May 2006

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
Suite 500
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

Epstein Becker & Green, P.C. (EBG) is pleased to announce that Pierre G. Bonnefil has joined the firm as a member of the Immigration Law Group.

The U.S. Citizenship and Immigration Services (USCIS) recently announced the current cap count for the H-1B nonimmigrant classification.

On April 20, 2006, the Department of Homeland Security (DHS) announced its comprehensive immigration enforcement strategy.

On April 28, 2006, the National Labor Relations Board (NLRB) directed all regional offices to submit for centralized review all unfair labor practice charges relating to employer discipline of workers who participated in public rallies in connection with the nation's immigration policy.

On April 7, 2006, the Department of State (DOS) proposed new rules that will revise the regulations of the J-1 Foreign Exchange program.

In a recent conference, the Department of Labor (DOL) provided estimates for the issuance of "45 Day Letters" and the elimination of the labor certification backlog. In this Special Alert, we will address these and other recent developments relating to immigration.

Pierre G. Bonnefil Joins EBG

On May 1, 2006, Pierre G. Bonnefil joined EBG as a member of the firm's Immigration Law Group. Prior to joining EBG, Mr. Bonnefil was an immigration partner at Gibney, Anthony & Flaherty, LLP, for 11 years, and an attorney with the Immigration and Naturalization Service through the Department of Justice's Honors Program. For the past 16 years, Mr. Bonnefil has assisted companies and individuals in all aspects of immigration and nationality law, and has represented clients before all agencies involved in the immigration process, including the DHS, USCIS, DOL, and DOS. Mr. Bonnefil practices in EBG's New York office and can be reached at 212-351-4687 or **pgbonnefil@ebglaw.com**.

USCIS Reports the Current Cap Count for H-1B Visas

As we advised in our February 15, 2006, *Client Alert*, on April 1, 2006, the USCIS began accepting new H-1B petitions for the 2007 quota, namely, positions beginning on or after October 1, 2006. There are 58,200 H-1B visa numbers generally available under this quota, with an additional 20,000 set aside for those who have earned advanced degrees from American universities and 6,800 for H-1B petitions filed for nationals of Singapore and Chile.

On May 1, 2006, the USCIS announced that the filing rate for the 2007 H-1B quota appeared to mirror the rate for 2006. The USCIS has received 34,800 H-1B petitions that apply to the 58,200 quota. As you may recall, the 2006 H-1B quota was reached on August 10, 2005, before the 2006 fiscal year began. It may be reached considerably earlier this year. For this reason, we strongly advise all of our clients to assess their need for H-1B employees and to file the necessary petitions as soon as possible. Consideration of need should include F-1 students who may have recently begun work in optional practical training. Work authorization for these students typically expires during the summer, at which point it will likely be too late to secure the H-1B status they will need to remain with their employers.

DHS Announces Its Immigration Enforcement Strategy

On April 20, 2006, the DHS announced its comprehensive immigration enforcement strategy for the interior United States. The three-phase plan to reduce illegal immigration will span several years. A significant component of this strategy involves stronger worksite enforcement and compliance programs as a complement to tougher border enforcement. According to DHS Secretary Chertoff, the DHS intends to "find employers who knowingly or recklessly hire unauthorized workers and…use every authority within our power to shut down businesses that exploit an illegal workforce to turn a profit." These efforts will target not only the employers of illegal aliens but also those organizations that provide falsified documentation and other proscribed means of aid to illegal aliens.

This strategy already has resulted in increased enforcement efforts and workplace raids throughout the country. Agents from U.S. Immigration and Customs Enforcement (ICE), an agency whose primarily responsibility is enforcing these laws, raided the offices and plants of IFCO Systems, a leading pallet services company. ICE agents arrested approximately 1,000 employees and charged nine IFCO managers with illegally harboring the workers for commercial advantage. This raid followed the arrests of nine managers at two temporary employment agencies; the managers were charged with providing undocumented aliens with false papers to satisfy Form I-9 requirements. In the New York metropolitan area, raids have already have occurred in Brentwood, Bay Shore, and Farmingville on Long Island, and in Newark, Elizabeth, Willowbrook, and the Garden State Plaza in New Jersey. Additional raids have been reported in Illinois and Ohio.

The DHS immigration enforcement program will be supported by a number of government agencies, including the DHS, the USCIS, ICE, the DOL, and the DOS. ICE in particular has announced a shift in enforcement priorities, from administrative proceedings and civil fines to criminal charges and asset forfeitures. This places a premium on the processes and procedures that employers have established to satisfy their Form I-9 and H-1B Public Access File obligations, as well as the accuracy and completeness of the records they maintain in compliance with these legal obligations. Employers should review these records to ensure that they are properly maintained, and should remedy any existing deficiencies in their records or processes. In doing

so, employers must not backdate *any* records, but should note the exact date the records were signed or corrected. Employers should additionally consider adopting and/or amending immigration policies to clarify the employer's philosophy regarding the employment of undocumented workers. It is wise to provide unambiguous direction to all employees involved in the recruitment and hiring process on how they should respond in the event of a government investigation.

