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U.S. Immigration Laws Adversely Impact Our Ability To Participate In Global Markets

The Editor interviews Michael K. Ligorano, Partner, Norris McLaughlin & Marcus, PA.

Editor: Please tell us about the immigration practice at Norris McLaughlin.

Ligorano: Our immigration practice is mostly commercial based. We assist employers so that they can bring workers here, whether they are skilled workers, athletes, or professionals. We also assist in family based immigration – spouses, adoptions, children and things of that nature.

Editor: How has globalization affected immigration law?

Ligorano: One would think, if you read Thomas Friedman's book *The Lexus And the Olive Tree*, that immigration problems were caused by globalization. However, my take is that the immigration laws as they stand today are adversely impacting the United States' ability to participate in true globalization to our benefit. It is so difficult to bring in skilled workers. The demand far exceeds the supply of visas. That is resulting in outsourcing of a lot of high skilled and tech jobs because employers are unable to get the necessary visas or a fixed time frame of when the visas will be available. The concern about an onslaught of workers is not legitimate.

To bring a skilled worker into the U.S., an employer needs to go through a long process and demonstrate that he or

she cannot find a U.S. worker with the same skills. Because of the complexity of the process, an employer who needs a visa for a skilled worker cannot get firm answers on when, or if, he or she will be able to bring that worker to the U.S. Because of the uncertainty in this area, businesses cannot plan adequately. Employers will decide not to bring people to the U.S. and set up a plant in India or elsewhere where the workers are. The lack of predictability and the artificial numbers that are put on the number of people that can come is restrictive. The number of visas for skilled temporary workers for FY 2007 was exhausted within the last month. Employers must now wait until FY 2008 for additional visas.

Editor: What steps must a corporation take before hiring a multinational executive or manager?

Ligorano: That is complex. If it is a foreign corporation that is setting up a U.S. business, to transfer an executive or employee with specialized knowledge to work here temporarily, they use an L-visa. That person comes without the need for a foreign labor certification, which shows that a U.S. citizen or lawful permanent resident is not available to perform the same job. There also needs to be verification of the job description, wages



Michael K. Ligorano

and things of that nature. That process is relatively smooth.

If a U.S. company wants to hire a skilled worker or someone high up on a temporary basis, they have to go through the H-visa process where there is a cap on the number of visas available. The workers are only allowed to remain in the U.S. for a maximum of six years.

If someone wants to enter the U.S. to start up a new company or invest in a new venture, they can do so with an E-visa. This visa is also temporary and there is intense financial scrutiny on the company or investment.

If you come as an L or H, even though the visas are set up to be temporary, the law provides you with the opportunity to become an immigrant if the company sponsors you. You then have to put the person in one of the EB (employment-based) categories for permanent residency. That involves a whole new layer of certification review to make sure that you are not displacing a U.S. citizen or lawful permanent resident. That process can take over a year, assuming that a visa is available.

If the corporation is hiring a professional or worker with special skills who will immigrate here, they come under the EB visa. There is a series of numerical caps based on qualification and country of origin. Someone with extraordinary or unique skills essential to the business would get an EB-1 visa. Whereas, other professionals, skilled workers or certain special immigrants would get an EB-2, 3, or 4 visa.

Please email the interviewee at mkligorano@nmmlaw.com with questions about this interview.

On the family side, if you attempt to bring over a family member, depending on the family relationship and where they are coming from, the wait can be longer than twenty years.

Editor: What about a company that wants to hire an undocumented non-citizen?

Ligorano: There is no lawful way of doing it. The only golden parachute is that if you enter the country legally under the B visa as a tourist and you overstay the visa, if you then marry, you can apply to adjust your status as a permanent resident. Once you overstay by certain time-frames, you can be barred from reentry into the U.S. for three to ten years or permanently depending on how long you overstayed. The bar does not kick in until you leave. The lack of ability to adjust these people is harmful. If you are an undocumented person who entered without inspection, there is no hope.

