GCI Business Immigration & KOCAMA Quarterly Newsletter
January 2014

The first 2014 quarterly GCI-KOCAMA Newsletter includes:

- ⇒ DHS OIG New Report on EB-5 Program
- ⇒ TN NAFTA Professionals Visa
- ⇒ Change of Nonimmigrant Visa Status
- ⇒ E-Verify Requirements: Federal, State, County, and City Levels
- ⇒ Grounds of Inadmissibility/Deportability and Waivers
- ⇒ Legal Permanent Residents & Grounds of Inadmissibility
- ⇒ 23-Count Indictment for Harboring & Exploiting Undocumented Workers
- ⇒ CA Supreme Court Rules Undocumented Immigrant Can Practice Law
- ⇒ Immigration Processing Times
- ⇒ Global Migration: People's Republic of China
- ⇒ Republic of Korea's Aerospace Industry
- ⇒ Republic of Korea-U.S. Free Trade Agreement (KORUS-FTA) & Alabama

Gulf Coast Immigration was founded to meet the growing need for comprehensive services in all aspects of immigration, including nationality law, and domestic and international legal resources for both American and foreign companies and individuals in the southern Gulf Coast region. It handles both employment- and family-based immigrant and non-immigrant visa petitions and applications with a subspecialty focusing on the U.S. Immigrant Investor Program (EB-5 Program). It also provides resources on global migration for 34 countries to assist international companies in managing the immigration process for their employees worldwide.

KOCAMA LLC was established to assist both individuals and American and Korean companies of all sizes to capitalize on the sale of goods and services, and investment opportunities created by the Republic of Korea - U.S. Free Trade Agreement (KORUS-FTA). Current priorities are goods, which become tariff free in 3 years, and government procurements.

++

DHS OIG New Report on EB-5 Program

The Department of Homeland Security's Office of Inspector General (OIG) has recently released a new report on whether the EB-5 Regional Center Program is administered and managed effectively.

Congress established the Employment-Based Fifth Preference (EB-5) green card category in 1990 to stimulate the U.S. economy through direct job creation and capital investment by foreign investors. Congress added a regional center pilot program to the EB-5 category in 1993 for pooling investor money in a defined industry and geographic area to create both direct and indirect jobs. An EB-5 foreign investor must invest $1 million; however, the required minimum investment is lowered to $500,000 if the investment is made in a high unemployment area or a rural area. Each foreign investor must create or preserve at least 10 full-time jobs for qualifying U.S. workers within 2 years.

The OIG report notes several conditions that prevent U.S. Citizenship and Immigration Services (USCIS) from administering and managing the EB-5 regional center program effectively, including the laws and regulations governing the program do not give USCIS authority to deny or terminate a regional center's participation based on fraud or national security concerns; and the program extends beyond the current USCIS mission - secure America's promise as a nation of immigrant.

OIG recommends that USCIS: (1) update and clarify its regulations; (2) develop memoranda of understanding with the Departments of Commerce and Labor and the Securities and Exchange Commission to provide expertise and involvement in the adjudication of applications and petitions for the EB-5 regional center program; (3) conduct comprehensive reviews to determine how EB-5 funds have actually stimulated growth in the U.S. economy in accordance with the intent of the program; and (4) establish quality assurance steps to promote program integrity and ensure that regional centers comply with regulatory requirements.

If you have questions about the EB-5 Program, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

TN NAFTA Professionals Visa

In general, a citizen of a foreign country who wishes to enter the United States must first obtain a visa, either a nonimmigrant visa for temporary stay, or an immigrant visa for permanent residence. The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada and Mexico. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. Foreign applicants may be eligible for TN nonimmigrant status, if they are a citizen of Canada or Mexico; their profession qualifies under the regulations; the position in the United States requires a NAFTA professional; they have a prearranged full-time or part-time job with a U.S. employer (but not self-employment) and they have the qualifications to practice in the

profession in question.

Canadian citizens are generally eligible for admission as nonimmigrants without a visa as they are not required to apply for a TN visa at a U.S. consulate. They may establish eligibility for TN classification at the time of seeking admission to the United States by presenting required documentation to a U.S. Customs and Border Protection (CBP) officer at certain CBP-designated U.S. ports of entry or at a designated pre-clearance/pre-flight inspection station.

Mexican citizens are required to obtain a visa to enter the United States as a TN nonimmigrant. Applicants should apply for a TN visa directly at a U.S. embassy or consulate in Mexico. Once the application is approved for a TN visa, Mexican citizens may apply for admission at certain CBP-designated U.S. ports of entry or at a designated pre-clearance/pre-flight inspection station.

