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Immigration Update – September 10, 2004

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

H-1B Cap Is Imminent

The limited annual supply of H-1B visa petition approvals is nearly gone for fiscal year 2005, which runs from October 1, 2004 to September 30, 2005. We expect that later this month or early next month the immigration service will stop accepting new H-1B visa petitions from employers that are subject to the H-1B cap. Most employers will then be unable to obtain H-1B visa status for new or existing employees until October 1, 2005.

The H-1B cap does not apply to: (1) people who already have H-1B visa status and are seeking extension of stay, or a visa to allow travel; (2) people who already have H-1B status and are seeking to change employers; (3) people seeking to work for an institution of higher education or a related or affiliated nonprofit entity, a nonprofit research organization, or a government research organization; and (4) physicians seeking a change of visa status from J-1 to H-1B to work in a medically underserved area.

The employees at greatest risk from the H-1B cap are foreign nationals who have recently graduated from U.S. universities and hold F-1 or J-1 visa status with practical training work authorization. These employees generally must transition to H-1B visa status before their temporary work authorization expires, typically in May, June or July of 2005 for those who graduated in 2004. Unless they get H-1B visa status now, or qualify for some other visa status, they will need to be placed on unpaid leave or transferred to a foreign office when their work authorization expires next summer. Also at risk are graduates of foreign universities who are seeking H-1B visa status for the first time.

There are several steps that employers can take to avoid or reduce the adverse consequences of the H-1B cap:

1. Identify all existing employees who hold F-1 or J-1 practical training work authorization and file H-1B visa petitions for them immediately if you intend to continue their employment beyond the expiration of their practical training authorization.

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2. Consider accelerating plans to hire new employees from outside the United States who will need H-1B visa status. An H-1B visa petition can be filed up to six months before the intended start date of the U.S. employment.

3. In some cases there are other visas that can be used instead of H-1B visas. Canadian citizens and Mexican citizens may be able to obtain TN visa status. Employees who are transferring from an affiliated company outside the U.S. may be able to obtain L-1 visas. The E-1 (treaty trader), E-2 (treaty investor), H-3 (trainee) and J-1 (exchange visitor) visas can sometimes be used as substitutes for H-1B visas.

US-VISIT Expands to Cover Visa Waiver Travelers, and More Airports and Seaports

On September 30, 2004, the US-VISIT program will expand to cover visitors who enter the United States without a visa under the Visa Waiver Program ("VWP"). These visitors will be photographed and fingerprinted upon arrival, and must follow "check out" procedures upon departure. These requirements already apply to most foreign nationals who use nonimmigrant (temporary) visas to enter the United States.

Also, beginning October 26, 2004, VWP travelers must have machine-readable passports. A machine-readable passport has two lines of text on the identification page that can be read by an electronic scanner. Travelers holding older passports that lack this feature will either need to get a new passport, or apply for a U.S. visitor visa in their present passport.

The US-VISIT program is continuing to expand to additional airports and seaports. It has not yet been implemented at any land-border crossings.

Arrival Procedures: When arriving at a designated airport or seaport, all VWP travelers and most other persons holding nonimmigrant (temporary) visas will be photographed and fingerprinted. This is a quick and easy procedure using digital cameras and inkless fingerprint scanners. Refusal to be photographed or fingerprinted will result in denial of entry. These arrival procedures have been implemented at all major U.S. international airports and seaports, and at pre-flight clearance points in Canada, Bermuda and the British Isles.

Departure Procedures: When departing the U.S. at designated airports and seaports, all VWP travelers and most nonimmigrant visa holders must electronically scan their passport or visa at a self-service kiosk in the departure area, or allow an immigration officer to do so. Anyone who enters the U.S. through a designated port and departs through a port that has not yet implemented these departure procedures should keep a boarding pass or other document to show the date and place of departure. This document should be carried on future visits to the U.S. to demonstrate that the person did not overstay or depart through a designated port without following the departure procedures.

Exemptions: The following persons are exempt from US-VISIT procedures: (1) U.S. citizens and permanent residents (green card holders); (2) Canadian citizens who enter without a visa; (3) those

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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.

More information about the US-VISIT program is available at

http://www.dhs.gov/dhspublic/interapp/content_multi_image/content_multi_image_0006.xml

New Procedures for Personal Appearances at Local Immigration Offices

Most local offices of U.S. Citizenship and Immigration Services (“CIS”) no longer allow “walk-in” visits for the purpose of filing applications, obtaining passport stamps, or making inquiries about pending applications. Unless CIS has provided an appointment notice, in most cases it will now be necessary to book an appointment through an internet-based appointment system called INFOPASS. To check the locations where INFOPASS is operational and to schedule an appointment, go to http://infopass.uscis.gov/info_en.php

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If you have questions about any of the issues outlined above, or any other immigration matter, please contact one of the Trow & Rahal attorneys listed below.

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