



April 2006

Hello,

## **IMMIGRATION LAW UPDATE:**

### **LEGISLATIVE UPDATE**

In recent weeks, the discussion surrounding US immigration reform has moved to the front of our national debate. In light of this increased attention, we have dedicated the majority of this issue of the Clark Hill Immigration Update to a summary of important pending immigration-related legislation.

#### **WHAT IS DIFFERENT IN THE LAW TODAY?**

Nothing. While frequent minor changes are made every year, no significant changes to US immigration law have been made in at least 10 years. The House of Representatives has passed proposed legislation (briefly discussed in a previous [Immigration Update](#)), but it is not final.

By way of background, proposed US laws start off as bills, and become laws when identical language is approved by a majority of the House of Representatives and Senate (two parts that make up our "Congress"), and the President signs the bill. In the US, the President cannot draft a bill, but he can reject (called "veto") what Congress has passed.

#### **WHY IS THE U.S. HAVING A DEBATE ON IMMIGRATION?**

There are approximately 11 million (and possibly more) foreign nationals in the US who do not have a temporary or permanent visa status. After the September 11th attacks on New York and Washington DC, security has become a priority for our local and national political leaders. With 11 million undocumented people in the US, many of whom were not screened for criminal or other "deportable" offenses, we have a problem. On that point, most people on both sides of the immigration debate agree. President Bush has stated many times that he supports a "guest worker" program. His support, and the bill that passed the House of Representatives late last year, have been instrumental in drawing attention to this issue. How a guest worker program would work is still being debated.

#### **WHAT ARE THE ARGUMENTS FOR AND AGAINST IMMIGRATION REFORM?**

There is a lot to this question, but a very basic summary is included below.

US political leaders and citizens differ on how we should deal with these 11 million. Many in the US feel that these people should all be removed from the US through increased enforcement (people who are not in an immigration status are "deportable" or "removable" from the US). This group feels that these foreign nationals drive down US wages. US workers would perform these lower skilled jobs, if the wage were at a level that the market would have to pay, and if there were no illegal workers. This side believes these workers will work for less money, because it is more than they can earn in their own country.

The other side of the debate believes that 11 million people will continue to evade US immigration enforcement officials, regardless as to how much money is spent on enforcement. While the rule of law must be obeyed, the only way to find out who is here, is to provide a mechanism through which

these persons can work their way to legal status. They also believe that many of these workers perform the duties that US workers do not want to perform. Alternatively, these foreign nationals could work for more money, if they had immigration status, as they would have the bargaining power to negotiate a higher wage. Finally, 11 million people is a sizeable new tax base.

The US population is split on how to handle immigration. A recent study by the non-partisan Pew Research Center was released in March with some surprising statistics. For more information visit the [Pew Research Center's website](#).

#### IS AN AMNESTY BEING SUGGESTED?

Technically speaking, none of the new bills propose an amnesty program. Most members of Congress who support a mechanism to "legalize" these 11 million want it to be an "earn as you go" program, which is being called a guest worker program. Paying taxes, no criminal convictions, and providing some sort of skill are part of proposed legislation.

#### HOW WOULD A GUEST WORKER PROGRAM HELP?

We have extensive temporary visa categories for persons to come to the US to attend school, complete training, and work in a professional category (see the [Clark Hill website](#)). And while we have temporary visas for short term and seasonal workers (H-2A and H-2B), these visas are time consuming, numerically limited, and do not allow foreign nationals to acquire a [US green card](#) (which provides the ability to work and live in the US indefinitely).

We believe that there is a need for US immigration categories that assist employers in hiring and retaining non-professional workers. If there are no visas available for this category, abuses are more likely to occur. Apart from the H-2A and H-2B visas listed above, it is very slow and time consuming for an employer to sponsor a non-professional for a green card. If the foreign national is in the US, but not in lawful status, then in most cases he/she would need to fly home to complete the green card process at a US Consulate. Upon departing the US he/she may not be able to come back to the US for 10 years (see the [3 and 10 year bar information on the Clark Hill Website](#)).

As an example, we see abuses in the US immigration system when professional visas are not available - and Immigration is aware of this. Take for example the H-1B visa. For the last several years we have run out of H-1B's, even before they were available on October 1st of each year. When this happens, Immigration warns its officers at the US ports-of-entry that visitor visas, TN's, L-1's, etc. may be improperly used for persons who should be entering on an H-1B, and enforcement should be increased.

#### WHAT ELSE COULD CHANGE?

For our clients, we would like to see more H-1B visas, more immigrant visas (so the [employment based priority dates](#) go back to being current), and an end to the 5 year visa delay for green card holders who marry foreign nationals with no US status. Elements of some of these pieces are included in proposed legislation.