The initial period of stay is up to 3 years. If a TN visa holder wishes to remain in the United States beyond their initial period of stay without first departing from the United States, they must seek an extension of stay.

If you have questions about the TN nonimmigrant classification, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

Change of Nonimmigrant Visa Status

If foreign nationals want to change the purpose of their visit while in the United States, they must file a request with United States Citizenship and Immigration Services (USCIS) before their authorized stay expires. Foreign nationals should apply as soon as they determine the needs for changing their nonimmigrant category to a different one. Until the request is approved, they cannot change their activity under the nonimmigrant category in which they were admitted into the United States.

There are several nonimmigrant visa categories which foreign nationals cannot apply to change their status including but not limited to: Visa Waiver Program· Crew member (D nonimmigrant visa), In transit through the United States (C nonimmigrant visa), In transit through the United States without a visa (TWOV), Fiancé of a U.S. citizen or dependent of a fiancé (K nonimmigrant visa), and Informant (and accompanying family) on terrorism or organized crime (S nonimmigrant visa).

In general, foreign nationals may apply to change their nonimmigrant status if they were lawfully admitted to the United States with a nonimmigrant visa, their nonimmigrant status remains valid, they have not violated the conditions of their status, and they have not

committed any crimes that would make them ineligible. Please note that if foreign nationals fail to maintain their nonimmigrant status, they can be barred from returning to and/or removed (deported) from the United States.

If you have questions about the nonimmigrant status changes, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

E-Verify Requirements: Federal, State, County, and City Levels

Federal (Executive Order 13465)

- Effective September 8, 2009, all Federal contractors and their subcontractors (paid over $3,000) need to use E-Verify to confirm that all of their new hires and current employees working directly on federal contracts are authorized to work in the United States.
- Non-compliance penalties - Ineligibility to receive and/or loss of federal contracts.

States With No Existing E-Verify Legislation

- Alaska, Arkansas, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Texas, Vermont, West Virginia, Wisconsin, Wyoming

States With E-Verify Legislation

- All or Most Employers - Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Utah
- State Agencies and/or Contractors - Florida, Indiana, Missouri, Nebraska, Oklahoma, Pennsylvania
- State Agencies Only - Idaho, Virginia
- Contractors Only - Colorado, Minnesota
- Employers via Local/Municipal Law - Michigan, New York, Oregon, Washington
- Law Rescinded/Expired- California, Illinois, Rhode Island

Alabama (the Beason-Hammon Alabama Taxpayer and Citizen Protection)

- Effective January 1, 2012, as a condition for the award of any state contract, every contractor or subcontractor needs to enroll in E-Verify and verify the employment eligibility of its new hires.
- Effective April 1, 2012, every business entity or employer in the state is required to

enroll in E- Verify and verify the work eligibility of all new hires. A business entity or employer that uses E-Verify to verify the work authorization of an employee shall not be deemed to have violated this section with respect to the employment of that employee.

- Penalties for non-compliance – first Offense leads to debarment from state contracts, cancellation of state government grants or incentives, and suspension or revocation of business license up to 60 days. Second Offense may lead to permanent revocation of business license.

Alabama – Albertville

- Effective December 1, 2008, for contracts in excess of one hundred thousand dollars ($100,000.00) in any twelve-month period, the contractor or supplier should certify to the city that it and its subcontractors have and will verify, to the extent allowable by federal law, by using the federal E-verify program, that no unauthorized aliens are utilized in providing services, materials, or things to the city.
- Penalties for non-compliance – the city council may terminate a contract if the contractor, subcontractor, or supplier fails to terminate an employee determined by the federal government to be an unauthorized alien or fails to provide verification that it does not employ unauthorized aliens.

Alabama – Decatur

- Effective January 1, 2009, for all employers doing business with the city. Decatur City Council approved resolution No. 99-141 requiring that companies doing business with the city verify that all employees are authorized to work in the US using E-Verify or another acceptable procedure.
- Penalties for non-compliance – revocation of contract.

Alabama - Huntsville

- Effective January 1, 2010, all city contractors with contracts valued at $15,000 or higher must use E-Verify for all new employees who will be working directly on the contract with the city. If a contractor uses one or more subcontractors in connection with the performance of a contract, the contractor shall include in all subcontracts valued at $3,000.00 or more the requirement for compliance by the subcontractor. COTS items are exempted for both contractors and subcontractors.
- Penalties for non-compliance – the city may refuse to award, renew or extend a contract. The city may also terminate a contract with any contractor that fails to remain enrolled in E-Verify throughout the term of its contract with the city.

