



# Immigration Monthly

**February 2006**

- **Are Recruiters Ready For The World Stage?** by *Angelo A. Paparelli, Esq.*
- **The PERM Workshop**  
**San Antonio, TX**  
**June 21, 2006**  
**8:30am-5pm**

## **Are Recruiters Ready For The World Stage?** by *Angelo A. Paparelli, Esq.*

Demographics don't lie. Populations in the developed world are aging rapidly, especially in Europe, Japan and Russia. To a lesser but still pronounced degree, the ratio of older to younger citizens is also projected to increase in the United States, Australia, New Zealand, Canada, Singapore, Hong Kong, Taiwan and South Korea. At the same time, the global market for knowledge workers, especially in the STEM fields of Science, Technology, Engineering and Mathematics, is growing ever hotter with no cool-down in sight. More troubling still, China, India and other fast-rising global competitors with sizable populations are producing STEM graduates with Masters and PhDs, and submitting patent applications, at a more rapid pace than the world's perennial leader, the United States.

The trend lines of these forces are ominous. Increasingly, globally competitive businesses must broaden the recruiting search beyond national borders if they are to secure the brightest and best workers. As new, more demanding jobs are created, will your recruiting team find and hire the best of a

globally scarce lot? One essential way to prepare your company's recruiters is to confirm that the team makes optimal use of employment-based options under U.S. and foreign immigration laws. Another equally important measure is to provide recruiters with the training and resources required to avoid the many mission-killing snares of global migration.

This article will offer tips on best practices in global recruiting. It will also suggest precautions your company should take to avoid the glare of adverse publicity, the arrest of company personnel and the imposition of stiff fines for violating a nation's immigration laws.

### **It's the 21st Century: Do You Know Where Your Recruiters Are?**

Many companies have built their recruiting models on a solid domestic foundation, with incremental growth coming one country at a time. The premise for this approach has been eminently sensible. People on the ground in a particular country are best suited to know the labor market, maintain knowledge of nation-centric immigration and visa laws, and hire local lawyers or other service providers to cut through the immigration red tape. But this focus on location-specific recruiting management has rapidly been overtaken by events.

Today, it is by no means unusual for Hiring Candidate A, a citizen of Country B and permanent resident of Country C, with a spouse from Country D, to be stationed initially for training in Country E, and then permanently assigned to Country F. Which country's recruiting team is best tasked with the unenviable chore of sorting out multinational immigration compliance? How will senior management be assured that, in this common scenario, resources are best deployed, costs kept under control and a hiccup-less process for new-candidate hiring will occur?

Many businesses now realize that the best way to clear the global hire's path to success at the company is through a combination of local immigration resources and centralized oversight and support. With this approach, a global-hiring database is made available to the entire recruiting team, globally compliant case-management software gathers the required immigration data and documents on every candidate's academic credentials and career history (while tracking immigration and hiring deadlines), and the services of globally-capable or location-appropriate immigration providers are obtained at favorable rates.

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### **Is Your Company Recruiting "Stealth Employees"?**

A dangerous "under-the-radar" practice is growing in frequency. The "stealth employee" can be a new recruit or transferee from an affiliate, often one slotted to fill a senior position, who enters the country of intended employment without first obtaining proper immigration visas or work permits. Frequently, the process moves ahead at a fast clip. Here is a very realistic scenario:

*Step One:* Candidate accepts offer to work in a country other than that of the person's nationality or permanent residence.

*Step Two:* Press release is issued proclaiming the appointment, effective immediately, and listing the individual's new job title and duties in the host country.

*Step Three:* New hire enters the country of employment and expresses to the immigration inspector the intention to engage in "business."

*Step Four:* The "business visitor" starts working immediately, though lacking a proper visa or work permit to begin employment.

*Step Five:* Arrests, imprisonment, significant fines and penalties, and damage to the business brand and reputation ensue.

Stealth employees risk serious damage to themselves and to the enterprise. The solution is simple. Make sure your recruiters and business managers show restraint. After Step One, Step Two must always involve serious attention to host-country immigration requirements and compliance.

### **Brand Your Company as Immigration Friendly**

For a moment, put yourself in the shoes of a prospective new hire. Imagine you are a top performer with an outstanding track record who must choose among multiple offers for attractive jobs in various countries. You and your spouse (successfully employed in a separate career) have two school-age children. You are willing to move from your home country but wonder how tough will it be to jump each country's immigration hurdles. You ask yourself which of these companies will stand by my family and me to make sure that the process to permanent residence and citizenship is smooth, immigration requirements are satisfied, my spouse can get a work permit, and our children will be allowed to study all the way through college. Savvy recruiters know that the availability or absence of full-fledged immigration support for the duration of the candidate's career is often the deal-breaker.