Editor: What about the employer who unknowingly hires an undocumented non-citizen?

Ligorano: Since 1986, it has been the law that it is illegal to hire *anyone* to work unless they are authorized to work in the U.S. Once hired, all workers are required to complete an I-9 form. That form is designed to show that the employee is properly documented to work in the U.S. You cannot ask the applicant if they are authorized to work in the U.S. because that is employment discrimination. The form sets out a series of original documents that the worker has to produce. If they do not produce the original acceptable documents within three days you have to fire them.

The real issue arises when the employer has filled out the I-9 form properly, the worker does a tremendous job while working for the company, but the worker eventually tells the HR department that they applied with fraudulent documents. The employee gets a reasonable time to clear the problem up and once that period is over the company has to terminate them. If a company knowingly employs an undocumented non-citizen, it will pay fines of up to \$11,000. If there is a consistent pattern, there is potential jail time. You can also be barred from federal contracts.

When Homeland Security took over immigration, two of its stated missions were to increase enforcement on the border, and increase employer enforcement. Employer enforcement was higher prior to 9/11 than after. However, starting last year, the Immigration and Customs Enforcement Division of Homeland Security (ICE) started conducting raids. It rounded up employees but really focused on employers. The first really big one was the Wal-Mart raid last year. This year ICE stepped up the raids dramatically. ICE has arrested managers and supervisors who knew that employees were working without proper documentation. These managers are arrested under the RICO statutes. It is a serious offense.

If you combine this emphasis on enforcement with the new bills proposed in the House and Senate, employers need to be ready. They cannot sit back and assume that the I-9 forms are filled out with proper documentation.

Editor: Currently two different strategies for immigration reform are being debated by Congress. What is the likely impact on employers of these different reforms?

Ligorano: Neither bill increases the numbers of essential workers who cannot be found in the U.S. That will not relieve the pressure here.

They will increase the enforcement of the laws. The common ground between the Senate and House bill is that they both severely increase the penalties on employers who fail to properly document employees or knowingly employ someone who confesses to being undocumented. The Senate bill increases the penalty to \$40,000 per employee. It also increases the jail time.

Whether the guest worker program passes is still anyone's guess. We are already being called by employers who believe there is an amnesty. That has not happened and if the law is passed it will be a while until regulations are passed.

Editor: How will any verification system required by these reforms work?

Ligorano: The Senate bill calls for the establishment of a program with the Social Security Administration where employers can get instant verification of

a social security number. These bills give 18 months for the establishment of this system. If the system goes up and you do not use it, you will be hammered.

Editor: What if a corporation has a lot of undocumented workers? Will ICE bring actions against the top management?

Ligorano: There are several million dollars of fines on Wal-Mart. ICE is enforcing the laws against the managers. If they can prove that the senior management knew about the practice, they can go after them too. If you hire an independent contractor that uses illegal workers and you know about it, you can run into problems too. The reality is that the environment is changing.

Editor: Norris McLaughlin has formed an Immigration Crisis Team. Please tell us about that.

Ligorano: It is made up of attorneys from our immigration practice group, the labor group and our white collar and criminal groups. We issued a notice to our clients that, if they are raided, they should call us immediately. There are a host of issues that come up. For instance, privacy concerns come into play. If a manager is arrested, the company needs to know what to do. We decided that we should be proactive and not wait for a phone call.

Editor: What about a person who is legally able to work but the employer never asked them for their documentation?

Ligorano: The employer is breaking the law if they do not have an I-9 form. Our firm requires the I-9 forms for *any* new hire. In the past ICE sent a notice that they would inspect the company's records. You would be given a period of time to complete them.

Editor: Is there anything that you would like to add?

Ligorano: The American Immigration Lawyers Association is encouraging people with immigration issues to see a lawyer who specializes in immigration law. This will prevent them from being preyed upon by unscrupulous individuals who take money from them.