Florida (Governor's Executive Order 11-116 & 11-02)

- Effective May 27, 2011, all agencies must: (1) Verify the employment eligibility of

all new agency employees through E-Verify (2) Expressly require state contractors use E-Verify for new employees hired by the contractor during the contract term (3) Expressly require contractors require their subcontractors to use E-Verify for all new employees hired by the subcontractor during the contract term.
- Penalties for non-compliance – possible denial of future county projects

Louisiana (Act 376 and Act 402)

- Effective January 1, 2012, Act 376 requires that private employers who bid on a public entity project or enter into a contract agreement with a public entity for the physical performance of services, confirm in a sworn affidavit that the company uses the E-Verify system for all new employees within the United States. If the employer is awarded a contract, he or she is required to E-Verify all new employees in Louisiana hired through the duration of the contract. The requirement applies to both general contractors and their subcontractors.
- Effective August 15, 2011, Act 402 stipulates that all Louisiana employers must confirm the citizenship or work authorization status of new hires through one of two ways. The employer may either: (1) use the E-Verify system; or (2) ensure that each employee has provided a picture ID and one of the following documents (a copy of which must also be retained): U.S. birth certificate or certified birth card; naturalization certificate; certificate of citizenship; alien registration receipt card; U.S. immigration form I-94, with employment authorized stamp.
- Penalties for non-compliance – private contractors may be subject to cancellation of the public contract and may be ineligible for public contracts for up to 3 years from the violation date.

Mississippi (SB 2988)

- Effective July 1, 2008, all public employers, all public contractors and subcontractors, and private employers with 250 or more employees must use E-Verify.
- Effective July 1, 2009, private employers with between 100 and 250 employees must use E-Verify.
- Effective July 1, 2010, private employers with between 30 and 99 employees must use E-Verify.
- Effective July 1, 2011, all private employers must use E-Verify.
- Penalties for non-compliance – Violating Employers may be subject to all state contracts terminated and become ineligible for public contracts for three years, have any license, permit, or certificate suspended for one year, or both.

Georgia (Illegal Immigration Reform and Enforcement Act of 2011)

- Effective January 1, 2012, all private employers with 500 or more employers are required to enroll in E-Verify and verify the employment eligibility of new hires.
- Effective July 1, 2012, all private employers with 100 or more employees but fewer than 500 employees are required to enroll in E-Verify and verify the employment eligibility of new hires.
- Effective July 1, 2013, all private employers with more than 10 employees but fewer than 100 employees are required to enroll in E-Verify and verify the employment eligibility of new hires.
- Penalties for non-compliance – persons acting in willful violation of the law by knowingly accepting identification documents that are not secure and verifiable shall be guilty of a misdemeanor and subject to imprisonment not to exceed 12 months, a fine not to exceed $1,000.00, or both.

If you have questions about the E-Verify Program, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

Grounds of Inadmissibility/Deportability and Waivers

Grounds of inadmissibility are applied to individuals that are seeking admission (entry) to the United States and who have not yet been admitted. Grounds of deportation/removal from the United States are divided into two different categories under the U.S. Immigration and Nationality Act ("INA"): (1) Grounds of Inadmissibility under § 212(a); and (2) Grounds of Deportation under § 237(a)(1)(A). The grounds of deportation/removal apply to individuals who have been admitted to the U.S. and who are physically located within the U.S., but who became deportable/removable based upon certain violation of law. Note that certain grounds of criminal inadmissibility are waiveable under the INA.

If you have questions about the Ground of Inadmissibility/Deportability and Waivers, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

Legal Permanent Resident & Grounds of Inadmissibility

Legal Permanent Residents (LPRs) may lose their permanent resident status (green card) if they commit an act that makes them removable from the United States under the INA. LPRs who are returning to their home in the US, are not considered as seeking admission and therefore, they are not required to establish admissibility under the INA. However, LPRs who fall within one of the following categories, are subject to being place in removal proceeding:

- Has abandoned or relinquished his/her LPR status
- Has been absent rom the US for a continuous period of more than 180 days
- Has engaged in illegal activity after leaving the US
- Has departed from the US while under legal process seeking his/her removal
- Has committed a criminal inadmissibility ground, unless he/she has obtained a waiver or relief from removal

In addition, LPRs may be found to have abandoned their permanent resident status if they:

