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Gulf Coast Immigration
Business Immigration Newsletter – March 2015

The first 2015 quarterly GCI Newsletter includes:

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Please click the following link to download this Business Immigration Newsletter published by the Gulf Coast Immigration (GCI). http://www.gcimmigration.com/news-1/monthly-weekly-alert/

Gulf Coast Immigration was founded to meet the growing need for comprehensive services in all aspects of immigration, including 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 professionals and international companies in managing the immigration process.

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Immigration Innovation Act of 2015 (S. 153): High-Skilled Immigration Bill

On 1/13/15, Senators Hatch (R-Utah), Klobuchar (D-Minn.), Rubio (R-Fla.), Coons (D-Del.), Flake (R-Ariz.), and Blumenthal (D-Conn.) introduced the Immigration Innovation ("I-Squared") Act of 2015 to address many of the critical reform needs in the business immigration context. This bill was first introduced in the 113th Congress.

Some of the key provisions include the following:

- Increasing the H-1B cap from 65,000 to 115,000 and allowing the cap to go up (but not above 195,000) or down (but not below 115,000) depending on actual market demand
- Removing the current 20,000 cap on the U.S. advanced degree exemption for H-1Bs
- Recognizing "dual intent" of foreign students at U.S. colleges and universities which allow them to

avoid being penalized for wanting to stay in order to work in the U.S. after graduation
- Providing an exemption for U.S. STEM advanced degree holders, persons with extraordinary ability, outstanding professors and researchers, and dependents of employment-based immigrant visa recipients from the employment-based green card cap (approximately 140,000)
- Establishing a grant program using funds from new fees added to H-1Bs and employment-based green cards for the purpose of promoting STEM education and work-related retraining
- Authorizing work permits for dependent spouses of H-1B visa holders
- Recapturing green card numbers that were approved by Congress in previous years but were not used for the following years
- Eliminating annual per-country limits for employment-based visa petitioners and adjusting per-country caps for family-based immigrant visas

This bipartisan bill addresses many of the critical reforms, which have been needed in the business immigration context. Many provisions of the Act would make positive changes to high-skilled immigration in the U.S.

H-1B Filing Starts April 1

Starting on April 1, 2015, U.S. employers, who want to hire highly skilled foreign nationals and who already have obtained a certified labor condition application (LCA) from the Department of Labor, will be able to submit their H-1B petitions. Obtaining a certified LCA requires appropriate documentation and now takes approximately 7 days.

The H-1B visa category is currently capped at 65,000 visas per year with 20,000 additional visas for foreign professionals who have earned at least a Master's or Doctorate from a qualifying U.S. academic institution. The H-1B visa is a temporary, non-immigrant employment visa for highly educated foreign professionals in "specialty occupations" that requires at least a bachelor's degree or the equivalent. The visa is valid for three years with the option to renew for an additional three years for a total of six years. H-1B employers may sponsor H-1B workers for immigrant visas (green cards).

In recent years, the cap has been reached days after the visas are made available (April 1 of each year) as the number of U.S. employers seeking highly skilled foreign professionals has drastically increased and far outstripped the limited pool of H-1B visas available. Since 2012, the cap has been reached on "the first day," which includes the first 5 business days from April 1st.

As a result, United States Citizenship and Immigration Services (USCIS) has conducted the selection process ("lottery") – the petitions submitted by U.S. employers chosen for adjudication will be randomly selected from among all of the H-1B petitions filed with USCIS during the first five business days in April. This H-1B "lottery" for advanced degree exemption petitions first for 20,000 visas and all advanced degree petitions not selected were part of the random selection process for the 65,000 Cap. In the 2014 lottery over 172,000 and in the 2013 lottery over 124,000 H-1B petitions were submitted to USCIS during the 5-day filing window. Because it is expected to be a similar situation this year, it is most important that H-1B petitions are completed and ready for delivery to USCIS on April 1st.

It is essential that both U.S. employers and foreign individuals understand first whether or not

positions even qualify for an H-1B visa – U.S. job offers must be in "specialty occupations," i.e., that require at least a bachelor's degree. It is also important to understand whether foreign individuals are even subject to the H-1B visa Caps listed above. If they are, whether it is the Bachelor's Cap, or the U.S. Master's Cap must be determined. Further, certain employers, including universities and nonprofit and government research institutions, are not subject to either H-1B cap. In addition, if a U.S. Master's degree is issued from a private and/or for-profit institution of higher education, it may not qualify a foreign individual for the U.S. Master's Cap. These issues can often be complex and complicated and can best be addressed by experienced immigration attorneys.

