GCI Business Immigration & KOCAMA Consulting
Newsletter Fall 2013

The Fall 2013 GCI-KOCAMA Newsletter includes:

Gulf Coast Immigration was founded to meet the growing needs for comprehensive services in all aspects of immigration, including nationality law, and domestic and international legal resources for 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 American and Korean companies of all sizes and individuals 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). Its current priorities are goods, which become tariff free in 3 years, and government procurements.

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H-2A Agricultural Workers Program and Its Process

In 1986, the H-2A Program was created under the Immigration and Nationality Act (INA) to help agricultural employers obtain an adequate labor supply while also protecting the jobs, wages, and working conditions of U.S. farm workers. The program allows a U.S. employer anticipating a shortage of domestic agricultural workers to hire foreign full-time workers on a temporary basis to perform agricultural work. The employer must first receive a temporary labor certification from the Department of Labor (Labor) before the U.S. Citizenship and Immigration Services (USCIS) can approve a visa petition for H-2A workers.

Labor's OFLC within the Employment and Training Administration handles H-2A applications for a temporary labor certification, and ensures a condition of certification that qualified U.S. workers are not available for the job and the employment of temporary foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. Labor's Wage and Hour Division enforces the terms and conditions of the agricultural work contract and worker protections under the H-2A Program.

The process of obtaining a temporary labor certification from the OFLC under the H-2A Program involves the following basic steps:

Step 1: Filing a Job Order with the State Workforce Agency (SWA)
Step 2: Filing an H-2A Application with the Chicago National Processing Center (NPC)
Step 3: Conducting Recruitment for U.S. Workers
Step 4: Completing the Temporary Labor Certification Process
Step 5: Submitting Form I-129 to USCIS
Step 6: Prospective workers outside the United States apply for visa and/or admission

If you have questions about the H-2A 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 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). In brief, the grounds of inadmissibility are applied to individuals that are seeking admission (entry) to the United States and who have not yet been admitted. 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.

The most commonly applied grounds of inadmissibility are:

(1) Health-Related Grounds of Inadmissibility [INA § 212(a)(1)]
A foreign national will be denied entry if they are determined to have a communicable disease of public significance in accordance with the Department of Health and Human Services' regulations. (Please note HIV has been removed from the list).

(2) Criminal Grounds of Inadmissibility [INA § 212(a)(2)]
A foreign national is inadmissible to the U.S. if s/he has been convicted of, or who admits having committed, or who admits committing acts, which constitute the essential elements of either (1) a crime involving moral turpitude ("CIMT"); or (2) an offense relating to a controlled substance. Examples of CIMTs include, but are not limited to, murder, rape, arson, robbery, larceny/theft, and fraud.

Inadmissibility based upon a CIMT will NOT apply to a foreign national if the crime was committed when the foreign national was under 18 years of age, and the crime was committed more than 5 years before the date of application for admission to U.S. and if the maximum penalty possible for the crime of conviction did not exceed imprisonment for one year and, if the foreign national was convicted of such crime, s/he was not sentenced to a term of imprisonment in excess of 6 months.

Any foreign national convicted of two or more offenses and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more, is inadmissible [INA § 212(a)(2)(B)].

An foreign national will be found inadmissible if s/he is reasonably believed to be a trafficker in any controlled substance, or if s/he has been a knowing aider, assister, abettor, conspirator or colluder with others in the illicit trafficking in any controlled substance [INA § 212(a)(2)(C)].

A foreign national who prostitutes, or who has engaged in or sought to engage in prostitution, or to procure prostitutes within the past 10 years, or seeks to engage in prostitution, is inadmissible [INA § 212(a)(2)(D)].

A foreign national is inadmissible if s/he commits or conspires to commit human trafficking offenses in the U.S. or outside the U.S. In addition, a person will be inadmissible if immigration authorities know, or have reason to believe that the person has been a knowing aider, abettor, assister, conspirator, or colluder with a trafficker in severe forms of trafficking [INA § 212(a)(2)(H)].