- Move to another country intending to live there permanently
- Remain outside of the United States for more than 1 year without obtaining a reentry permit or returning resident visa.
- Remain outside of the United States for more than 2 years after issuance of a reentry permit without obtaining a returning resident visa.
- Fail to file income tax returns while living outside of the United States for any period.
- Declare yourself a "nonimmigrant" on your tax returns

If you have questions about the Legal Permanent Resident status, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

23-Count Indictment for Harboring & Exploiting Undocumented Workers

A federal grand jury recently returned a 23-count indictment charging the owners and managers of an Ohio restaurant chain with conspiracy to harbor undocumented workers, aiding and abetting the harboring of undocumented workers, and harboring undocumented workers, among other charges. In addition to prison sentences, the indictment seeks $16.47 million in gross proceeds that the defendants allegedly earned as a result of the claimed offenses.

In the indictment, the U.S. Attorney for the Northern District of Ohio charged that the owners and managers of the restaurant chain "took advantage of their workers' immigration status for their own profit." The indictment alleges that the defendants not only hired undocumented workers, but also conspired to shield them from detection by, among other acts, helping the employees obtain fraudulent work documents, leasing housing for them, and paying them in cash in lieu of placing them on payroll. The indictment further charges that the defendants paid the workers less than the minimum wage, failed to pay overtime, and sometimes only paid them in tips.

This indictment is indicative that federal authorities take incidents of purposeful employment of undocumented workers seriously, particularly where the employers are alleged to have done so as part of a "business model."

CA Supreme Court Rules Undocumented Immigrant Can Practice Law

California's Supreme Court ruled that Sergio Garcia, an undocumented immigrant who received a law degree and passed the state bar exam in 2009, must be given his license to practice law in California. Garcia came to the United States from Mexico when he was 17 months old. He and his family lived in California until 1986 and then they moved back to Mexico when he was 9 years old. In 1994, when Garcia was 17 years old, he and his parents returned to California; again he entered the country without documentation. His father obtained U.S. citizenship in 1999. His father has filed a green card petition for Garcia, but it remains in a long backlog. California is the first state which knowingly admitted an undocumented alien to the practice of law.

Immigration Processing Times

Please click to access current processing times of the Department of State's latest Visa Bulletin, the USCIS Service Centers, or the Department of Labor with the most recent cut-off dates for visa numbers:

Department of State Visa Bulletin: click here

USCIS Service Center processing times online: click here

Department of Labor processing times: click here

Global Migration: People's Republic of China

The People's Republic of China ("PRC") has comprehensive laws and regulations governing foreign nationals coming to do business to encourage economic growth and firmly establish its role in the global economy. The Chinese visa is defined as a permit issued to a foreigner by the Chinese visa authorities for entry into, exit from or transit through the Chinese territory.

The Ministry of Foreign Affairs operates the PRC diplomatic missions, consular posts, and other agencies abroad, which are responsible for processing visa applications. In PRC, however, local government offices often dictate practice and procedure although the laws are generally national in scope. As a result, there are significant variations within the country. Documentation requirements also vary by city. For example, police clearance certificates issued in the foreign national's home country are required in some cities but not in others. Some, but not all, PSBs require kinship certificates (such as birth and marriage certificates) to be legalized. These documentation differences can affect the overall processing time for a

foreign national to complete the work authorization process in China. Applicants are encouraged to contact the embassy or consulate responsible for the applicant's place of residence and consult for any specific requirements for the region/city they intent to visit. (See the Resources section for contact information for the embassies and consulates).

In June 2012, the National People's Congress passed the *Law of the People's Republic of China on Entry and Exit Control*. The new law took effect July 1, 2013 and supersedes the existing entry and exit control laws. As of September 1, 2013, China has implemented regulations governing the Exit-Entry Administration (immigration) Law. It has replaced the regulations, which had been in effect since 1986. In the coming months, published regulations with instructions are expected on key provisions. The People's Republic of China has adopted flexible new visa rules to make it convenient for foreign professionals and investors to work and invest in the country in order to attract them. Under new regulation, "short-term" is defined by the new regulations as 180 days or less, and "long-term" is defined as more than 180 days. The rules also established the new visa types and purposes as well as some of the documents required to file applications.

The Chinese government issues several categories of visa, including the following types that typically concern students and professionals:

- D Visas are issued to an applicant who plans to reside permanently in China.
- F Visas are reserved for non-commercial activities including scientific, cultural, athletic and educational purposes.
- J-1/J-2 Visa are issued to foreign correspondents and their accompanying dependents residing in China.
- M Visas are for persons engaging in business or commercial activities
- R Visas are for highly skilled foreign worker in shortage occupations
- Z Visas are for professionals who expect to be employed in China for any period.
- X-1/X-2 Visas are for students wishing to study in China.

