

PUBLICATION

Immigration Update: E-Verify Enhancement — Getting Personal with Employees; Immigration Benefits for Same-Sex Spouses; DOL Publishes PERM Applications; Comprehensive Immigration Reform Still Uncertain

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E-Verify Enhancement — Getting Personal with Employees

The United States Citizenship and Immigration Services' (USCIS) E-Verify system will now contact employees directly in the event of a Social Security Administration (SSA) or Department of Homeland Security (DHS) Tentative Nonconfirmation (TNC). The revised March 2013 Form I-9 includes a space for an employee to voluntarily provide his or her e-mail address. If provided, employers must include the e-mail address when inputting the Form I-9 data in the E-Verify system. Effective July 1, 2013, employees for whom a TNC has been generated will receive a courtesy notification directly from E-verify concurrent with the employer's notification. This feature does not alter or alleviate the employer's obligation to contact the employee directly following a mismatch of information and receipt of TNC. E-verify will also send e-mail notifications if no action to resolve the TNC has occurred within four days (of the maximum eight days), and once the TNC is overcome, including information about any possible need to update a SSA or DHS record.

For more information on this latest development, check out the "What's New" link at: <http://www.dhs.gov/e-verify>.

Immigration Benefits for Same-Sex Spouses

Traian Popov, a Bulgarian immigrant who lives with his same-sex spouse in Ft. Lauderdale, Florida, became the first same-sex partner to receive a permanent resident card following the Supreme Court's finding DOMA unconstitutional. Based on recent published policy statements, it seems clear that both DHS and the Department of State (DOS) are going to treat gay marriage equally with heterosexual marriage for sponsorship and derivative immigration benefits (immigrant and nonimmigrant) if the marriage is valid in the state where it was entered into (just as heterosexual marriage). What remains unclear is what happens if the couple is currently living in the United States and in a state that has articulated a fundamental public policy against gay marriage. According to a recent Q&A on this topic on the DHS website, same sex spouses who were married in a state that recognizes the marriage, but who currently reside in a state that does not, can still file a petition for immigration benefits:

"Yes, you can file the petition. In evaluating the petition, as a general matter, USCIS looks to the law of the place where the marriage took place when determining whether it is valid for immigration law purposes. That general rule is subject to some limited exceptions under which federal immigration agencies historically have considered the law of the state of residence in addition to the law of the state of celebration of the marriage. Whether those exceptions apply may depend on individual, fact-specific circumstances. If necessary, we may provide further guidance on this question going forward."

The full statement from Secretary of Homeland Security Janet Napolitano regarding the "Implementation of the Supreme Court Ruling on the Defense of Marriage Act" is available at www.uscis.gov.

DOL Publishes PERM Applications

The U.S. Department of Labor (DOL) has made public a database containing permanent labor certifications (PERMs) filed by employers to assert that they have been unable to find minimally qualified U.S. workers to fill positions for which they are sponsoring qualified foreign workers. In the past, DOL has published more generic data about filings, but is now publishing the *actual* applications with all the questions and answers. DOL redacts the name, specific contact information, and identifying numbers of the sponsored workers, but it publishes their country of birth and citizenship, current residence city, current immigration status, specific educational information (including exact degree, school and field). Viewers can search the filings by case number, case type, state, job location, employer name, posting range or industry code according to specified date ranges. Employers using the PERM process must expect that this data will be scoured by other workers, union leaders, news organizations and political players and should consider the implications.

Comprehensive Immigration Reform Still Uncertain

The "Security, Economic Opportunity, and Immigration Modernization Act" or S.744, introduced in the U.S. Senate in April 2013, was approved by a 68-32 vote on June 27, 2013, and has begun its journey through the U.S. House of Representatives. Although it is unclear at this point whether the bill will be considered piecemeal or as the collective border enforcement and increased employment and citizenship opportunity package that passed by the Senate, the House Judiciary Committee passed the Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visa Act (SKILLS Act), which suggests we may be seeing the House approaching aspects of S.744 in individual components and not as a broad-based bill.

For questions about these or any employment-related issue, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.