



US IMMIGRATION CLIENT ALERT

If you have any questions about this announcement, please contact the legal professional with whom you usually work at Fragomen, Del Rey, Bernsen & Loewy, LLP.

June 26, 2008

Update on DOL Audits

EXECUTIVE SUMMARY

The media has now widely reported on the Department of Labor's audits of labor certification applications filed by Fragomen. Both the legal and corporate communities have expressed outrage at the DOL action. Fragomen is in active discussions with the Department regarding an agreement to release cases from audit and have cases return to the normal processing queue.

Fragomen is fully committed to compliance with the law and all U.S. Department of Labor (DOL) regulations. Our attorneys' central mission is providing counsel to our client companies in navigating a complex and confusing regulatory process.

As you are aware, the DOL is auditing labor certification applications filed by Fragomen. Apparently, the DOL interest was triggered during routine PERM audits, where Fragomen submitted a template form used by some of our offices to assist clients in complying with PERM processing. DOL noticed the form contained a legend advising clients to contact the firm if a U.S. worker applicant appeared potentially qualified. DOL reasoned that this rather innocuous advice suggested that lawyers may have dissuaded client companies from actually hiring U.S. worker applicants that the company determined were qualified during the PERM labor market test, and who, but for the lawyer's intervention, would have received a job offer. In the press release and subsequent communication, DOL announced a new interpretation of the regulations that restricts an attorney's ability to give advice concerning specific candidates' resumes.

Attorney Involvement in the PERM Process

The regulations and decisions specifically protect the employer's right to counsel throughout the complex PERM process. Because PERM processing and evaluation standards differ markedly from normal recruitment in material ways, legal guidance is essential to ensure compliance. Yet DOL, by its audit, seeks to limit the right to counsel. In order to make its point, DOL presses to make a radical departure from past practice and create a new regulatory interpretation which would limit the role of employers' attorneys and bar them from giving guidance on specific fact situations.

The right to counsel is a cornerstone of our legal system and is protected by the Constitution and by the DOL's own regulations which say that clients can rely on attorneys "throughout the

BANGALORE, INDIA* • BOSTON, MA • BRISBANE, AUSTRALIA* • BRUSSELS, BELGIUM • CANBERRA, AUSTRALIA* • CHICAGO, IL • CORAL GABLES, FL • DALLAS, TX • FRANKFURT, GERMANY • HONG KONG* • HYDERABAD, INDIA* • IRVINE, CA • KOCHI, INDIA* • LONDON, UK • LOS ANGELES, CA • MATAWAN, NJ • MELBOURNE, AUSTRALIA* • NEW YORK, NY • PARIS, FRANCE** • PERTH, AUSTRALIA* • PHILADELPHIA, PA • PHOENIX, AZ • SAN DIEGO, CA • SAN FRANCISCO, CA • SAN JOSE, COSTA RICA • SANTA CLARA, CA • SHANGHAI, CHINA* • SINGAPORE* • SYDNEY, AUSTRALIA* • TROY, MI*** • WASHINGTON, DC • WELLINGTON, NEW ZEALAND*

* Affiliated through Fragomen Global Immigration Services, LLC

** Correspondent Office

***PLLC, a wholly-owned subsidiary of Fragomen, Del Rey, Bernsen & Loewy, LLP

labor certification process.” We render legal advice. We do not make employment decisions. And while the audits to date have centered on applications filed by Fragomen, the bar recognizes that this is an attack on the entire industry and would affect the standard practices of immigration law firms throughout the country. In fact, the Labor Department has indicated that it intends to take similar actions against other immigration law firms where they suspect any violation of their new interpretation of the rules.

Industry and Community Response

There continues to be widespread outrage in the business community and in the bar at the Department’s unprecedented sweeping audit and its misinterpretation of the law. Our position continues to receive widespread support from prominent immigration lawyers and the American Immigration Lawyers Association, which have challenged and criticized DOL’s new interpretation and also the manner in which it has publicly announced the audits. In addition, the U.S. Chamber of Commerce, as well as many of our clients, have expressed to DOL their concern that the agency’s action is unfairly interfering with the normal processing of their filings.

Ongoing Discussion to Resolve the Audits

Fragomen certainly understands and fully supports the DOL mission of protecting U.S. workers and the need to fully comply with all laws and regulations. Nonetheless, we strongly disagree with their new rule which raises constitutional concerns. We also strongly disapprove of any attempt to announce a new standard and then apply it retroactively without following the legal requirement under the Administrative Procedure Act to provide the public with notice and an opportunity to comment.

We are actively working to reach an agreement that will enable us to move forward quickly to a resolution and have DOL release cases from audit in the near future, so cases will be back on track in the routine process.

If you have any questions about this alert, please contact the Fragomen attorney with whom you usually work.

Copyright © 2008 by Fragomen, Del Rey, Bernsen & Loewy, LLP