If you have questions about the People's Republic of China's immigration system, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

Republic of Korea's Aerospace Industry

Korea is both a major importer and exporter of parts and components. It continues to emerge as a major industry player and supplier for some of the world's major manufacturers, including Boeing and Airbus.

In 2012, Korea was the 11th largest market for U.S. aerospace exports. Total U.S. exports to Korea exceeded USD 1.5 billion, accounting for 78 percent of the total value of Korea's

aerospace imports.

The Korean aerospace market, for the commercial sector, is open to foreign firms. Top U.S. aerospace exports to Korea include: complete aircraft, civilian aircraft engines, equipment and parts, military airplane parts, and helicopters. All of the U.S. aerospace exports are duty-free as of March 15, 2012 as a result of the implementation of the Korean-U.S.FTA (KORUS).

Korea has two state-owned airport companies, Incheon International Airport Corporation (IIAC) and Korea Airport Corporation (KAC). Incheon Airport was voted the top in the 'airport service quality' survey for the eighth year in a row and has won the highest score in the Airport Service Quality (ASQ) category organized by the Airports Council International (ACI) consisting of 1,700 airports around the world. It is also consistently named Best Airport in the Asia-Pacific and Best Airport in the 25 to 40 million-passenger category.

In 2008, Korea Aerospace Industries (한국항공우주산업주식회사) introduced its first non-military private aircraft. In 2011, Korean Aerospace Research Institute (한국항공우주연구원) succeeded in developing an unmanned tilt-rotor aircraft and it plans to commercialize it with Korean Airline (대한항공), Korea's largest airline company.

In addition, in 2013, 한국항공우주산업주식회사 won a USD 1.22 billion contract to exclusively supply wing parts to Europe's Airbus SAS, wing bottom panels (WBP) for the very popular A320 passenger jets. It marks the single largest civilian aircraft components deal won by a Korean company. It will supply the panels for the duration of the aircraft's production that may extend to 2025, with the first delivery to be made in 2014.

Aerospace industry is one of eleven industries that Alabama targets to recruit for new jobs and to help improve existing resources.

Republic of Korea-U.S. Free Trade Agreement (KORUS-FTA) and Alabama

The Korea-U.S. Free Trade Agreement (KORUS-FTA), which came into force on March 15, 2012, will eliminate tariffs for over 95 percent of U.S. exports of consumer and industrial products within five years. As this is the first U.S. FTA with a Northeast Asian partner, the KORUS FTA will likely become a model for trade agreements for the rest of the region and underscores the U.S. commitment to the Asia-Pacific region.

U.S. exporters to Korea currently pay an average 6.2 percent tariff, or nearly $1.3 billion a year, to Korea through tariffs on industrial goods and Korean exporters to the United States currently face an average 2.8 percent tariff. According to a 2007 study conducted by the U.S. International Trade Commission (USITC), the impact of the eliminations of tariffs and

related barriers is estimated to increase U.S. GDP by up to $11.9 billion and U.S. goods exports by nearly $11 billion annually when the KORUS FTA is fully implemented. This estimate does not include trade of services – which will further expand U.S. trade with Korea.

South Korea, a member of the Organization for Economic Cooperation and Development (OECD), is the world's 15th largest economy: its economic growth exceeded 6 percent in 2010 with an estimated GDP of $ 1 trillion. Services drive the Korean economy, accounting for 57.6 percent of GDP in 2008, with a market size of $580 billion. The World Bank and the International Monetary Fund classify Korea as a high-income economy and an advanced economy.

Korea is the seventh largest trading partner of the United States: the 2nd largest market for U.S. services in Asia, the 5th largest market for U.S. agricultural goods, the 7th largest U.S. trading partner, and the 10th largest market for U.S. information and technology products. During 2012, Alabama ranked 22nd in the nation for total dollar exports and exported over $466 million of goods and services to South Korea. South Korea ranked as the 8th-largest export market for Alabama in 2012, holding steady at the same position from 2011.

If you have questions about The Korea-U.S. Free Trade Agreement (KORUS-FTA), please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@kocama.org

Gulf Coast Immigration
KOCAMA L.L.C.
P.O. Box 2262
Mobile, Alabama 36652
(251) 379-8065; (251) 387-2544; (251) 219-7182 FAX
info@gcimmigration.com
skim@kocama.org

DISCLAIMERS & REMINDERS