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Immigration Update – July 29, 2005

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

Recent Accounting of H-1B Usage: U.S. Citizenship and Immigration Services (USCIS) recently announced that approximately 27,300 H-1B visa petitions are approved or in the pipeline that will be counted against the fiscal year 2006 H-1B cap of 65,000. About 8,300 H-1B petitions are approved or are the pipeline that will count against the 20,000 exemptions for applicants holding advanced degrees from U.S. institutions for fiscal year 2005.

New L-1 Outsourcing Provisions: USCIS has implemented new provisions for L-1 intracompany transferees that were mandated by the L-1 Visa Reform Act of 2004. Under the new “outsourcing” provisions, L-1B temporary workers can no longer work primarily at a worksite other than that of their petitioning employer if either: (a) the work is controlled and supervised by a different employer; or (b) the offsite arrangement is essentially one to provide a non-petitioning party with local labor for hire, rather than a service related to the specialized knowledge of the petitioning employer.

USCIS said it intends to interpret the “control and supervision” provisions of the new law to require an L-1B petitioning employer “to retain ultimate authority over the worker.” The determination as to whether a foreign national is or will be employed primarily at a worksite other than that of the petitioner will depend on the specific facts presented. In addition, the outsourcing bar will not apply if satisfactory performance of the off-site employment duties requires that the L-1B temporary worker has specialized or advanced knowledge of the petitioning employer’s product, service, or other interests. General skills or duties that relate to ordinary business or work activities would not meet the specialized knowledge test.

These new provisions apply to all L-1B petitions filed with USCIS after June 6, 2005, and include extensions and amendments involving foreign nationals currently in L-1B status. They do not apply to executive or managerial employees in L-1A status.

The new provisions also require that all L-1 temporary workers have worked for a period of at least one year outside the U.S. for an employer with a qualifying relationship to the petitioning employer. Previously, participants in the “blanket L-1” program could participate after as little as six months of qualifying employment. This change applies to petitions for initial L-1 classification filed with USCIS after June 6, 2005; extensions of status under the blanket program are not affected.

July 29, 2005

Page 2

Relief for Schedule A Immigrants: Recent legislation provides for the “recapture” of 50,000 employment-based immigrant visa numbers that were unused in fiscal years 2001 through 2004. These numbers are now available to professional nurses, physical therapists, and persons “of exceptional ability in the sciences or arts,” who qualify under “Schedule A” and their accompanying spouses and children. These recaptured numbers provide partial relief from the unavailability of EB-3 immigrant visa numbers that we described in our last Immigration Update. Nurses are expected to benefit particularly from the Schedule A numbers.

This announcement was made in the Department of State’s Visa Bulletin for July which can be found on the Internet at http://www.travel.state.gov/visa/frvi/bulletin/bulletin_2539.html.

New Form I-9: USCIS and U.S. Immigration and Customs Enforcement (ICE) have updated the Employment Eligibility Verification Form (I-9) to eliminate outdated references to the former Immigration and Naturalization Service (INS) and the Department of Justice. USCIS maintains many of the immigration forms that USCIS and ICE inherited from the INS when its functions were transferred from the Department of Justice to the Department of Homeland Security (DHS) in March 2003.

The edition date on the updated I-9 reads “(Rev. 05/31/05)Y.” Employers may use this version or continue to use earlier versions with edition dates of “(Rev. 05/31/05)N” or “(Rev. 11/21/91)N” in the lower right corner.

DHS is making more substantive changes to the I-9 pursuant to previous rulemakings and plans to introduce a new I-9 at the end of this process.

More information about employment eligibility verification is available from the website for the USCIS Office of Business Liaison at <http://uscis.gov/graphics/services/employerinfo/oblhome.htm#Info>.

USCIS Introduces New Welcome Guides and Fact Sheets: USCIS has published *Welcome to the United States: A Guide for New Immigrants*, which includes “how-to” information on a variety of practical topics, such as maintaining status, obtaining a driver’s license or social security number, U.S. history and government, civic rights and responsibilities, obtaining medical care, and becoming a citizen. The guide is available in English, Spanish, Chinese, and Vietnamese; future editions are planned in Korean, Russian, Arabic, Tagalog, Portuguese, French, and Haitian Creole. The free guide, and ordering information for the print editions, is available from the USCIS website at <http://uscis.gov/graphics/citizenship/welcomeguide/index.htm>.

USCIS also has released a new series of “How Do I” fact sheets, including series on services for U.S. citizens and for permanent residents. Upcoming fact sheets will include information for nonimmigrants, refugees, asylees, and employers. The fact sheets are available in English and Spanish at <http://uscis.gov/graphics/faqs.htm>.

July 29, 2005

Page 3

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