

**CALL FOR AN
APPOINTMENT**

(703) 837-8832

717 King Street
Suite 205
Alexandria, VA 22314

William J. Kovatch, Jr.
ATTORNEY AT LAW, PLLC

July 27, 2009

William J. Kovatch, Jr.,
Attorney at Law, PLLC
provides a wide array of
legal services.

- Family Based Visas
 - Immediate Relatives
 - Spouse/Fiancé
 - Preference System
- Employment Visas
 - Immigrant Visas
 - Non-Immigrant Visas
- Naturalization
- Asylum
- Removal/Deportation

William J. Kovatch, Jr. is an
experienced litigator, with
eight years experience
litigating cases for the
Federal Government. He
has litigated complex cases
before U.S. courts, NAFTA
panels, and the World
Trade Organization.

William J. Kovatch, Jr. is a
member of the American
Immigration Lawyers
Association.

This newsletter is meant
for informational purposes
only, and not meant to
constitute legal advice.
Quality legal advice
requires a thorough look
at the facts and
circumstances surrounding
your situation.

IMMIGRATION LAW NEWSLETTER

New System for Filing Labor Condition Applications Becomes Mandatory

All employers filing a Labor Condition
Application (“LCA”) must use the
Department of Labor’s new iCert system as of
July 1, 2009.

LCAs are required for H-1B specialty
worker visas, H-1B1 visas for certain workers
from Chile and Singapore, and E-3 visas for certain workers from Australia.
Through the LCA, the employer certifies that:

- it will pay the greater of: (1) the actual wages paid by the employer to its employees with similar experience and education, or (2) the prevailing wage level for the occupational class in the area of employment,
- the working conditions its provides the H-1B worker will not adversely affect the working conditions of other workers similarly employed in the area,
- there is not currently a strike or lockout, and
- it has either provided notice of the filing to the bargaining representative of its employees, or if there is no bargaining representative it has posted notice in a conspicuous location or has given electronic notification to its employees.

iCert replaces the Department’s prior LCA approval system. Under



that system, it was common for LCAs to be approved within moments. The most significant change in the new system is that the Department may now take up to seven days to approve an LCA.

The iCert system is meant to create a single portal for the filing of LCAs for non-immigrant employment visas, and full Labor Certifications for immigrant employment visas. Implementation of iCert for the full Labor Certifications will come later. Last summer, the Department had announced that it was going to devote more resources to enforcement issues. Having a single portal may permit the Department to identify inconsistencies between a company's LCAs and Labor certifications. ■

ICE Targets Businesses for I-9 Compliance Audits

On July 1, 2009, U.S. Immigration and Customs Enforcement announced that it would step-up its efforts and audit over 600 companies for I-9 compliance issues.

Every employee in the United States must complete a Form I-9 when he or she starts a new job, and present acceptable identification to the employer. The I-9 is used to determine whether the person is authorized to work in the United States. Companies who fail to follow proper I-9 procedures can face stiff penalties.

Krispy Kreme was the target of one such audit. ICE conducted the audit after receiving information from a local sheriff's department that Krispy Kreme had been hiring undocumented workers. As a result of the audit, Krispy Kreme agreed to a settlement, where it paid a \$40,000 fine.

Through the I-9 process, the employee must show proof of identification, and proof of authorization to work in the United States. At times, proof of identification and proof of authorization to work can be accomplished with a single document, such as a valid, unexpired passport, a permanent residency card (I-551), or an employment authorization document with a photograph. Employees without such documentation may need to show two documents, such as a driver's license to prove identity and a Social Security card to show authorization to work.

Recently, the Government changed its rules regarding which documents were acceptable. Prior to 2009, an expired passport could be used to prove identity. Now, all documents used for the purpose of verifying identity and work authorization must be unexpired. ■

H-1B Visas Still Available

U.S. Citizenship and Immigration Services announced on July 10, 2009, that approximately 44,900 applications for H-1B visas subject to the annual cap had been received. The annual cap is set at 65,000. This means that almost 20,000 H-1B visas for the fiscal year starting October 1, 2009 remain available. In previous years, the entire cap for the fiscal year had been reached in the first days of filing. ■