new immigration violators, and (3) those who have been issued a final order of removal after January 1, 2014. Prosecutorial discretion is to be exercised in cases that do not fit these priorities removing the

threat of deportation for millions of undocumented immigrants with stronger ties to the United States. Immigration detention policies will be revised accordingly.

- **Border Security** -- Border security will be advanced through the creation of three Joint Task Forces, incorporating elements of the U.S. Coast Guard, CBP, ICE and USCIS. Also, the White House will seek for Congress to hire 20,000 additional Border Patrol agents.
- **Deferred Action** -- Approximately 4.4 million undocumented immigrants will be eligible for a status called Deferred Action. Deferred Action does not grant these individuals legal status or a route to permanent residence/citizenship. It simply codifies that they will not be deported in the next three years, and that they can apply for work authorization for this period. Two major new groups will qualify: (1) Undocumented immigrants who arrived as children before January 1, 2010 ("Dream Act Beneficiaries") and (2) Undocumented immigrants who have been present in the U.S. since before January 1, 2010 and who have a U.S. citizen or permanent resident child as of the date of the President's announcement. This will be implemented in the next six months.
- **Provisional Waiver Process to be Expanded** - This waiver process is likely to be expanded to apply to intending immigrants who can establish that denial of a waiver will result in an "extreme hardship" to a U.S. citizen or lawful permanent resident spouse or parent. These changes will be made in the upcoming months through the regulatory process.

*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.*

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