Once it is determined whether a foreign individual is qualified for an H-1B visa and he/she is subject to one of the Caps mentioned above, it is important that the petition be submitted without any errors that may cause USCIS to reject it from participation in the H-1B lottery. By the time a petitioner receives the rejected petition back from USCIS due to error(s), it will likely be too late to re-file, and thus it will miss the chance to be selected in this year's H-1B lottery. Accordingly, early preparation and attention to detail are most essential for successfully securing a chance in the H-1B lottery. In addition, U.S. employers (petitioners) and foreign individuals (beneficiaries) will only know if their petitions were selected under the cap when they receive a receipt notice from USCIS that the H-1B petition is being adjudicated. For petitions not randomly selected, U.S. employers will receive a rejection notice for the petition with the filing fees returned.

If you have any questions about the H-1B Cap system, the H-1B lottery, or the H-1B petition process, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com She will be able to help you navigate this complicated H-1B process.

EAD for Spouses of H-1B Nonimmigrants

USCIS announced, on February 24, 2014, that it extends eligibility for an employment authorization card (EAD) to certain H-4 spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status. The Department of Homeland Security (DHS) amended the relevant regulations in order to allow these H-4 spouses to be able to accept employment in the United States. This will go into effect on May 26, 2015.

This is one of several initiatives underway to modernize, improve and clarify visa programs to grow the U.S. economy and create jobs, which was an important element of the immigration executive actions President Obama announced in November 2014.

Eligible individuals include certain H-4 dependent spouses of H-1B nonimmigrants who: 1) are the principal beneficiaries of an approved Form I-140, Immigrant Petition for Alien Worker; or 2) have been granted H-1B status under the American Competitiveness in the Twenty-first Century Act of 2000, as amended by the 21st Century Department of Justice Appropriations Authorization Act. The government estimates that as many as 179,600 people will be eligible to apply for employment authorization in the first year, and 55,000 annually in subsequent years.

For more information about this rule and filing procedures, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com

F-1 Foreign Students with pending or approved H-1B petitions

Certain foreign students with pending or approved H-1B petitions (filed by prospective employers) can maintain their F-1 status until the start of their approved H-1B employment period (Oct. 1 of the each Fiscal Year) even when their F-1 status and OPT expire. In other words, the U.S. Immigration regulations provide a way to fill the "gap" between F-1 and H-1B status for qualifying foreign students, which might otherwise occur and place foreign students in "out of status."

A "gap" can occur because H-1B employers cannot file an H-1B petition earlier than six months prior to the H-1B workers' start date under current regulations. That is, the earliest date that an H-1B employer can file an H-1B petition to hire foreign worker(s) is April 1 for the following fiscal year, and the employment starting date is October 1. USCIS Fiscal year (twelve-month period) begins October 1 and ends September 30.

In order to qualify for this gap extension, foreign students (F-1 status) must be the beneficiary of an H-1B petition that 1) is timely filed, 2) with an employment start date of October 1 2015, and 3) that requests a change of your status from F-1 to H-1B. Additionally, you must not have violated the terms/conditions of your F-1 status, and you must be on a period of post-completion OPT.

If all of these requirements are satisfied, the cap-gap extension begins and continues until the H-1B petition adjudication process is completed. However, note that the cap gap extensions are given in increments as the petition goes through the steps of filing, receipting, and adjudication. For example, if an H-1B petition is properly filed, the student's OPT will be extended to June 1; and if the petition is selected for receipting, the student's OPT authorization will be extended to September 30. If the petition is withdrawn or denied, the student's OPT authorization will end 10 days after the date of the withdrawal or denial and you will have the standard 60-day grace period from the date of the rejection notice or your extension, whichever is later, to leave the U.S. In addition, if F-1 students are on post-completion OPT, their OPT will not expire prior to the filing date of the H-1B petition. Therefore, students can continue working during the extension period they will be given.

