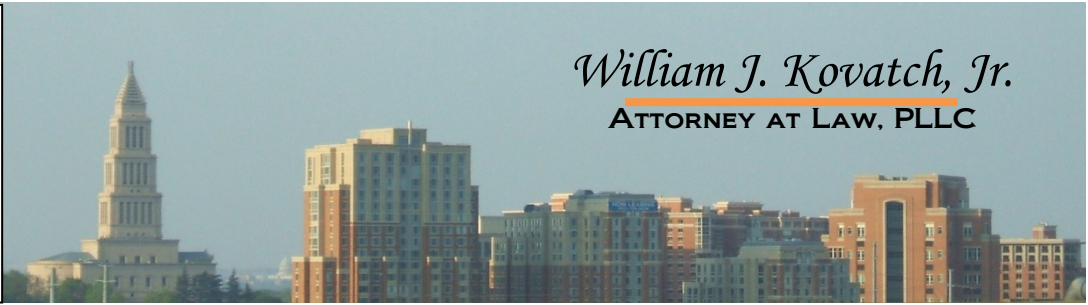


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December 28, 2009

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

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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

Fiscal Year 2010 H-1B Cap Met

On December 22, 2009, U.S. Citizenship and Immigration Services (“USICS”) announced that it reached the 65,000 cap for H-1B visas for fiscal year 2010. An H-1B is a temporary visa available to U.S. employers who hire foreign specialty workers. A specialty worker is a person who works in a profession requiring at least a bachelor’s degree.

Employers can apply for an H-1B visa up to six months before the fiscal year begins. Fiscal year 2010 began on October 1, 2009, which means that H-1B petitions could have been filed as early as April 1, 2009.

In past years, USCIS has received more than enough petitions on the first date of filing to meet the quota for the year. Fiscal year 2010 was unusual in that H-1B visa remained available even after the first date of filing. Indeed, H-1B visas remained available even after the fiscal year had begun. Many believe this is due to the recession, because hiring was down across the board.

Employers should not expect that this situation will repeat itself in fiscal year 2011. That is, should a recovery come about, and employers require the services of specialty workers, it is entirely possible that USCIS will receive more than enough petitions on April 1, 2010 to meet the annual quota for fiscal year 2011, which starts October 1, 2010. Employers would therefore be wise to be ready to file H-1B petitions for fiscal year 2011 on April 1, 2010.■



Changes in Prevailing Wage Determinations

Starting January 1, 2010, prevailing wage determinations will no longer be made by state workforce agencies. Rather, the process will be centralized through the U.S. Department of Labor (“DOL”).

A prevailing wage determination is necessary for employers seeking to hire a foreign worker permanently. The employer’s first step in most cases is to seek a labor certification from DOL, confirming that there are no qualified, willing, able and available U.S. workers for the job. The U.S. employer must be willing to pay the foreign worker at least the prevailing wage, which is essentially determined through a labor survey. Until 2010, the determinations were made by the state governments through the state workforce agency.

The prevailing wage determination must now be requested from DOL using ETA Form 9141. Initially, it must be mailed to DOL. DOL anticipates receiving prevailing wage determination requests on-line by January 20, 2010 through its iCert system. However, employers will not be able to attach supporting documentation to the on-line request.

There are issues that may require the submission of supporting documentation, even if the request is made on-line. An employer, for example, may submit a private labor survey, and request that the prevailing wage determination be based on the information in that survey. An employer may also be required to submit a collective bargaining agreement, or proof of special business requirements, such as a foreign language requirement. To do so after January 20, 2010, the employer should complete the on-line application process, note in the on-line form that supporting documentation will be submitted, mail in the supporting documentation and include the filing number on all correspondence concerning the request.■

Comprehensive Immigration Reform Introduced in the House

Representative Luis V. Gutierrez of Illinois introduced a bill aimed at creating comprehensive immigration reform in the U.S. House of Representatives on December 15, 2009. The bill would address such issues as improving border security and ensuring human conditions for immigration detainees.

By far the most controversial aspect of the bill is the creation of a path to citizenship for undocumented aliens. If passed, the legislation would create a 6 year non-immigrant visa for undocumented immigrants present in the United States on December 15, 2009. To qualify, the alien would have to pay a \$500 fine, and have no convictions for any felonies, or less than three misdemeanor convictions. Aliens brought to the United States illegally before the age of 16 would not be required to pay the fine. After six years, the aliens may be eligible to apply for permanent residency.

President Obama pushed immigration reform as part of his first year agenda. However, much of his efforts have been focused on the Government take-over of the U.S. health care industry. Topics such as immigration reform have remained on the back-burner. With 2010 being an election year, it is uncertain whether comprehensive immigration reform which includes a path to citizenship for undocumented aliens can pass.■