NLRB Centralizes Immigration Rally Complaints

The NLRB announced on April 28, 2006, that it has instructed all regional officials to submit for centralized review any unfair labor practice charges related to employer discipline of workers who participated in public rallies in connection with the national immigration policy. The NLRB's regional offices will investigate all unfair labor practice allegations the results then will then be forwarded to the NLRB's Division of Advice, which is part of the Office of General Counsel. The Division of Advice will instruct regional offices on how to proceed. This process has some precedent, as the NLRB historically has centralized the review of certain types of allegations in order to ensure uniform treatment.

DOS Proposes to Amend J-1 Regulations

On April 7, 2006, the DOS proposed to revise its regulations governing the implementation of its J-1 training programs in several pertinent respects. The J-1 program was established by the Mutual Educational and Cultural Exchange Act of 1961. Until October 1, 1999, all J-1 programs were administered by the United States Information Agency (USIA). After that date, however, responsibility for administering the J-1 program was shifted to the DOS. Since that time, the DOS has established regulations that address this shift in governmental responsibility, but the J-1 regulations have remained largely unchanged since 1993, the year of the last USIA overhaul of the program.

The DOS proposal follows a review of the J-1 training programs by both the DOS and the General Accounting Office (GAO). The review uncovered occasions of program misuse by J-1 sponsors, who had failed to provide program participants with any training and were instead treating them only as temporary employees. The GAO additionally concluded that some employers were using the J-1 program as a way to circumvent the H-1B quota or as a stepping-stone to other longer-term nonimmigrant or immigrant (green card) classifications that may not have been available at the time the J-1 application was submitted.

The changes proposed by the DOS fall primarily into three separate areas. First, the DOS plans to eliminate the current regulatory distinction between "specialized," "nonspecialized," and "unskilled" occupations. According to the DOS, the amount of prior experience the trainee has, and not the occupational characterization of training offered, should determine whether trainees will be allowed to participate in the J-1 program. The DOS proposals would require trainees to have at least three years of prior related work experience in their fields to be eligible for consideration for the J-1 program. In addition, the proposed rules would require the trainees to demonstrate fluency in English by scoring at least 550 on the Test of English as a Foreign Language (TOEFL) examination or an equivalent examination.

Second, the proposed regulations create a new J-1 category of "interns" for recent college or university graduates (i.e., those who graduated within the past 12 months) who have not yet had the opportunity to acquire

actual work experience in their chosen fields and want to secure such experience in the United States. The DOS supports the addition of these recent graduates to the J-1 program but believes that they must participate in programs that clearly define the learning experiences they will receive. Thus the proposed regulations limit participation to recent graduates that (a) received degrees from degree-granting accredited academic institutions, (b) are fluent in English as evidenced by a score of at least 550 on the TOEFL or an equivalent examination, and (c) receive an individualized "Training/Internship Placement Plan" prior to receiving their J-1 visas. These new J-1 programs for recent graduates will be limited to periods of no more than 12 months.

Finally, the DOS proposes to strengthen its requirements for the preparation of J-1 training plans. According to the DOS, existing regulations regarding the content and use of these plans have been "boilerplate" and thus ineffective in allowing the government to evaluate whether trainees actually receive the required training or participate in appropriate activities. Under the proposals, employers for both interns and trainees will be required to prepare an individualized Training/Internship Placement Plan that provides, among other items, (a) the trainee/intern contact information; (b) the number of years of experience that the trainee has in the field; (c) the beginning and end dates of the training; (d) the contact information and address(es) of the employer; (e) the contact information for the supervisors/managers who will evaluate and monitor the trainees/interns; (f) the purpose(s) of the training/internship program; (g) the skills the trainees/interns seek to derive from the program; and (h) the allowance that trainees/interns will receive for housing, living expenses, etc. Employers of J-1 trainees or interns also will be required to attest that they do not intend to displace American workers and that the positions they fill exist solely to assist the trainees/interns in achieving their objectives through participating in the program.

DOL Estimates the Elimination of the Labor Certification Backlog

During a recent conference, the DOL provided estimates for the elimination of the labor certification backlog. In this conference, the DOL predicted that it would complete the initial data entry for all backlog labor certifications by the end of June 2006. At the same time, the DOL considered that it would be able to eliminate the entire labor certification backlog by September 2007. The DOL has given estimates for the completion of these tasks in the past, but has been unable to achieve its goals within the given time frame. It remains to be seen whether these latest predictions will prove accurate.

If you have any questions about these issues or any other developments in the immigration area, you can contact **Robert S. Groban, Jr.**, head of the Immigration Law Group, in the **New York** office at **212-351-4689** or **rgroban@ebglaw.com.** You may also contact **Pierre G. Bonnefil** in the **New York** office at **212-351-4687** or **pgbonnefil@ebglaw.com**, **Elise Healy** in the **Dallas** office at **214-397-4345** or **ehealy@ebglaw.com, Leigh N. Ganchan** in the **Houston** office at **713-750-3141** or **lganchan@ebglaw.com,** or **William Poole** in the **Atlanta** office at **404-923-9035** or **wpoole@ebglaw.com.**

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

© 2006 Epstein Becker & Green, P.C.