

May 25, 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

Leigh N. Ganchan Joins EBG

On May 15, 2005, Leigh N. Ganchan joined EBG as a member of the firm's Immigration Law Group. Ms. Ganchan brings 11 years of immigration experience in virtually every type of immigration setting, including the United Nations High Commissioner for Refugees, a corporate legal and government affairs office, the Immigration & Naturalization Service, and a private immigration boutique firm. Ms. Ganchan is Board Certified in Immigration & Nationality Law by the Texas Board of Legal Specialization and was voted by her peers as one of Houston's Top Lawyers for 2005 and 2006. Her employment-based immigration practice features I-9 compliance planning and litigation and healthcare professional immigration. She has published many articles on immigration and employment eligibility verification, including "The New Paperless I-9 Law: Compliance Made Easier." She serves on the AILA USCIS Benefits Liaison Committee and participated on the AILA/Texas Service Center Liaison Committee for many years. Ms. Ganchan practices in EBG's Houston office and can be reached at 713-750-3141 or lganchan@ebglaw.com.

USCIS Approaches H-1B Cap for Fiscal 2007

On May 24, 2006, the USCIS announced that it had received 42,876 new H-1B petitions toward the 58,200 cap. This does not count H-1B petitions filed for employees who hold advanced degrees from American universities. There is a cap of 20,000 on these applications, and the government has only received 5,358 of these cases. Finally, the USCIS announced that it had received fewer than 1,500 E-3 applications from Australian nationals toward the 10,500 cap and thus does not anticipate that this quota will be reached in fiscal 2006.

CIS Designates Additional Forms as Eligible for Premium Processing

The U.S. Citizenship and Immigration Services (USCIS) issued two interim rules on May 23, 2006, that changed the process for designating immigration processes and applications as eligible for premium processing and designated certain new applications as eligible

for its 15-day premium processing service. Under the USCIS premium processing service, the USCIS guarantees that it will take action on a filing within 15 calendar days, for an additional processing fee of \$1,000. Previously, premium processing was only available for certain temporary visa petitions filed on Form I-129.

In the first interim rule, the USCIS announced that all future changes in the immigration processes, applications, and/or procedures that would be eligible for premium processing would be announced on its web site, <http://www.uscis.gov> and not published in the Federal Register as had previously been the case. In the second interim rule, the USCIS designated the following applications as eligible for premium processing: Form I-140 “Immigrant Petition for Alien Worker” (excluding EB-2 National Interest Waiver cases); Form I-539 “Application to Extend/Change Status”; and Form I-765 “Application for Employment Authorization.” In making this designation, the USCIS was careful to point out that it is not currently accepting premium processing requests for these additional applications. The start date for accepting premium processing requests for these cases will appear on the USCIS web site at some point in the future.

In these interim rules, the USCIS also commented on its past practice of allowing courtesy concurrent filings of dependent extension applications on the Form I-539 to be premium processed with the companion I-129 petition. The USCIS was careful to point out that it has allowed this practice as a courtesy to its customers but that it did not guarantee that the Form I-539 application would be premium processed with the companion I-129. The USCIS states that it will continue the courtesy practice of attempting to process within 15 days any Form I-539 filed concurrently with the principal alien’s Form I-129 where premium processing service has been requested. However, the USCIS made it clear that the premium processing service applied only to Form I-129, unless the applicants also requested premium processing of the I-539 and filed an additional \$1,000 fee. In this regard, the USCIS interim rule advised concurrent I-539 applicants to file a separate request for premium processing service and \$1,000 processing fee, rather than rely on the courtesy of concurrent processing, if they needed the case adjudicated within 15 days.

New Premium Processing Option May Provide Relief to Some Seeking Expedited Employment Authorization Documents (EAD)

One of the most significant aspects of the new USCIS interim rule is that it promises to expand availability of premium processing to some I-765 applications for employment authorization. This will provide needed relief to some employees who, due to USCIS inefficiency and delays, are at risk of losing their work authorization due to processing delays with their renewal applications. In the explanation accompanying its new interim rules, the USCIS confirms a common and longstanding concern of employers by acknowledging that these “business customers want to be assured that their foreign-born workers will not have a break in employment or consider employment elsewhere.” However, the USCIS presently has selected only *one* classification within Form I-765 as eligible for premium processing service. The new premium processing option will only be available to employment-based adjustment of status for principal aliens and their dependents.

Unfortunately, the USCIS did not extend this expedited processing option to all classes filing for an EAD on Form I-765. For some foreign nationals seeking an EAD, Form I-765 normally cannot be filed until after the underlying petition or application has been approved. In its interim rules, the USCIS has determined that, *as a courtesy*, it will permit certain classifications within Form I-539 to file Form I-765 *concurrently* with

Form I-539 that they are filing via premium processing service. These classifications are: B-1 personal or domestic servants; B-1 airline employees; E-1 or E-2 dependent spouses; and L-2 spouses. The USCIS was careful to note, however, that the premium processing service only applies to Form I-539; therefore, USCIS cannot guarantee that the concurrently filed Form I-765 will be processed within the same 15-calendar-day period as Form I-539.

Supreme Court Considers Applicability of RICO Companies Employing Undocumented Workers

On April 26, 2006, the U.S. Supreme Court heard oral argument in *Mohawk Industries, Inc. v. Williams*. In this class action, the plaintiff employees alleged that the company had conspired with temporary help agencies and other recruiters to locate and transport large numbers of undocumented workers to Mohawk's plants in Georgia, for the purpose of driving down employee wages. The complaint alleged violations of, among other things, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961, et seq. ("RICO").

RICO has been a possible source of litigation in these situations since 1996, when Congress added alien smuggling, document fraud, and knowingly hiring undocumented workers to the list of predicate act crimes that can form the basis for a RICO complaint. Since that time, there have been several cases alleging RICO violations in various contexts arising out of the employment of undocumented workers. So far, most circuit courts have upheld these claims based on the plain language of the RICO statute. Given that this is the first time the issue has reached the U.S. Supreme Court, it is difficult to predict if the Court will adopt the same interpretation. A decision is expected by the summer.

* * *

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.