LitwinLaw Update

October 1, 2009

Headlines:

➢ **1. USCIS Says Fees May Rise** -A decline in revenue from a decrease in applications could lead to higher application fees.

➢ **2. Labor Dept. Issues FAQ on LCAs** - The Department issued a FAQ about the new iCERT Portal and the newly redesigned ETA Forms 9035 and 9035E.

➢ **3. Be Prepared for Surprise Enforcement Site Visits** - Employers should prepare for unannounced, random immigration-related worksite inspections.

➢ **4. USCIS Issues Guidance on E-Verify Federal Contractor Rule** - Companies awarded a contract with the E-Verify clause are now required to enroll in E-Verify within 30 days of the contract award date.

➢ **5. October Visa Bulletin Shows EB-3s Backlogged 7 Years** - EB-3 cut-off dates are in 2001 and 2002.

➢ **6. USCIS Announces New Web Site Design** - USCIS says its redesigned Web site, in English and Spanish, is more customer-centric.

➢ **7. Global Entry Program Now Available at Detroit Airport** - Global Entry allows pre-screened, approved, registered travelers to use automated kiosks to receive expedited processing upon arrival.

➢ **8. Missouri Plant Pays $450K Fine for Hiring Undocumented Workers** - A Missouri poultry-processing plant where 136 undocumented workers were arrested in 2007 recently paid a $450,000 administrative fine as a result of a worksite enforcement investigation.

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Details...

1. USCIS Says Fees May Rise

Alejandro Mayorkas, the new director of U.S. Citizenship and Immigration Services, said recently that the agency has received a significantly lower number of applications lately and that the resulting decline in revenue could lead to higher application fees. At a press conference in Albuquerque, New Mexico, on September 24, 2009, Mr. Mayorkas said there is a $118 million budget shortfall and that he has asked for Congress's help. "The potential fee increase is not something that is taken lightly. We understand very well its impact upon the community. In my personal view, it would be something of [a] last resort."

Mary Giovagnoli, director of the Immigration Policy Center, noted that an increase in fees could result in even fewer applicants. "Congress has been really reluctant to revisit this whole idea that we shouldn't be trying to finance our immigration system basically solely on the backs of applicants. I think the agency and the applicants are both kind of caught between a rock and [a] hard place."

Fee increases were imposed two years ago, but a budget gap remains. For more on the drop in applications and its effect on USCIS' budget, see http://www.abqjournal.com/news/state/apimmigrationfees09-14-09.htm.

A news article about Mr. Mayorkas' press conference is posted at http://www.abqjournal.com/news/state/apimmigfeesmayorkas109-24-09.htm.

A USCIS Q&A on paying immigration fees and what types of payment are accepted is available at http://www.uscis.gov/files/article/Check_Instructions.pdf.

For more guidance on how to pay immigration fees, see http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3850a99ba78af110VgnVCM1000004718190aRCRD&vgnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD.

2. Labor Dept. Issues FAQ on LCAs

The Department of Labor recently issued frequently asked questions (FAQ) about the new iCERT Portal and the newly redesigned ETA Forms 9035 and 9035E. Topics discussed include how to correct an invalid federal employer identification number after denial of a labor condition application (LCA) on that ground; filing on behalf of a new company created through a merger,

acquisition, or sale; what contact information to enter for employer point of contact; how to enter a prevailing wage survey on the new LCA; and how to withdraw an LCA after receiving certification via the iCERT Portal.

The FAQ is available at http://www.foreignlaborcert.doleta.gov/pdf/FAQ_iCERT_090909_%20FINAL_Elissa_090909.pdf.

A press release is available at http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/website_redesign.pdf.

3. Be Prepared for Surprise Enforcement Site Visits

As part of the Department of Homeland Security's stepped-up enforcement efforts that include increased audits of businesses to detect immigration and labor law violations, employers are reporting random, unannounced visits by the Fraud Detection and National Security Division (FDNS) of U.S. Citizenship and Immigration Services. FDNS inspectors often use a script of questions and ask to speak with an employer representative and any foreign workers. FDNS is also using what it learns to add fraud indicators to its database in an effort to identify patterns and potential fraud during adjudications.

The Alliance of Business Immigration Lawyers (ABIL) recommends that employers prepare for immigration-related worksite inspections by developing and implementing robust compliance policies, auditing their I-9s and H-1B public access files, and planning in advance how to respond when immigration agents visit. ABIL recommends designating an immigration compliance officer, who should contact immigration counsel immediately upon an FDNS site visit, and implementing an investigation response plan in advance that includes everyone from upper management to receptionists. Contact Litwin & Associates for help in preparing for potential onsite FDNS inspections.

4. USCIS Issues Guidance on E-Verify Federal Contractor Rule

U.S. Citizenship and Immigration Services (USCIS) reminded federal contractors and subcontractors that effective September 8, 2009, they "may be required" to use the E-Verify system to verify their employees' eligibility to work in the United States if their contract includes the Federal Acquisition Regulation (FAR) E-Verify clause. The regulation states that federal contracts will be awarded only to employers who use E-Verify to check employee work authorization.

The E-Verify federal contractor rule extends use of the E-Verify system to cover both federal contractors and subcontractors, including those who receive American Recovery and Reinvestment Act funds. Applicable federal contracts awarded and solicitations issued on or after September 8 will include a clause committing government contractors to use E-Verify.

Companies awarded a contract with the E-Verify clause now must enroll in E-Verify within 30 days of the contract award date. With certain exceptions, E-Verify must be used to confirm that all new hires, whether employed on a federal contract or not, and existing employees directly working on these contracts are legally authorized to work in the U.S.