If you have any questions about the Change of Status from F-1 to H-1B and process and procedures in general, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com

Change of Status from F-1 to H-1B and International Trip

F-1 students who are soon planning to seek to change their status to H-1B visa category should understand the potential implications and risks of their abroad trips on their H-1B visa process.

If the H-1B visa petition is filed on behalf of a F-1 student before her OPT expires and the H-1B petition was selected, the F-1 student can remain in the U.S. and continue to work under the "cap-gap" provisions until October 1 even after the OPT period is expired (called cap-gap period). However, if the F-1 student departs the U.S. during the cap-gap period, she will not be allowed to return to the U.S. as her F-1 student status had expired. Further, USCIS considers a change of status

petition from F-1 to H-1B, abandoned if the beneficiary departs the U.S. prior to the approval of the petition. In this case, upon the approval of the H-1B petition, the F-1 student will need to apply for her H-1B visa at a U.S. Consulate abroad. Once she acquires her H-1B visa, she become admissible to the U.S., however, no sooner than 10 days prior to October 1, 2015, which is the effective date of her H-1B petition.

F-1 visa holders should always consult with their immigration professional prior to planning any international trips. If you have any questions about the F-1 visa category, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com

Non H-1B visa categories for F-1 Students

H-1B visa may not be an option for all foreign students graduating from U.S. colleges and universities. The following alternatives should be considered for F-1 students whose H-1B petitions were not selected in the lottery, who may have training options, or who may have a desire to invest in or start a business in the United States.

- **E-2 Treaty Investor**

The E-2 visas allow the U.S. business to hire foreign nationals of a treaty country, with which the U.S. maintains a treaty of commerce and navigation if foreign nationals are investing a substantial amount of capital in a U.S. business. Certain employees of such a foreign investor or of a qualifying organization may also be eligible for this classification.

To be eligible for an E-2 visa, foreign entrepreneurs/investors must prove their direct investment in a bona fide U.S. enterprise and be from a country that has a treaty of commerce and navigation with the U.S. The initial period of stay in the U.S. is up to 2 years and the visa can be extended or renewed during the period of stay in 2-year increments. Family members of the E-2 visa holders may seek E-2 nonimmigrant classification and they may apply for work authorization in order to work.

- **L-1A/B Intracompany Transferee**

L-1 work visas are available for foreign nationals transferring from a company abroad to work in the U.S. for a related company. To be eligible, the foreign national must hold an executive or managerial position, or be a professional employee with specialized knowledge about company products or processes. The L-1B classification allows a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the U.S. It also allows a foreign company, which does not have an affiliated U.S. office to send a specialized knowledge employee to the U.S. to establish one.

The initial period of stay in the U.S. is up to 3 years (1 year when it is for a new office petition). The visa can be extended in up to 2-year increments. However, the maximum period of stay is 7 years for managers and executives and 5 years for specialized knowledge employees. The L-1 visa holder's spouse and unmarried children who are under 21 years of age may seek admission in the L-2 nonimmigrant classification and they may apply for work authorization in order to work.

- **EB-1 Extraordinary Ability**

Foreign entrepreneurs or employees may be eligible for the EB-1 extraordinary ability immigrant classification if they have extraordinary ability in the sciences, arts, education, business, or athletics (as demonstrated by sustained national or international acclaim and recognized achievements in the field of expertise); outstanding professors or researchers; and multinational executives and managers.

For the EB-1 category, a job offer or employer-employee relationship is not required and foreign applicants may self-petition for this immigrant classification.

- **EB-2 Advanced Degree Professional and Exceptional Ability**

Foreign nationals who hold advanced degrees or with exceptional ability in the arts, sciences, or business may be eligible for EB-2 category,

For the EB-1 category, a job offer or employer-employee relationship is required and the employer must obtain a labor certification issued by the Department of Labor. To be exempted from the job offer and labor certification requirements, foreign entrepreneurs seeking EB-2 classification may request a National Interest Waiver (NIW)

- **EB-5 Immigrant investor Program**

Foreign entrepreneurs may be eligible for the EB-5 immigrant investor immigrant classification if they invest $1,000,000 in a qualified U.S. business and create 10 new full-time jobs as a direct result of the investment. The minimum investment is lowered from $1 million to $500,000 if a business is located in a designated Targeted Employment Area (TEA).

