



Counseling Corporations On The Full Array Of Immigration Law Issues

The Editor interviews **David H. Nachman**, Managing Attorney, Nachman & Associates P.C. Learn more about the firm at www.visaserve.com.

Editor: What challenges do companies face in hiring professional foreign workers?

Nachman: Recently, the federal government imposed a cap on professional (H-1B) workers, which was reached quickly after the first date for the filing of the petitions. While comprehensive immigration reform seeks to remedy this problem, effective legal counsel is required to ensure compliance in this rapidly evolving area of law.

Today, business immigration lawyers must be ever vigilant of the interconnection of federal agency databases. For example, an inquiry using the social security number as the search criteria may trigger records from DOL, IRS, SSA, HHS and FBI.

In addition, many senior-level R&D staff, researchers and scientists have been delayed at the U.S. consulates abroad while awaiting confirmation that they are not in violation of the Technical Alert List (TAL) and that their exposure to sensitive information in the U.S. will not pose a national threat (e.g., Deemed Exports).

Our office finds creative ways for our corporate and business clients to address these and the many other challenges they face in hiring and retaining the professional foreign workers they need.

Editor: How has the cost associated with immigration-related compliance

increased?

Nachman: The increased complexity of immigration regulations translates directly into increased legal fees. In addition, employment-based filing fees have increased. For example, the Department of Homeland Security, Citizenship and Immigration Services (CIS) has introduced (and continues to modify) a premium processing fee, which adds \$1,000 for certain visa applications to ensure a rapid response.

Another example is the reintroduction of the Department of Labor (DOL) training fee for funding grants to train U.S. workers for professional and specialty occupation jobs. The fee is \$750 for U.S. employers with fewer than 25 employees and \$1,500 for employers with over 25 employees.

Since 1991, H-1B employers have been required to file the ETA 9035 and to prepare and maintain Public Access Files (PAF) containing about 6-7 items specified in the DOL's H-1B regulations, which also has resulted in increased administrative costs for the employer that wants a level of comfort from prospective liabilities.

Editor: What challenges do the Form I-9 and social security mismatch regulations create?

Nachman: The *Wal-Mart* settlement



David H. Nachman

emphasizes the importance of employers' knowing their employees' identity and being sure that I-9 Forms for contractors (and employees) are properly prepared and maintained. Some states (such as Colorado and New York) have taken I-9 compliance to a higher level. The I-9 Form was re-branded about a year ago, and employers should be sure that they are using the most recent version.

Immigration and Customs Enforcement (ICE) which is responsible for worksite enforcement and audits, encourages employers to use the Basic Verification Program and a Program called IMAGE to electronically verify a prospective employee.

If an employee's name does not match the social security number, the employer may receive a mismatch letter. Proposed regulations provide employers with a "safe harbor" against liability if they act with due diligence within 30 days of receiving a mismatch letter.

Worksite enforcement actions by CIS/ICE focus on such critical infrastructure as, wastewater treatment plants, nuclear power facilities and airports. Actions can also be anticipated in the pharmaceutical, healthcare, transportation, biotech, education and hospitality industries if ICE perceives an impact on national security.

Editor: How can companies keep up-to-date in this rapidly evolving area of the law?

Nachman: Our firm shares our knowledge through speaking engagements and

articles that we regularly disseminate. We recently received a federal grant (jointly with EANJ) to train NJ employers about employment verification. Our website provides information about emerging developments in business immigration law.

Bimonthly, we highlight changes in business immigration law in our electronic newsletters, which we disseminate for free. Anyone can subscribe at www.visaserve.com. You can also call our offices at (201) 236-9998 ext.110, and we can add you to our e-mail list.

We also conduct onsite training programs on Employment Verification Compliance, Form I-9 Audits, Business Immigration Law Basics, Social Security Mismatch Letter Compliance, the new IMAGE Program and other hot topics related to business immigration law.

Editor: Please tell our readers about your hands-on business experience with immigration law.

Nachman: In 2003, my partner and I opened the *Bistro En* in Teaneck, N.J. The restaurant was recently reviewed in *The New York Times*. We serve a Fusion cuisine prepared by an extraordinary staff of chefs. The facility features international artwork and music. My ownership and management role – including hiring and retaining the best and brightest staff from around the globe – contributes to my unique understanding of the timing, cost and frustrations of my clients in dealing with the complexities of U.S. business immigration laws.

Please e-mail the interviewee at david_nachman@visaserve.com with questions about this interview.

