



Immigration Update

September 2009

"The only constant is change" is an adage which holds true for immigration regulations. The following is a highlight of the changes in the United States, Canada and United Kingdom that companies should be aware of and prepare for accordingly.

CANADA

Dependent Work Permits – Dependents of foreign workers living in the provinces of Alberta and Ontario may be able to obtain an open work permit to accept a job with any employer. The permit is valid for the duration of the parent's work permit and the dependent child must be between 18 and 22 years of age to qualify in Alberta; 14 years old in Ontario.

2010 Winter Olympics – Service Canada, an organization that offers single-window access to a wide range of Canadian government programs and services for citizens, has established an expedited process for Winter Olympic contractors and subcontractors to hire multiple temporary foreign workers during the events. Employers' recruiting efforts must allow Canadian citizens first opportunities for available jobs. Employers are encouraged to apply early to avoid processing delays.

UNITED STATES

H-1B Site Visits by USCIS (U.S. Citizenship and Immigration Services) – Efforts Stepped Up

USCIS initiated a wide-scale program of official visits to companies employing H-1B workers. This program is termed the Administrative Site Visit and Verification Program. USCIS is stepping up its unannounced visits to the worksite to verify that work conditions stated in the H-1B petition are accurate. Site visits typically last between 15 to 90 minutes, but longer visits are possible.

USCIS does not have the authority to impose civil or criminal fines for violations of the terms and conditions of the H-1B petition, but it may share information with ICE (Immigration and Customs Enforcement). Companies should be aware of existing practices and cooperate with officers making site visits. Failure to fully cooperate may jeopardize a specific petition and compromise the company's success in future filings.

A number of companies will receive such site visits; the following is a short list of suggested actions in preparation for a visit:

- If advance notice is provided, contact your designated immigration attorney for assistance
- Establish a plan of action to deal with government visits; ensure HR, company reception desk, etc. are aware of the possibility of an unannounced visit and assign a spokesperson to represent the company
- H-1B files should contain the required documents for a petition; in addition, documents should be organized and readily accessible (investigators normally review the petition and not the underlying labor condition)
- Questions will vary and may include general employer questions, relationship between petitioner and beneficiary and foreign-worker personal information; in addition, questions may be related to the company's immigration policies and practices and directed toward the foreign nationals management; contact your immigration specialist for sample questions they may have experienced from prior site visits





Immigration Update continued...

UNITED KINGDOM

Changes to the U.K. Points-Based System

The U.K. Border Agency announced changes to the points-based system and revised guidance for employers that sponsor foreign national work authorizations. In general, the technical changes affect the foreign-worker's salary delivery, employer's duties in the event of wage reductions or work-hour cuts, and recruiting requirements for director-level positions.

The following highlights general changes — some of which are specific to a designated category type (General, ICT, Sub-Category):

- No longer required to be on U.K. payroll
- Must not directly replace an EU national worker
- Advertising requirement exempted in the following circumstances:
 - Director-level positions with salaries in excess of £130,000
 - Workers recruited as part of a milk round (recruitment of university students and Certificate of Sponsorship assigned on or before August 31, 2009)
 - Workers employed at a higher education institution as a research fellow
- Allowances for short-term ICT's whose salary is paid outside of the U.K. will be taken into account when awarding points; accommodation allowances up to 40% of the gross salary based on specific criteria
- If a foreign worker is promoted or core duties and responsibilities change, a new resident labor market test must be conducted
- Temporary reduction in salary and/or working hours to avoid redundancies will not require a full change of employment action as long as certain criteria are met

This information has been summarized by Primacy's Consulting Services team. If you have any specific questions affecting your global transfers and/or you require additional information, please contact your immigration specialist.

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