If you have questions about the E-2, L-1A/B, E-1, E-2, and EB-5 Program, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com

Immigration Consequence of Federal and State Criminal Conviction

A criminal conviction may disqualify foreign nationals, including lawful permanent resident (LPR) – greencard holder, from entering the United States (inadmissible) or make them deportable from the United States. The Immigration & Nationality Act (INA), as amended, has created severe consequences to non-U.S. citizen foreign individuals with certain criminal convictions. Conviction is defined as a formal judgment of guilt, or if a judgment is withheld, where there is some type of plea, and/or admission of facts warranting guilt and the imposition of some type of penalty under the INA.

Grounds of deportability and inadmissibility 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). Please note that certain grounds for inadmissibility or deportability may be waivable under the INA§ 212(h) and INA §212(d)(3). In some cases, foreign nationals facing deportation may be allowed remain in the U.S. through waiver and/or relief process. All waivers and relief are granted in the exercise of discretion and the applicant must

convince the consular or immigration officer to exercise discretion favorably.

Grounds of deportability apply to individuals who have been lawfully admitted to the U.S. and who are physically located within the United States, such as a lawful permanent resident (LPR) – green card holder. Grounds of Inadmissibility apply to foreign nationals who are seeking admission (entry) to the United States, including lawful permanent resident (LPR) who travel abroad.

One of the most commonly applied grounds of inadmissibility and deportability is Criminal Grounds [INA § 212(a)(2) and INA §237(A)(2)]. Aggravated felony, control substance, crime involving moral turpitude, firearm or destructive device, and domestic violence convictions are grounds of deportability. The following crimes covered:

- Murder
- Rape
- Sexual Abuse of a Minor
- Drug Trafficking
- Firearm Trafficking
- Crime of Violence and 1 year of actual or suspended prison sentence
- Theft or Burglary and 1 year of actual or suspended prison sentence
- Fraud or tax evasion and loss to victim(s) involves more than $10,000
- Prostitution business offenses
- Commercial bribery, counterfeiting, or forgery and 1 year of actual or suspended prison sentence
- Obstruction of justice or perjury and 1 year of actual or suspended prison sentence
- Certain bail-jumping offenses
- Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.)
- Attempt or conspiracy to commit any of the above

Foreign nationals who are convicted of an aggravated felony are ineligible for most waivers of removal and relief from removal, including cancellation of relief, and voluntary departure. They may also subject to permanent inadmissibility after removal and up to 20 years of prison if they illegally reenters the US after removal.

Foreign nationals seeking temporary nonimmigrants status, such as tourists, may have their criminal grounds of inadmissibility waived at a U.S. consulate under INA §212(d)(3). Even with a waiver, a foreign national with a nonimmigrant visa who has misdemeanor convictions, charges and/or arrests, may be subject to a secondary inspection by the officer in order to review the charges, dispositions at the port of entry. If the original charge was a felony, and may have been pled down to a misdemeanor, the CBP will conduct a secondary inspection for admission at the port of entry. They may also be sent to deferred inspection if records are not available, or if the case is ongoing.

Please also see GCI article: Criminal Grounds of Inadmissibility/Deportability. If you have questions about the Criminal Grounds of Inadmissibility and Deportability, and Immigrant and Non-immigrant Waivers, please contact Sujin Kim, Esq. at(251)387-2544/(251)379-8065 or skim@gcimmigration.com

Known Employer Program

DHS is considering a "Known Employer" pilot program to streamline adjudication of certain types of employment-based immigration benefit requests filed by eligible U.S. employers. DHS expects to launch the pilot by late 2015 to test the program. USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) will jointly implement the pilot program.

The program is to make adjudications more efficient and less costly, and reduce paperwork and delays for both the department and U.S. employers who seek to employ foreign workers through expediting or otherwise facilitating legitimate cross-border business travel along the northern border ports of entry. In particular, the U.S. and Canadian governments intend to "explore the feasibility of incorporating a trusted employer concept in the processing of business travelers between Canada and the United States."

Additional information about the Known Employer program and updates are available here.