Any person known or suspected to have engaged, is engaging, or seeks to enter the U.S. to

engage in money laundering is inadmissible, as are knowing aiders, abettors, assisters, conspirators, or colluders [INA § 212(a)(2)(I)].

(3) Economic Grounds of Inadmissibility [INA § 212(a)(4)]
A foreign national who is deemed to be a "public charge" is inadmissible.

(4) Illegal Entrants & Immigration Violators [INA § 212(a)(6)]
- Present Without Admission or Parole
- Failure to Attend Removal Proceedings
- Fraud and Misrepresentation
- Smugglers

(5) Documentation Requirements [INA § 212(a)(7)]
Any foreign national who seeks to enter the U.S. and remain here permanently, or who is seeking to enter the U.S., but who does not have the proper documents to demonstrate that s/he has authorization to do so, is inadmissible.

(6) Foreign Nationals Previously Removed [INA § 212(a)(9)]
Any foreign national who has been previously removed and whose removal proceedings were initiated upon the foreign national's arrival in the U.S. and who again seeks admission within 5 years of the date of such removal (or 20 years in the case of a second or subsequent removal) is inadmissible.

Any foreign national who has been unlawfully present for a period of more than 180 days but less than one year is inadmissible for 3 years. Any foreign national who has been unlawfully present for a period of one year or more is inadmissible for 10 years.

Any foreign national who has been unlawfully present in the U.S. for an aggregate period of more than 1 year, OR who has been ordered removed from the U.S., who then enters or attempts to enter the U.S. without being admitted is inadmissible for life.

(7) Miscellaneous Grounds of Inadmissibility [INA § 212(a)(10)]

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

Forms of Relief From Removal

Removal Proceedings are commenced by the filing of a Notice to Appear (Form I-862) with the Immigration Court after it is served on the alien. The Notice to Appear ("NTA") is a written notice to the alien which includes the nature of the proceedings, the legal authority under

which the proceedings are conducted, the acts or conduct alleged to be in violation of the law, and the charge(s) against the alien and the statutory provision(s) alleged to have been violated.

Once an alien in proceedings is found to be removable, he or she, if eligible, may request one or more types of discretionary relief. The alien has the burden of proving that he or she is eligible for relief under the law, and usually that he or she deserves such relief as an exercise of discretion.

The following types of discretionary relief are available during a hearing:

Voluntary Departure is the most common form of relief from removal and may be granted by Immigration Judges, as well as the Department of Homeland Security (DHS), which absorbed the functions of the former Immigration and Naturalization Service. Voluntary departure avoids the stigma of formal removal by allowing an otherwise removable alien to depart the United States at his or her own personal expense and return to his or her home country, or another country if the individual can secure an entry there.

Cancellation of Removal is available to qualifying lawful permanent residents and qualifying non-permanent residents. For lawful permanent residents, cancellation of removal may be granted if the individual has been a lawful permanent resident for at least 5 years; has continuously resided in the United States for at least 7 years after having been lawfully admitted; and has not been convicted of an "aggravated felony," a term that is more broadly defined within immigration law than the application of the term "felony" in non-immigration settings.

Cancellation of removal for non-permanent residents may be granted if the alien has been continuously present for at least 10 years; has been a person of good moral character during that time; has not been convicted of an offense that would make him or her removable; and demonstrates that removal would result in exceptional and extremely unusual hardship to his or her immediate family members (limited to the alien's spouse, parent, or child) who are either U.S. citizens or lawful permanent residents.

Asylum can be granted to an alien who qualifies as a "refugee" by the Attorney General in his discretion. Generally, this requires that the asylum applicant demonstrate an inability to return to his or her home country because of past persecution or a well-founded fear of future persecution based upon his or her race, religion, nationality, membership in a particular social group, or political opinion.

Adjustment of Status is available to change an alien's status from a non-immigrant to a lawful permanent resident (LPR). Aliens who have been previously admitted into the United States can apply to DHS for adjustment of status, while aliens in removal proceedings apply before an

Immigration Judge. Several conditions must be met, including that the alien is admissible for permanent residence and an immigrant visa is immediately available at the time of application.