Leading companies also recognize that immigration support requires more than hiring a lawyer and signing papers. Today, with immigration a hot-button political issue, successful companies recognize that developing an immigration-friendly brand requires significant corporate resources. Recruiting, Government Affairs, Media/ Public Relations, and Human Resources must all participate. Company officials must advocate for enlightened employment-based immigration laws and the elimination or expansion of work-visa and permanent-immigration quotas. Success stories of foreign hires who've made significant contributions to corporate and national prosperity must be widely publicized. Immigration lawyers must be retained who are not merely procurers of visa benefits but also capable corporate strategists. Any company that wants to glean a healthy share of top foreign talent must be prepared to cultivate and maintain a brand image as an enthusiastic supporter of employment-based immigration in each country where the enterprise does business.

## **Recruiters Must Know and Take Advantage of All Immigration “Process Opportunities”**

Immigration laws and procedures are much like a metaphorical maze. Enter, make a quick left, pass the first intersection, turn left again, and voilà, your new hire reaches immigration nirvana. For others, however, the maze becomes a trap. Your candidate enters and moves through the corridors into the deeper passages of the maze, remaining lost there for unnecessary months and years. The immigration maze is most complex and confusing in the United States; but these days – especially since 9/11 and its aftermath – other countries are rapidly vying with the U.S. for the world title of “Most Complicated Immigration Maze.”

Every developed country, however, also creates immigration process opportunities – special laws, procedures, interpretations, rules, regulations and court cases – that help new foreign hires speed through the maze more quickly. In the U.S., for example, over the last few years the federal government has:

- made it easier for your recruiters to lure away foreign candidates from competitors (using a technique known as “portability”) and thereby piggyback on the immigration procedures and recruiting efforts of prior employers;
- allowed companies involved in mergers, acquisitions and other forms of restructuring to continue employing foreign workers after the deal closes without obtaining new permission or amending the employees’ visas;
- created numerous special categories offering work visas that are otherwise unavailable, e.g., E-3 visas for Australians, special H-1B visas for citizens of Chile and Singapore, and H-1B visas for foreign students graduating from U.S. universities with Masters or Ph. D. degrees;
- allowed spouses of some foreign workers to obtain work permits; and
- permitted extensions of stay in the U.S. (beyond normal time limits) for certain foreign employees who are waiting for permanent resident (“green card”) quotas to re-open.

On the other hand, the U.S. government (along with other countries) has made it harder and more expensive to qualify for immigration benefits in many cases. Security clearances can be quick and routine, or slow and burdensome, depending on the content and quality of the visa applications filed with U.S. consular officers. U.S. visa applications submitted at American consular posts and embassies in Canada or Mexico are easily approved for some nationalities and virtually impossible for others.

Unless your recruiters know all about (and are proactive in utilizing) these immigration process opportunities (while staying clear of visa traps), they will be ill equipped to make wise, “immigration-friendly” hires. Senior management must therefore make sure that recruiters are trained in immigration hiring requirements and opportunities, and that the training is updated as often as new developments arise.

## **Your Recruiters Must Be Wary of Immigration Enforcement Techniques, “Wal-Mart” Style Risks and Government Data Mining.**

As foreign recruiting becomes increasingly a business

# The PERM Workshop

**San Antonio, TX**

**June 21, 2006**

**8:30am-5pm**

**Moderators and Speakers: Joel Stewart and many others to be announced.**

This is an all-day, (8:30 am to 5 pm), comprehensive workshop covering every major aspect of the PERM rule and its impact on labor certification practices. It is intended for experienced practitioners--familiarity with the PERM rule and labor certification process will be assumed. Considerable time will be devoted to back and forth and the seating is limited to the first 50 registrants to give participants ample opportunity to have their critical questions answered.

### **Workshop Outline:**

- |                 |  |
|-----------------|--|
| 8:30 - 9am      | -- Registration (includes continental breakfast)   |
| 9 - 10:30am     | -- Session 1: Curriculum to be announced.          |
| 10:30 - 10:45am | -- 15 min. break (refreshments provided)           |
| 10:45 - 12:15am | -- Session 2: Curriculum to be announced.          |
| 12:15 - 1:45pm  | -- Lunch Program (includes lunch and presentation) |
| 1:45 - 3:15pm   | -- Session 3: Curriculum to be announced.          |
| 3:15 - 3:30pm   | -- 15 min. break (refreshments provided)           |
| 3:30 - 5pm      | -- Session 4: Curriculum to be announced.          |

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**Family-based Immigration: A Practitioner's Guide**, edited by Charles Wheeler, is a practical guide to all aspects of family-based immigration, including immediate relatives and the preference system, application process for permanent residence, consular processing, immigrating through marriage, grounds of inadmissibility, the affidavit of support, and other topics of concern to practitioners.