Executive Actions on DACA and DAPA

Due to a federal court order on February 16, 2015, to temporarily block the implementation of the expanded Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Legal Permanent Residents (DAPA) initiatives, USCIS is not accepting requests for the expansion of DACA. However, those individuals, requesting an initial grant of DACA or renewal of DACA under the guidelines established in 2012, are not affected as the only programs at issue in the lawsuit are the expanded DACA and DAPA initiatives.

On November 20, 2014, President Obama announced two programs providing protection from deportation for SOME undocumented people who have been living in the United States since January 1, 2010: Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA). Undocumented people who came to the U.S. as children and meet other requirements may qualify for DACA. Undocumented people who are parents of U.S. citizens or lawful permanent residents who meet other requirements may qualify for DAPA.

If you have questions about President Obama's Immigration Accountability Executive Action, please contact Sujin Kim, Esq. at (251) 387-2544/(251)379-8065 or skim@gcimmigration.com

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

Immigration Research and News

41 percent of Fortune 500 companies were founded by Either an immigrant or a child of an immigrant

Reports from the George W. Bush Institute and the Partnership for a New American Economy note that 18% of Fortune 500 companies were founded by immigrants and 23% were founded by the children of immigrants and those companies employ 10 million people worldwide.

The key findings from the analysis of reports include:

- 95 of Fortune 500 firms (19%) were founded by immigrants.
- Furthermore, 23.4% of companies were founded by children of immigrants.
- In total, 211 out of 500 companies (42.2%) were founded by immigrants or the children of immigrants.
- These 211 companies founded by immigrants or the children of immigrants reported revenue of $5 trillion in 2011
- Profits for Fortune 500 firms founded by immigrants or children of immigrants amounted to $430 billion in 2012.

Immigrants make up outsized share of small business growth

According to a report developed for *Office of Advocacy of the United States Small Business Administration,* immigrants are found to have higher business ownership rates and higher business formation rates than the non-immigrants. The key findings from this analysis of immigrant-owned businesses are:

1. The business formation rate per month among immigrants is 0.62 percent (or 620 out of 100,000).
2. Immigrant-owned firms have $435,000 in average annual sales and receipts.
3. Among immigrant owned businesses that hire employees these firms hire an average of 8.0 employees with an average payroll of $253,000.
4. Hispanic immigrant owned businesses have an average sales level of $257,000 compared with $465,000 for Asian immigrant owned businesses. Asian immigrant owned firms are more likely to hire employees than Hispanic immigrant owned firms (36 percent compared with 20 percent), but have roughly similar levels of employment and payroll conditioning among employer firms.
5. The most common source of startup capital for immigrant-owned businesses is personal or family savings with roughly two-thirds of businesses reporting this source of startup capital.

Southern cities leading immigrant integration efforts

Southern cities and states lead immigration integration efforts by taking leadership in creating an environment that welcomes and is inclusive of immigrant communities. Atlanta's Mayoral Office of Multicultural Affairs, Nashville's Mayor's Office for New Americans, and Charlotte's Immigrant Integration Task Force are examples.

Stakeholders of these cities from different sectors have came together to discuss what immigration means to the city and how to leverage the myriad benefits of immigrants' diverse cultures.

Correlation between Foreign Students and Global City

Migrated foreign students contribute to both America's culture and economy through building bridges between the U.S. and their home countries, which carry on to economic activities.

The Brookings Institution's report on international students in the U.S. indicates that the number of foreign students has grown rapidly — from 110,000 in 2001 to over 800,000 in 2013. The report discusses how cities and metropolitan areas can grow their competitiveness by tapping into the talent pool that foreign-born students offer.

About Gulf Coast Immigration

Immigration and Global Migration are one of the most complex and dynamic areas of law and policy affecting America's social and economic composition. A well-functioning immigration system is critical to America remaining strong and vibrant. To contribute to this goal and to meet the growing needs for comprehensive and sophisticated legal services in all aspects of business immigration-related matters in Northwest Florida, South Alabama and Mississippi, GCI has been issuing business immigration newsletters/updates and immigration alerts to announce fast-breaking developments.

GCI offers guidance, advice, counsel and representation to business and individual clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. GCI also conducts fee-based educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments on the U.S. immigration law and policy, including I-9 Compliance, E-Verify, and the EB-5 Program. For further information about GCI, publications and lectures and seminars, contact us at www.gcimmigration.com

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