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Montgomery County has Foreign-Trade Zone status thanks, in part, to the City of Conroe. Now local companies can leverage cost-savings for competitive advantages to conduct business here, there and *everywhere!*

SAFEGUARDING BUSINESS THROUGH LEGAL ACCESS TO LABORERS

By Alicia Hedges, Law Clerk, Azarmehr & Associates, P.C.



As Congressional Hearings on immigration reform conclude across the country in preparation for another round of talks in Congress, the Department of Homeland Security (DHS) is focusing resources on employer compliance with current immigration laws through its investigational arm, U.S. Immigration and Customs Enforcement (ICE).

Along with this increased enforcement, the government is also implementing new methods for employers to evaluate their current hiring practices and enable self-regulation with regard to verifying a potential employee's authorization to work in the United States. The U.S. Citizenship and Immigration Service (USCIS) has developed an on-line **Basic Pilot Employment Verification Program** called the Systematic Alien Verification for Entitlements (SAVE) Program. This is a voluntary program in which employers can participate to confirm the employment eligibility of newly-hired employees. USCIS encourages employers to join these pilot programs proactively, to help shape the direction of these plans and create models for employer compliance for other companies.

Compliance with immigration laws is beneficial to American business because the system aims to stabilize the domestic economy through requirements of labor certification, payment

of prevailing wages, and required methods of recruitment. A motivating factor for immigration reform is the fact that employers have not been complying with the existing laws, which circumvents the procedures for safeguarding our society and the economy. According to the Pew Hispanic Center, in March 2005, approximately 7.2 million of the 11.1 million unauthorized immigrants in the United States were employed illegally.

Instead of merely implementing civil penalties to fight the problem of non-compliance by employers, as done in the past, ICE has chosen to pursue criminal prosecutions as its enforcement strategy. Therefore criminal charges have been brought against business owners, as well as managers and supervisors, who knowingly hire or harbor illegal aliens for financial gain. This is leading employers to investigate options for ensuring they have a legal workforce.

"Many of our business clients are taking this opportunity to revise their immigration law compliance policies," states Mehron Azarmehr of Azarmehr & Associates, P. C. in Austin, Texas, a law firm that provides services for employers seeking to secure a legal workforce. "We assist our clients in staying abreast of changes in enforcement and compliance through monthly newsletters, and work with them to update their


company's procedures for verifying employment eligibility," explains Mr. Azarmehr. By combining legal expertise in visa applications and work authorization compliance with recruitment services, Azarmehr & Associates, P.C. is able to help U.S. businesses recruit qualified workers, petition USCIS for work authorizations, and maintain the employee's work authorization status. The result is U.S. employers are able to legally hire a range of foreign workers, from professionals to unskilled workers.

The different visa types available are assigned in relation to the skills or other attributes of the visa applicant. The visa application process can vary depending on the type of workers the U.S. company needs, and may require:

- Researching the current wage paid in the area for the job offered;
- Attempting to recruit qualified workers within the United States to perform the job; and if no qualified resident workers are available,
- Identifying potential foreign workers to fill the need.

TN Visas for Professional Workers

The North American Free Trade Agreement (NAFTA) prescribes for a TN Visa for the recruitment and employment of specific professionals from Canada and Mexico. These professionals include





but are not limited to: Accountants, Architects, Engineers, Hotel Managers, Scientists, Medical/ Allied Professionals, and Registered Nurses.

Health care professionals participating in the TN Visa Program are alleviating the shortage in health care professional services across the nation, and especially in federally-designated Health Professional Shortage Areas, such as parts of the Texas Rio Grande Valley. “Our firm is collaborating with hospitals in these underserved communities to recruit qualified Nurses and Allied Health Professional from Mexico. These candidates are evaluated for educational credentials, English proficiency and, as necessary, are required to be licensed by the State Board of their profession,” describes Mr. Azarmehr, “which allows hospitals to provide quality medical care.”

The TN Visas are granted for one-year increments, and can be renewed on a yearly basis. However, it is the responsibility of the employer to verify that the visa holder’s work authorization is kept current to avoid being held liable for employing an unauthorized worker. It is estimated by the Pew Hispanic Center that between 4 and 5.5 million of the illegal aliens in the United States today originally entered the country with legal status, but have since overstayed the authorized periods of their visas. This is where it is important

to have policies in place that account for the additional administrative duties associated with hiring foreign workers, as well as penalties for noncompliance with such policies.

H-2B Visas for Unskilled Workers

H-2B Non-immigrant Visas allow unskilled workers in industries such as construction, food service, and hospitality to work for a sponsoring employer in the United States. This program permits a sponsoring employer with seasonal employment needs or peak-load demand to hire temporary workers who are pre-screened and may be approved by the U.S. Government for up to ten months.

Employers must request information from their respective state agencies regarding the prevailing wages for regular full-time employees in similar employment positions to ensure that wages are not depressed by importing a foreign labor force. Additionally, employers are required to attempt to recruit workers within the United States and must hire any qualified U.S. workers before they are allowed to petition for foreign workers.

H-2B Visa Applications are also processed through the U.S. Department of Labor and the USCIS. Once candidates are selected they are screened by the USCIS and must submit to interviewing and fingerprinting at the U.S. Consulate Office in

order to obtain approval as a qualified applicant. Once the applicants are approved and have arrived in the United States, their work authorization is valid only so long as they are working for their sponsoring company during the approved time period. “In addition to recruiting the workers and applying for visas, our firm provides ongoing assistance to the employers to help them comply with U.S. immigration laws,” states Mr. Azarmehr. “This is crucial for a company wishing to participate in this type of visa program.”

Although it may still be unclear what result the immigration debate will produce, employers can be assured that workforce compliance will be a component of enforcement. As for now, reevaluating your company’s policies on immigration law compliance can contribute to safeguarding the U.S. economy, protecting U.S. and foreign workers, and possibly avoiding civil and criminal prosecution.

GROWTH is privileged to publish contributions from expert members of our communities. M. Alicia Hedges is a 3rd Year Law Student and currently working as a Law Clerk for Azarmehr & Associates, P.C. in Austin, Texas. Azarmehr & Associates, P.C. is an Austin-based Immigration law firm with associate offices in New York, New York; McAllen, Texas; Brownsville, Texas and Monterrey, Mexico. Azarmehr & Associates, P.C. has been helping individuals and corporations with immigration matters since 1998. For more information on the firm please visit www.mpalaw.net.