Registry is available for the adjustment to LPR status for aliens who have lived in the United States for an extended period. The registry provision under INA allows for the adjustment of aliens who have lived in the United States since before 1972. However, aliens who are inadmissible on criminal grounds are ineligible for adjustment, as are aliens who lack good moral character.

If you have questions about the Forms of Relief from Removal and Removal Proceedings, please contact Sujin Kim, Esq. at (251) 379-8065/(251) 387-2544 or skim@gcimmigration.com

Eight Circuit Finds Unauthorized Workers Covered Under FLSA

The U.S. Court of Appeals for the Eighth Circuit recently found that employers may not exploit undocumented workers' status or profit from hiring such workers in violation of federal law.

Six undocumented workers toiled in the Jerusalem Café, some for less than minimum wage and all without receiving overtime wages. The workers sued the Café, and its then-owner and manager for willfully violating the Fair Labor Standards Act of 1938 (FLSA). A jury decided for the workers, and the district court for the Western District of Missouri awarded the workers minimum and overtime wages, statutory liquidated damages, and legal fees. The district court denied the employers' motion for judgment as a matter of law, rejecting the argument that the workers, as noncitizens without work authorization, lacked standing to sue. The employers appealed, contending the FLSA does not apply to employers who illegally hire unauthorized workers.

The Eighth Circuit rejected the employer's argument, finding that the FLSA does not allow employers to exploit any employee's immigration status or to profit from hiring unauthorized workers in violation of federal law. The court acknowledged the principle that "breaking one law does not give license to ignore other generally applicable laws."

Most of HB56 Has Been Permanently Blocked

The State of Alabama has agreed not to pursue key provisions of its immigration bill (HB 56) signed into law by Gov. Robert Bentley on June 9, 2011. HB56 was inspired by Arizona's SB1070 to address the state's growing number of undocumented workers and last year, the Supreme Court issued its decision to strike down four of the challenged provisions of SB1070 which made it clear that state law cannot dictate certain DHS immigration enforcement policies. In April 2013, the U.S. Supreme Court also refused to hear the state's appeal of a

federal court's ruling that enjoined key provisions of the law.

After Gov. Bentley signed the bill into law, three groups, a coalition of civil rights organizations, the federal government, and churches, filed lawsuits challenging HB 56. The Department of Justice and other groups argued that HB56 violated the Constitution's Supremacy Clause, which states that federal law takes precedence over state law, and that Alabama "pre-empted" federal immigration laws by attempting to create its own statutes and enforce them on its own. On September 28, 2011, the Judge allowed certain parts of the law to go into effect and enjoined other parts. On March 8, 2012**,** the United States Court of Appeals for the Eleventh Circuit expanded the October 14, 2011 order and enjoined an additional two Sections of HB 56: Sections 27 and 30

According to the settlement filed in the U.S. Northern District Court on October 29, 2013, the following provisions of HB 56, including some that federal courts had already blocked, are now permanently blocked:

Section 10 criminalizing the failure to register one's immigration status. It was initially blocked by the U.S. Court of Appeals for the 11th Circuit and now has been permanently blocked.

Section 11(a) criminalizing the solicitation of work by unauthorized immigrants. It was initially blocked by the District Court in Birmingham and now has been permanently blocked.

Sections 11(f) and (g) criminalizing day laborers' First Amendment right to solicit work. These were initially blocked by the District Court in Birmingham and now have been permanently blocked.

Section 13 criminalizing giving a ride or renting to someone who is undocumented. It was initially blocked by the U.S. District Court in Birmingham and now has been permanently blocked.

Section 27 infringing on the ability of individuals to contract with someone who was undocumented. It was initially blocked by the 11th Circuit and now has been permanently blocked.

Section 28 requiring schools to verify the immigration status of newly enrolled K-12 students. It was initially blocked by the 11th Circuit and now has been permanently blocked.