**Relief From Removal: A Practitioner's Guide**, edited by Jill Sheldon, provides a detailed description of the law, as well as strategies for defending clients in removal proceedings. Chapters cover an overview of removal proceedings, asylum, cancellation of removal, adjustment of status, NACARA, withholding of removal, and relief under the Convention Against Torture.

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imperative, your company's recruiting professionals must be sensitive to the flip side of the visa coin, immigration law enforcement. Accessing high-quality foreign talent can do wonders for the bottom line, but inattention to immigration laws can trigger Sarbanes-Oxley exposures, wreak havoc on corporate reputation, lead to expensive fines, and require burdensome consent decrees. Perhaps the biggest problem to overcome is the prevailing perception among some recruiters that immigration is just so much trivial paperwork to sign and submit after a brief and casual skim. The reality is quite different. Immigration statutes, if violated, can trigger a full array of civil and criminal penalties.

Consider, for example, the rules punishing an employer for hiring a foreign worker with knowledge (actual or inferred) that the worker has no right to be employed in the United States. Although the rules took effect in 1986, and are now generally understood, less well known is the law prohibiting the use of a contract to circumvent the ban on unlawfully hiring foreign citizens.

As one prominent example, on March 18, 2005, Wal-Mart entered into a consent decree with ICE (a chilling but appropriate acronym for Immigration and Customs Enforcement, a police agency within the U.S. Department of Homeland Security). The company agreed to pay \$11 million to settle allegations (without admitting or denying the charges) that it knowingly used illegal immigrants to serve as janitors in its stores. As civil suits continue against Wal-Mart, allegations have surfaced that a company vice president counseled subcontractors on how to create subsidiaries to avoid immigration rules against unlawful hiring. Whatever the truth may be in the claims against Wal-Mart, the lesson for your company's recruiting team is obvious. Immigration problems cannot simply be "papered" over and ignored.

Indeed, the required immigration paperwork of an earlier era is rapidly being replaced by the mandatory on-line submission of applications for immigration benefits. Take for example, the U.S. Department of Labor's new PERM system for labor market testing (required in order for the agency to "certify" that no qualified U.S. workers are available for a job that a sponsoring employer wants a foreign worker to fill).

PERM – an acronym for Program Electronic Review Management – will gather and mine electronic data outlining the recruitment efforts, for years past, of every participating U.S. employer. Before PERM, labor certification applications were maintained in paper files that were sent off to dusty, musty storage in off-site government warehouses. These old paper files were easy for government examiners to send away but harder to retrieve. With PERM, however, a government investigator can learn with just a few keystrokes whether the employer has been consistent and accurate about its sworn statements concerning actual job duties, job requirements and recruitment efforts from application to application over time. Inconsistencies and inaccuracies in employer requirements can trigger government audits and investigations. Is anyone on your recruiting and HR teams concerned that all claims made by your company are, and remain, consistent and truthful from case to case as time passes? Someone in your company must be. The time may well have already arrived when your company needs to appoint an internal (or external) immigration compliance officer, ombudsman or maven.

## **The World May Be Flat but National Borders Remain Intact**

As the U.S. Supreme Court has said, control of a country's borders through immigration regulation is an inherent attribute of a nation's sovereignty. Noted author Thomas Friedman would amend the notion – as he persuasively argues in his best-selling business book, *The World is Flat*. Friedman asserts that digital communication along the globe-crossed pathways of countless fiber-optic lines is the great leveler of national boundaries. While the predicted fall of international borders is clearly premature, senior management in leading companies must carefully consider whether their professional recruiters are fully prepared to use global immigration laws to capture a generous share of the world's much-coveted top talent. If your company's recruiters are "not ready for prime-time" players on the world stage, then management must act.

*This article originally appeared on the Electronic Recruiting Exchange, <http://www.erexchange.com>.*

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### **About The Author**

**Angelo A. Paparelli** is the managing partner of Paparelli & Partners LLP, with offices in New York, NY and Irvine, CA. He has been named the world's leading authority for corporate immigration legal expertise by The International Who's Who of Business Lawyers (5th Ed., 2005), chosen by [www.LawDragon.com](http://www.LawDragon.com) as one of the 500 Leading Lawyers of America and also named in Best Lawyers in America and SuperLawyers.com. He serves on the boards of two nonprofits (the American Immigration Law Foundation and Children First).

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