UNDERSTANDING UNITED STATES IMMIGRATION & NATIONALITY LAWS

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I. INTRODUCTION AND IMPORTANT DEVELOPMENTS

Foreign nationals and their immigration counsel are facing more difficulties emanating from the Trump administration. Children of asylum applicants have been separated from their parents who are being detained and prosecuted for unlawful entries. Some of these children have later been reunited with their parents due to the public outcries, but they often are detained with a parent. Prosecutorial discretion has been almost eliminated; the Immigration & Customs Enforcement (ICE) agency has repeatedly stated that any foreign national within the U.S. who is out of status or undocumented is at risk of removal. Both nonimmigrant and immigrant visa applicants at U.S. consulates and embassies abroad are facing more "vetting" and should expect their cases to take longer to adjudicate. Persons within the U.S. with valid multiple entry nonimmigrant visas are discovering that their visas have been revoked due to any arrest for driving under the influence even if they have not been convicted of an offense. President Trump has issued "travel bans" to prohibit the admission into the U.S. of citizens of particular countries, and he continues to push for the construction of a wall along the length of our country's southern border. The Trump administration is seeking to hire thousands of additional employees for the Customs & Border Protection (CBP) agency and to secure more funding dedicated to immigration law enforcement. Backlogs for nearly every type of immigration and citizenship application have grown tremendously. In addition, President Trump is advocating for a nearly 50% reduction of lawful immigration and the implementation of a new "points" system to favor immigration for persons fluent in English who are well educated, hold special expertise, or will bring significant capital investments to the United States.

Immigration laws are constantly changing. Security and enforcement concerns have taken priority over timely adjudications of applications for immigration status submitted by employers for foreign national employees as well as by U.S. citizens for their relatives. This is a heavily regulated field with laws intended both to protect the United States workforce and to unify families. Congress must juggle competing interests in determining immigration policy: employers want to be able to hire skilled foreign labor, while labor unions and professional societies want to improve wages and working conditions for employees; immigrant families want to bring their relatives to the U.S., while the quota system lags ever farther behind; a global economy demands decreasing barriers, while an influx of unlawful immigration and the threat of terrorism results in tightening controls.

The U.S. Citizenship & Immigration Services (CIS) concentrates on the intent of the individual: Is he/she an intending immigrant or nonimmigrant? The wrong answer might result in a return trip to the home country. Nonimmigrant status is temporary: one may only remain in the U.S. for a limited period of time. Immigrant status, commonly called "green card" status, signifies that a person has been granted permanent resident status and may reside in the U.S. indefinitely.

These government websites provide useful information about immigration laws:

www.uscis.gov (U.S. Citizenship & Immigration Services)
www.dol.gov (U.S. Department of Labor)
www.travel.state.gov (U.S. Department of State)
www.twc.tx.us (Texas Workforce Commission)

USCIS Expands Provisional Waiver Program

In 2013, President Obama announced the creation of the Provisional Waiver program, whereby certain immediate relatives of U.S. citizens could apply for a provisional waiver of the unlawful presence ground of inadmissibility within the United States prior to leaving for their immigrant visa interview in their home country. The applicant had to prove extreme hardship to a U.S. citizen spouse and/or parent. On July 29, 2016, the USCIS announced a final rule which expanded the current provisional waiver program to include lawful permanent resident spouses or parents as potential

qualifying relatives. This final rule went into effect on August 29, 2016.

Parole in Place (PIP)

On November 15, 2013, the USCIS released a new Policy Memorandum which spelled out the process for applying for Parole in Place (PIP). PIP may be sought for spouses, children, and parents of persons serving on active duty in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or who previously served in either of the two mentioned above (i.e. veterans). An I-131 application is submitted without fee to the USCIS Field Office with jurisdiction over the applicant's residence, and if granted, the applicant receives an I-94 card indicating parole in the U.S. for one year. Those applicants who would not normally be eligible to apply for adjustment of status within the United States because of their manner of entry may then solicit permanent resident status from within the United States despite an unauthorized entry. It is important to note that the applicant should not actually leave the United States and use the PIP I-94 card to seek to return from travel abroad. The intent of PIP is to keep families together, especially the loved ones of those who fight to keep our country safe. PIP does not provide a waiver of any 212(a)(9)(C) ten year "permanent" bar.

DOMA: Defense of Marriage Act Declared Unconstitutional

Perhaps the most significant development in 2013 was that Section Three of the Defense of Marriage Act (DOMA) was declared unconstitutional by the U.S. Supreme Court on June 26, 2013. This meant that the federal government began to recognize the legal marriages of same-sex couples. Same-sex couples in committed relationships who were married in a state or country that recognizes such marriages can now receive a variety of federal protections, including the right to seek permanent resident status for foreign-born spouses of U.S. citizens, even if living in another state [that does not recognize same-sex marriages].

Even more significant was the Supreme Court ruling on June 26, 2015 legalizing same-sex marriages across the United States. Thirty-six states and the District of Columbia already recognized gay marriage, but this Supreme Court ruling required the remaining fourteen states to lift any bans against gay marriage that were in place.

Deferred Action for Childhood Arrivals

There was one very significant immigration law development in 2012. On June 15, 2012, President Obama announced that many children whose parents brought them into our country prior to age sixteen would be eligible for some immigration benefits. Deferred Action for Childhood Arrivals (DACA) provides eligible applicants a two-year Employment Authorization Document (EAD) and many of the earlier DACA recipients are now renewing their EADs for a second time. Qualified applicants must have entered the U.S. prior to age 16, have been younger than 31 on June 15, 2012, and have been continuously present in the U.S. for at least 5 years. They must have either served in the military or be enrolled in school or have graduated from high school or obtained a GED. In addition, they must not have been convicted of a felony, three misdemeanors, or any "significant misdemeanor." Driving under the influence is considered to be a significant misdemeanor. There are presently nearly 800,000 recipients of DACA.

The Trump Administration on September 5, 2017 rescinded the DACA program. No initial DACA applications are being accepted. Due to federal court litigation, DACA recipients are currently being permitted to renew both the period of deferred action and their employment authorization documents (EADs). The USCIS is not accepting any new applications for a DACA Advance Parole (travel) document.

Federal court litigation initiated by Texas and six other states is seeking to completely terminate the DACA program.

II. IMMIGRANT STATUS: EMPLOYMENT- BASED

Generally either a close family relative or an employer must sponsor someone for immigration. The first method relies on a close tie to a U.S. citizen or permanent resident. If a foreign national does not have such a relative, he/she might qualify under one of the employment-based categories. Currently the Immigration & Nationality Act sets an annual limit of 226,000 immigrant "preference" numbers for family-based categories, and 143,949 immigrant "preference" numbers for employment-based categories.

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