CBP Expand Global Entry to Republic of Korea, Germany, United Kingdom

The U.S. Customs and Border Protection is expanding eligibility for participation in Global Entry to citizens from the Republic of Korea, Germany, and the United Kingdom. Those participating in Korea's Smart Entry System (SES), Germany's Automated and Biometrics-Supported Border Controls (ABG) Plus, and select Qatar and United Kingdom citizens may be able to receive Global Entry benefits. Global Entry "allows pre-approved, low-risk travelers the ability to bypass traditional CBP screening and use an automated kiosk to complete their entry into the U.S. upon arrival."

Global Entry kiosks are available at 34 U.S. airports and 10 CBP preclearance locations in Ireland and Canada that serve 98 percent of all incoming air travelers. To become a member of Global Entry, interested individuals must fill out an online application, pay the $100 application fee, undergo a background investigation, and complete an interview with a CBP officer at a Trusted Traveler enrollment center, which includes submission of fingerprints. Upon approval, membership is valid for five years.

Global Migration: Republic of Korea (South Korea)

All foreign nationals who enter Korea must obtain an appropriate visa from the Korean embassy or consulate in their home country prior to entering Korea. A variety of factors including nationality, the purpose and expected duration of stay, occupation and family relations determine whether or not a foreign national is required to obtain a visa to visit Korea. Generally, Korean visa applications should be summited to a Korean consulate or the consular section of the Korean embassy in the foreign national’s country of residence. Visa application fees may vary from country to country due to reciprocity and the exchange rate applied at the time of filing, applicants are encouaged to contact the embassy or consulate responsible for the applicant’s place of residence to find out the amount application fee.

The business visitor is required to obtain a short-term business visitor visa (C-2) prior to entry unless there is a treaty between Korea and the foreign national’s country of nationality. Individuals may enter Korea as a business visitor for a limited, defined duration provided that their purpose of visit is to conduct allowable business visitor activities.

Foreign nationals who enter Korea for the purpose of employment must obtain a valid employment visa from the Korean embassy or consulate in their home country prior to entering Korea. An employment visa is given only for jobs that require high-level skills and expertise. Depending on the nature of the assignment/ employment, type of entity located in Korea, *etc.*, an appropriate work visa type may be determined for each foreign national: D-8, D- 7, E-4, D-5, and D-9.

Foreign nationals intending to stay in Korea for more than 90 days after entry are required to submit an application to register as a foreign national with the Immigration Office within 90 days from the arrival date. Upon acceptance of such application, the foreign national will be issued an Alien Registration ID Card and registration as a foreign national will be affixed in their respective passports.

Korea previously had a formal policy of not permitting dual citizenship. However, a revised nationality law passed on April 21, 2010 by the National Assembly, which came into effect on January 1, 2011, legalized dual citizenship for certain persons.

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

Korea-U.S. Free Trade Agreement (KORUS-FTA)

The Korea-U.S. Free Trade Agreement (KORUS-FTA) came into force on March 15, 2012, which 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 would be likely become a model for trade agreements for the rest of the region and underscores the U.S. commitment to the Asia-Pacific region.

With approval of the KORUS FTA, over 95 percent of U.S. exports will become duty free within five years - and almost all other tariffs will be eliminated within 10 years. It is expected that tariff eliminations and strong transparency obligations provisions of the agreement will facilitate exports for small and medium-sized companies. The KORUS FTA also contains strong provisions regarding intellectual property rights and competition, particularly in the services sector, which is expected to provide a model for future trade agreements.

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 the10th largest market for U.S. information and technology products.

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

Trade Between Alabama and Korea and other FTA counties

Alabama ranked 22nd in the nation for total dollar exports during 2012. During 2012, Alabama 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.

Since the U.S.-Chile and U.S.-Singapore trade agreements have been implemented in 2004 Alabama's exports to Chile have grown by 364 percent and to Singapore have grown by 111 percent. The KORUS FTA can similarly benefit Alabama.

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