

Immigration Client Alert:

Immigration under the Trump Administration

Immigration continues to be front page news, but just as important are the unpublished changes and trends in the direction that our current federal government is heading with respect to immigration matters. Here are a few highlights/thoughts:

1. President Trump is going to focus his efforts on securing the southern border and deporting undocumented criminals. Our government will be less forgiving than the Obama administration was regarding the collateral damage of many undocumented people, who have committed no crimes at all, being rounded up and deported along the way.
2. As for business immigration matters, our President will pursue his "America First" policy, and H-1Bs, L-1s, E-2s, and all green cards including PERMS will likely become more onerous, and USCIS will adjudicate each petition more harshly. That said, we think we will continue to see the high level of approvals that we do now, as our firm is not working with the kinds of employers who are cheating the system or who should fear hiring the talent they need.
3. This week USCIS issued a press release entitled "USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse." This announcement states that USCIS has created a new system for Americans to report suspected fraud within the H-1B visa program; and states that USCIS will increase its current program of auditing H-1B employers, concentrating its efforts on:
 - employers who are "H-1B Dependent," which means an employer whose overall workforce contains a high percentage of H-1B employees.
 - employers who farm out H-1B workers to third party locations.
 - employers whose basic company information cannot be verified by USCIS through commercially available data. For many years, USCIS has used only one source of commercially available data to check on a company's existence, address, and main product or service: the Dun & Bradstreet database, which offers information on

more than 230 million business's credit history, risk exposure, and business sales and marketing. Our firm has always suggested that our clients register with D&B if they are going to file an L-1 visa petition, and as of now we are doing the same for each company who is filing H-1B petitions as well.

4. Last week USCIS issued a Policy Memorandum to its adjudicating officers regarding H-1B petitions filed for Computer Programmers. This Memo clarifies what has long been USCIS policy: most general computer programming positions are not "specialty occupations" that may be awarded H-1B approvals, because the job duties do not require one to have a specialized bachelor's degree in a CS-related field. Our law firm has known this for more than ten years, and we never file H-1B petitions for a job title of "computer programmer." All of our IT-related H-1B petitions are for Software Developers, Software Engineers, and other jobs where the job duties are well developed and clearly require a specialized degree in a CS-related field. We see no reason for concern about this new guidance from USCIS.

5. We do not see any super-fast changes in the immigration laws or regulations. The President has spoken of requiring higher wages for H-1Bs and L-1s, and there has been mention of new requirements to do a mini-PERM for each H and L to prove that there are no US workers available before a U.S. employer can hire a new H or L worker. However, these kinds of changes could take several years to implement, and there is not an agreement on such moves in the current Congress. These changes cannot be made by an Executive Order, but rather require Congressional action and/or the following of strict rule-making procedures.

6. We urge our clients to be more diligent about compliance with rules and regulations of the Department of Labor, Department of Homeland Security, and Department of State. Please call us to schedule a conference about what can be done.

7. Our office is gearing up to reach out to Congress when we can to fight for our clients' right to hire the best and brightest in the world, as long as they do not undercut the American workforce. We are moving ahead full speed to meet the non-ending demand for foreign talent.