

CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

Resurgens Plaza
945 East Paces Ferry Road
Suite 2700
Atlanta, Georgia 30326-1380
404.923.9000

150 North Michigan Avenue
35th Floor
Chicago, Illinois 60601-7553
312.499.1400

Lincoln Plaza
500 N. Akard Street
Suite 2700
Dallas, Texas 75201-3306
214.397.4300

Wells Fargo Plaza
1000 Louisiana
Suite 5400
Houston, Texas 77002-5013
713.750.3100

1875 Century Park East
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Los Angeles, California 90067-2506
310.556.8861

Wachovia Financial Center
200 South Biscayne Boulevard
Suite 2100
Miami, Florida 33131
305.982.1520

Two Gateway Center
12th Floor
Newark, New Jersey 07102-5003
973.642.1900

250 Park Avenue
New York, New York 10177-1211
212.351.4500

One California Street
26th Floor
San Francisco, California 94111-5427
415.398.3500

One Landmark Square
Suite 1800
Stamford, Connecticut 06901-2681
203.348.3737

1227 25th Street, N.W.
Suite 700
Washington, DC 20037-1175
202.861.0900

EBGLAW.COM

IMMIGRATION ALERT:

DOS Comments on Immigrant Visa Numbers; DOL/DHS Propose Rules Barring Alien Substitutions in Labor Certification Cases; President Bush Proposes Changes in the Immigration laws; DOL Issues Revised BRC Schedule; and The DOL Announces \$2.74 Million Fine against H-1B Employer

The Department of State (“DOS”) has commented on its outlook for employment-based immigrant visa numbers. The Department of Labor (“DOL”) and Department of Homeland Security (“DHS”) just proposed changes to the PERM labor certification process that, among other things, will prevent employers from substituting alien beneficiaries on approved labor certifications. President Bush announced the administration’s support for an increase in the quota for H-1B nonimmigrants and for adoption of a guest worker program that does not include an amnesty provision. The DOL also has announced that its two backlog reduction centers (“BRC’s”) will not be able to complete initial processing of labor certification applications filed before March 28, 2005 until June 2006, and that it has imposed a \$2.74 million fine against a Michigan-based computer staffing firm that failed to pay the required prevailing wages to H-1B nonimmigrants. In this Special Alert, we shall address these and other recent developments in the immigration area.

1. DOS Comments on Immigrant Visa Numbers

The DOS recently expressed its outlook for the availability of employment-based immigrant visa numbers. As our readers know, there are annual quotas that regulate the number of employment-based immigrants who can apply for and obtain immigrant visas. Due to the growing demand for these visa numbers and the increased numbers of permanent residence applications processed by the U.S. Citizenship and Immigration Services (“USCIS”), the demand for these quota numbers has significantly exceeded the statutory supply and this has resulted in substantial backlogs for Indian and Chinese nationals and for the Third Preference classification for all nationalities.

The DOS has reviewed what it anticipates as the demand for fiscal 2007 and concluded that there appears to be a decrease in demand for employment-based numbers. This is resulting in more rapid advancement of the cut-off dates for the Second and Third preference categories. If the demand continues at these rates, the DOS does not see a need to impose a cut-off date for the worldwide First and Second preferences. The DOS also projects that this same lack of demand applies to the Indian and Chinese First and Second preferences, and to the worldwide Third preference. As a result, these preferences should continue to progress faster than expected.

2. DOL/DHS Propose Rules Barring Alien Substitutions in Labor Certification Cases

The DOL and DHS just proposed changes to the regulations governing the current labor certification process that, if adopted, will prevent employers from substituting alien beneficiaries on approved labor certification applications. These agencies view an employer's ability to substitute beneficiaries as a strong inducement for fraud and abuse of the current labor certification program. As a result, they are proposing a rule that would: (a) eliminate the employer's ability to substitute alien beneficiaries in approved labor certifications; (b) require employers to file I-140 petitions within 45 days following approval of the labor certification; (c) prohibit the sale, barter, or purchase of approved labor certifications; and (d) clarify the DOL procedures for responding to possible fraud in the permanent labor certification program. In view of these proposed changes in the labor certification process, employers contemplating substitution should do so as soon as possible.

3. President Bush Proposes Changes in the Immigration Laws

President Bush's State of the Union address contained several important immigration proposals. First, he called on Congress to pass sweeping immigration reform. Second, he indicated the administration's support for raising the annual cap on H-1B visas for foreign skilled workers. Third, he proposed the establishment of a "Guestworker" program that would allow employers to hire the foreign nationals they need to run their businesses and ensure that employers were not hiring undocumented aliens.

4. DOL Issues Revised BRC Schedule

The DOL has revised its estimate of when it will complete initial processing of labor certifications filed prior to initiation of the PERM process on March 28, 2005. As our readers know, the DOL had more than 350,000 labor certification cases pending when the PERM regulations were implemented. These all were forwarded to two BRC's, which are processing them and issuing "45 Day Letters" asking the sponsoring employers whether they want to continue these cases. Originally, the DOL announced that its initial processing would be complete by the end of December 2005. Recently, however, the DOL announced that it had revised this estimate to June 2006.

5. The DOL Announces \$2.74 Million Fine against H-1B Employer

The DOL recently announced that Computech Inc., a Southfield Michigan firm that places computer professionals across the country, has agreed to pay \$2,250,000 in back wages to 232 computer professionals and a \$400,000 fine to settle charges that it had violated the immigration laws. The DOL investigation found that Computech sponsored these H-1B professionals but failed to pay them the mandatory prevailing wage, and then "benched" them without any compensation when it did not have sufficient work for them to do. In addition to these fines, the company is barred from participating in the H-1B program for the next 18 months.

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If you have any questions about these issues or any other developments in the immigration area, please contact: **Robert S. Groban, Jr.**, the head of our Immigration Law Group, in the **New York** office at **212/351-4689** or rgroban@ebglaw.com. You may also contact **Elise Healy**, the immigration member of the firm in our **Dallas** office, at **214/397-4345** or ehaly@ebglaw.com, or **William Poole**, the immigration member of the firm in our **Atlanta** office, at **404/923-9035**, or wpoole@ebglaw.com.

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