More than 148,000 participating employers at nearly 560,000 worksites nationwide currently use E-Verify to electronically verify their workers' employment eligibility, according to USCIS. The agency noted that since October 1, 2008, more than 7.8 million employment verification queries have been run through the system and approximately 96.9 percent of all queries are now automatically confirmed as work-authorized within 24 hours or less.

The USCIS announcement is available at http://www.uscis.gov/USCIS/Office%20of%20Communications/Press%20Releases/FY%2009/September%202009/EVerifyFederalContractorRule8Sep09.pdf.

USCIS also has issued the *E-Verify Supplemental Guide for Federal Contractors.* The guide discusses regulations affecting federal contractors; instructions for verifying new and existing employees; E-Verify enrollment and participation as a federal contractor; enrollment instructions for certain organizations that qualify as exceptions; qualifying contracts, exemptions, and exceptions; subcontractors, independent contractors, and affiliates; and information for designated agents.

The guide is available at http://www.uscis.gov/USCIS/E-Verify/Federal%20Contractors/Supplemental%20Guidance%20for%20Federal%20Contractors%20082709%20FINAL.pdf. Other E-Verify guidance includes the *E-Verify User Manual for Employers*, available at http://www.uscis.gov/files/nativedocuments/E-Verify_Manual.pdf, and the *E-Verify User Manual for General Users, Program Administrators and Designated Agents*, available at http://www.uncp.edu/hr/employment/E-VerifyUserManual.pdf.

5. October Visa Bulletin Shows EB-3s Backlogged 7 Years

The Department of State's October 2009 Visa Bulletin shows a cut-off date for employment-based third preference visa numbers of June 1, 2002, for all chargeability areas except for China-mainland born (February 22, 2002); India (April 15, 2001); and Mexico (May 1, 2002).

All chargeability areas are current for EB-2 numbers, except for China-mainland born (March 22, 2005), and India (January 22, 2005). For the third preference "Other Workers" category, all chargeability areas have a cut-off date of June 1, 2001, except for India (April 15, 2001).

The Visa Bulletin for October 2009 is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_4575.html.

6. USCIS Announces New Web Site Design

U.S. Citizenship and Immigration Services (USCIS) says its redesigned Web site, in English and Spanish, is more customer-centric, providing users with a "one-stop shop" for immigration services and information.

Before the redesign, users described the USCIS Web site as "frustrating" and "hard to navigate." The new "Where to Start" tool, located on the top left of the homepage, allows for direct navigation to information.

By clicking on the first drop-down menu, users have the opportunity to choose who they are from a number of options. After selecting who they are, clicking on the second drop-down menu allows them to select what they want to do.

USCIS says the "Where to Start" tool will take users to the information they want without having to search the entire site. Applicants for citizenship may also follow the progress of their cases online, and receive notifications via e-mail or text messages when their application status changes.

The USCIS Web site is at http://www.uscis.gov/portal/site/uscis. A related fact sheet is available at http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/FY%2009/September%202009/Where%20to%20Start%20Fact%20Sheet_ckn%2016Sept09.pdf.

7. Global Entry Program Now Available at Detroit Airport

Global Entry, U.S. Customs and Border Protection's (CBP) new clearance system for international air passengers, is now open at Detroit Metropolitan International Airport.

Global Entry allows pre-screened, approved, registered travelers (including U.S. citizens, lawful permanent residents of the U.S. and citizens of certain other countries) to use automated kiosks to receive expedited processing upon arrival at Detroit Metropolitan Airport.

Global Entry participation is voluntary. Participants must possess a machine-readable U.S. passport or permanent resident card, pay a non-refundable $100 application fee, submit an online application, and complete an interview at a CBP enrollment center.

"Detroit is a major international gateway, especially for flights from Asia and Europe, as well as a hub airport for Delta, the world's largest airline," said airport authority CEO Lester Robinson. "We treasure our international passengers and this added convenience provided by [CBP] is one more customer service we can highlight when marketing our airport and our region."

Global Entry is now available at Miami, Atlanta, Los Angeles, Chicago, Sea-Tac, Dallas, Newark, San Francisco, Boston, Orlando, Honolulu, Las Vegas, Orland-Sanford, Philadelphia, San Juan and Fort Lauderdale, as well as Detroit.

The Detroit announcement is available at http://www.cbp.gov/xp/cgov/newsroom/news_releases/09182009_4.xml. Additional information on the Global Entry program (including enrollment application) is available at http://www.cbp.gov/xp/cgov/travel/trusted_traveler/global_entry/.

8. Missouri Plant Pays $450K Fine for Hiring Undocumented Workers

A Missouri poultry-processing plant where 136 undocumented workers were arrested in 2007 recently paid a $450,000 administrative fine as a result of a worksite enforcement investigation conducted by U.S. Immigration and Customs Enforcement (ICE). George's Processing, Inc., paid the fine on September 11, 2009, as part of a settlement agreement.

ICE said it will use the funds to promote future law enforcement programs and activities in worksite enforcement. During a May 2007 enforcement action at the George's plant in Cassville, Missouri, ICE agents administratively arrested 136 undocumented workers from Mexico and Guatemala. Twenty-eight of those workers were criminally prosecuted for various immigration violations, including falsely claiming U.S. citizenship. Two of the company's hiring personnel subsequently were convicted of harboring undocumented workers and inducing them to remain in the United States.

George's Processing, Inc., headquartered in Springdale, Arkansas, employs 4,000 workers at its three poultry processing facilities in Arkansas, Missouri, and Virginia.

The USCIS announcement is available at
http://www.ice.gov/pi/nr/0909/090915springfield.htm.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:
https://egov.uscis.gov/cris/processTimesDisplay.do

Department of Labor processing times and information on backlogs:
http://www.foreignlaborcert.doleta.gov/times.cfm

Department of State Visa Bulletin:
http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html