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June 2013 BLG BREAKING NEWS

"All Things H" –Congress continued it work on proposed immigration reform legislation on June 10. The Senate Bill is anticipated to be ready to send to the House of Representatives by July 4, 2013. If all goes as expected we should have a new immigration law by this fall. In the meantime, we can only speculate as to the final format of immigration reform. Until the new law is enacted, the BLG Newsletter will be focusing on the provisions of current U.S. immigration law that will continue to exist.

The H-1B Visa – This month our focus will be on the temporary professional worker visa known as the H-1B. For now there are no more H-1B visas available until Oct. 1, 2014. This is due to the annual H-1B cap of 65,000 visas. One of the proposals in the new immigration law will be to increase these visas in exchange for more US worker recruitment. Below are some facts that US employers and Foreign National H-1B workers or potential workers should know:

1. The H-1B is available only to professional workers which are positions which require a bachelor's degree or the equivalent work experience and the worker has that degree and/or experience. Not all positions are considered professional by the USCIS.
2. Most H-1B visa holders gain this status by first working for a US employer in OPT work status. This is the 12-month or 27-month work card that F-1 foreign university students may receive after graduation from a US college.
3. H-1B status is valid for a maximum of up to 6 years but extensions beyond this may be gained by "recapturing" time spent outside the US or if the employer has filed a labor certification application with the Dept. of Labor prior to the beginning of the 6th year of H-1B status.
4. H-1B workers may change employers once they have been counted against the cap. This is known as porting which allows workers to begin work for a new employer as soon as a petition is filed. US employers may not recoup legal fees paid to an H-1B employee who wishes to port. And, if the employee returns home, the employer is responsible for payment of return transportation costs, even if the return home is caused by the employer's termination.
5. The most common pathway to US Permanent Residency for an H-1B beneficiary is through the Labor Certification process which requires the US employer to conduct a good faith recruitment of the US job market. Since it is currently taking around 7 years to gain Permanent Residency through this process one of proposed changes is to speed up the backlog of visas awaiting priority dates.
6. The H-1B and Labor Certification process require the assistance of a skilled immigration attorney. Both of these processes involve not only the USCIS but also the Dept. of Labor as well as the Dept. of State if a visa is needed. The USCIS and the DOL rules for the requirements for a profession and for an advanced degree do no match so care must be taken in formulating job requirements. Some employers are cap-exempt but if an employee moves from a cap-exempt to a cap-subject employer there must be a visa available. Timing is crucial to both processes and strict timelines must be followed for recruitment and record keeping. Employers may be subject to fines for recordkeeping errors or for back pay if the required wage is not paid.

If you are interested in learning more about these new developments, please contact our firm at (713) 980-9939 or admin1@barnett-lawgroup.com.