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Immigration Update – April 29, 2005

Trow & Rahal, P.C. is pleased to provide this Immigration Update as a service to our clients and friends.

H-1B CAP: Employers are engaged once again in a race to file H-1B visa petitions in the hope of catching one of the 65,000 visa slots that are available annually. This is a reminder to employers to file H-1B visa petitions now in order to get an approval with an October 1, 2005 start date.

EXTRA H-1Bs: The “H-1B Visa Reform Act of 2004” added 20,000 visa slots for people who have earned a Master’s or higher degree from a U.S. institution of higher education. The U.S. Citizenship and Immigration Services (CIS) intends to release guidance next week on how it plans to process cases that qualify for these slots. Those who qualify would not be subject to the H-1B cap and would be able to start employment immediately upon approval of their H-1B visa petition, well before October 1, 2005.

TN VISA STATUS: A new 90-day pilot program allows citizens of Canada to apply for TN visa status in advance of their departure from Canada. From April 27 to July 26, 2005, U.S. Customs and Border Protection (CBP) will implement a pre-qualification pilot program at Pearson International Airport in Toronto for Canadian citizens. Applicants can appear in person between 10:00 a.m. and 1:00 p.m. on Tuesdays, Wednesdays and Saturdays. If CBP approves the pre-qualification, it will issue a written notice that will allow entry into the U.S. within the next 14 days. When applying for entry, the applicant must show proof of Canadian citizenship and pay the filing fees. Under existing procedures, applicants must board a flight immediately upon being found qualified for entry in TN visa status.

US-VISIT EXIT PROCEDURES: The exit procedures, already operational at eight airports and the Miami International Seaport, are now being implemented at the Philadelphia International Airport, the Atlanta International Airport, and the Los Angeles, San Pedro and Long Beach Seaports. The exit procedures require visa holders and visa waiver program participants departing from one of these ports to check-out at a US-VISIT exit kiosk located within the port. The check-out procedures include scanning of travel documents and taking of digital photo and inkless fingerprints of both index fingers. After the check-out is complete, the kiosk issues a printed receipt which should be kept in the event a person needs to verify a timely departure from the U.S.

At the Atlanta airport, travelers are being required to present their check-out receipts at the departure gate for verification at which time the receipt is scanned and fingerprints are taken to

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match the traveler with his or her receipt. Failure to comply with exit procedures could lead to a possible denial of entry in the future.

Anyone who enters the U.S. through a participating port and departs through a non-participating port should keep boarding passes or other documents to show the date and place of his or her departure. Travelers may need these documents on future visits to the U.S. to demonstrate that they did not fail to comply with departure requirements at a designated departure port.

US-VISIT EXEMPTIONS: Business visitors and tourists entering under the visa waiver program are no longer exempt from US-VISIT requirements. The following persons continue to be exempt from US-VISIT requirements: (1) U.S. citizens and permanent residents (green card holders); (2) Canadian citizens who enter without a visa; (3) those under the age of 14, or over the age of 79; (4) those holding the following types of visas: A-1, A-2, C-3 (except attendants, servants or personal employees of accredited officials), G-1, G-2, G-3, G-4, or NATO-1 through NATO-6; and (5) those otherwise exempted by the government.

If you have questions about the information provided above, or how it may affect a particular case, or wish to discuss any other immigration-related matter, please contact one of the Trow & Rahal attorneys listed below.

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