

“WHAT GOES UP MUST COME DOWN” – April 11, 2002
BUYER’S SIDE DUE DILIGENCE CHECKLIST
FOR IMMIGRATION RELATED M&A DEALS



1. I-9s
 - Check to see that they exist for all employees. (Check against payroll records)
 - Check to see if the I-9s are completed properly.
 - If there are errors, analyze whether the errors are substantive or procedural (curable).
 - Assess penalties (civil liability) (criminal liability).
 - Determine whether reverification of new workforce is necessary. Be consistent for entire new workforce so as not invite discrimination complaints under INA § 274B.

2. LCAs
 - Check to make sure public inspection files are being kept for H-1B employees.
 - Check payroll records against LCA wage to ensure wage compliance.
 - Check adequacy of other LCA records in the file: posting notices, actual wage memos, prevailing wage documentation.
 - Determine whether aliens are receiving LCAs on or before first day of H-1B hire.
 - Assess penalties (civil liability).
 - Prepare DOL compliant LCA acquisition memo.

3. DEPENDENCY
 - Check number of H-1Bs to be acquired. Add to current company count to determine whether H-1B Dependency (15% for large companies) is reached.
 - Determine whether company is in compliance with Dependency regulations.

4. IS FILING REQUIRED FOR NEW H-1B WORKFORCE?
 - Are the terms and conditions of their employment to remain the same? If not, filing required.
 - Is the buyer a “successor in interest” under INS and DOL definition? If not, filing required.
 - Is deal already closed and workforce already on buyer’s payroll? If so, DOL compliant acquisition of LCAs cannot occur. New H-1B filings are required.

5. ARE THERE INTRACOMPANY TRANSFEREES (L-1s) or TREATY ALIENS (E-1s or E-2s) AT THE COMPANY?
 - Have overseas operations been acquired? If so, amended Ls need to be filed on behalf of L employees.

- ❑ Determine the feasibility of adding new entity to Blanket L petition if such a petition exists.
- ❑ Will buyer qualify as a Treaty Company, if employees are in E status? If so, file amended E applications.
- ❑ For employees who will no longer qualify as E or L, determine their eligibility for H-1 status.

6. EMPLOYMENT BASED IMMIGRANT FILINGS

- ❑ Are employees being sponsored for green cards/permanent residence?
Are there contractual obligations or terms of offer letter that legally oblige the employer to continue to process green cards?
- ❑ Are there repayment agreements signed by the employee to return funds to the company if the employee leaves the company before the green card?
- ❑ What kinds of immigrant applications are being sponsored by the seller?
Analyze the types of filings, labor certifications, EB1 Managers, EB1 Researchers or EB1 Extraordinary Aliens. Are these applications likely to succeed or will refiling be necessary?
- ❑ Will the buyer qualify as a “successor in interest” for immigrant purposes and be able to continue to process immigrant visas without restarting the process?
- ❑ Are labor certifications in the process of being filed and, if so, does seller have a pattern of recruitment for the occupation over the past six months?
- ❑ Should I-140 successor in interest applications be filed or interfiled with existing AOS applications?
- ❑ Are Outstanding Researchers being filed by the seller? If so, does buyer qualify as having three full-time researchers so that it can file Researcher positions?
- ❑ Are there AOS portable employees? Employees with AOS applications pending for 180 days ago or longer? Do they have an EAD card and, if so, are there new positions “same or similar?” Is buyer willing to write AOS portability letter explaining the “same or similar” position, and continue sponsoring alien for lawful permanent residence?