Clearly, as immigration attorneys, we support a sane and comprehensive US immigration system. The summaries below are only brief descriptions of the proposed laws, as they exist today. A lot can and will happen in the next few weeks. Religious and non-profit organizations have been instrumental in rallying support and marches around the US. In New York, Detroit, Los Angeles, and many other cities, foreign nationals and US citizens have been calling for help for these 11 million.

We will keep you informed of this progress, and in the event a law is passed, will let you know. Democracy in the US is slow. It is designed that way on purpose, with the hope that the end result will be the best for the country, by balancing all of the interests involved.

Be sure to let your voice be heard by contacting your congressperson.

### BRIEF SUMMARIES OF PROPOSED LAWS:

R 4437 passed in the House of Representatives and was considered by the Senate Judiciary Committee. Among other provisions, this bill would make illegal presence in the US (also called "out of status") a criminal felony, increase limits on naturalization eligibility, militarize the US-Mexico border, and create new grounds of deportability and inadmissibility. Provisions of this bill were debated by the Senate Judiciary Committee and many restrictive provisions were eliminated. We expect that this bill will, as it was presented, probably fail. However, provisions may be incorporated in future legislation.

Securing America's Borders Act was introduced in the Senate. This enforcement-focused bill would increase the number of officers at ports of entry, require additional technology at the borders, and increase the number of grounds for deportability/inadmissibility. It would also raise the H-1B cap and increase the number of immigrant visas available. It does not provide any form of relief for the 11 million undocumented foreign nationals in the US.

On March 28, the Senate Judiciary Committee debated and voted on various provisions of several immigration-related bills. From their votes, the Committee drafted its own bill called the Comprehensive Immigration Reform Act, which has been introduced as a substitute for the Securing America's Borders Act. This bill would also increase border security and officer presence and increase the number of H-1B visas and immigrant visas. It would institute a new visa for foreign national workers who have been in the US and working or attending school for at least two years. These foreign nationals would be able to eventually obtain a green card if they met employment requirements, had proof of payment of taxes, and met basic language and civics requirements. The bill would also establish a pilot program to provide temporary residence for agricultural workers who meet specific requirements. This bill is supported by the American Immigration Lawyers Association.

### THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION SUPPORTS SEVERAL OTHER PENDING BILLS, WHICH INCLUDE:

The Secure America and Orderly Immigration Act which, among other provisions, would increase the number of employment-based immigrant visas and allow visas that went unused in the past to be used now, which would reduce or eliminate backlogs. It would also establish a "guest worker" program and the potential for these workers to eventually obtain legal permanent residence.

The TALENT bill was introduced by the American Immigration Lawyers Association and more than 200 corporations, universities, and research institutions. The bill would increase the number of available employment based immigrant visas and streamline the process by eliminating the labor certification and/or caps for particular categories. It would also create a market-based cap for H-1B visas, allow spouses of H-1B visa holders to obtain employment authorization, and exempt US educated workers from the cap.

We are hopeful that fair immigration reform is around the corner, but we cannot predict when, if any, new laws will be passed or implemented. Because the Senate has not yet even determined which bill to vote on, we are unable to determine with certainty which provisions will succeed. We will keep you updated as to the progress of immigration legislation.

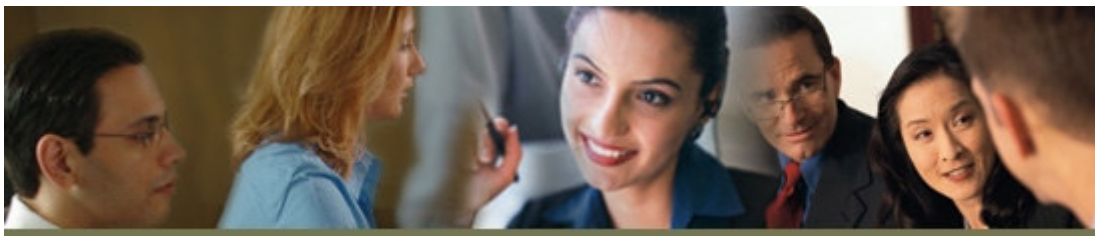
### H-1B VISA UPDATE

Beginning April 1, employers are now able to submit H-1B visa petitions for their foreign national employees. Employees with approved petitions will be able to begin working on October 1, 2006. The H-1B is a commonly utilized temporary work visa for professional positions. We encourage employers to submit their petitions early, as the annual limit on H-1B visas will be reached quickly, unless a law is passed which gives us more H-1Bs (last year, the cap for most foreign workers was reached in August, the cap for workers with a US Masters Degree or higher was reached in January). For additional information about H-1B visas, please contact the Clark Hill Immigration

Group.

### GERMAN PASSPORTS AND VISA WAIVER PROGRAM

Beginning May 1, 2006, German nationals who have a temporary passport or emergency passport (this does not apply to regular German passports), will no longer be able to travel to the US under the Visa Waiver Program.



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