



Joseph Law Firm^{PC}

Immigration Law Specialists

Newsletter

December/January 2016

Immigration News

HAPPY NEW YEAR FROM JOSEPH LAW FIRM, P.C.

Contributed by Koby Polaski, Senior Attorney

As another year comes to a close, I naturally begin to reflect back on the events of 2015: the triumphs and defeats; ups and downs; and breakthroughs and obstacles that we must still overcome. The last year was a particularly tumultuous one in the immigration world. From the ongoing litigation over President Obama's Executive Action announcement to Donald Trump's highly publicized presidential bid to the influx of Middle Eastern and Central American refugees, immigration remains on the forefront of political debates and a divisive issue among Americans.

As I read the news and represent my clients as they apply, litigate, wait, and advocate to come to – or remain legally in – the United States, I often feel a sense of frustration over the broken parts of our country's immigration system and towards those who advocate to blindly exclude foreigners from our country. At the same time, however, I feel a strong sense of gratitude. I am grateful to be in a position to advocate for my clients and to fight to extinguish the fear that some Americans feel towards immigrants. But most of all, I am exceptionally grateful for the opportunity to work with strong and courageous clients, to know them and their stories personally, and to play a role in reuniting them with their families and helping them realize their dreams.



We will continue to hope for immigration reform in 2016 and are honored to continue advocating for the rights of all immigrants over the next year. Happy New Year from Joseph Law Firm!

HOUSE PASSES CHANGES TO VISA WAIVER PROGRAM

Contributed by Courtney Butler, Associate Attorney

On December 8, 2015, H.R. 158 – the Visa Waiver Program Improvement Act of 2015 (the Act) – passed the House of Representatives and is now before the Senate. The Act will impose additional restrictions on the Visa Waiver Program, making it harder for visitors from Iraq, Syria, and other designated countries to travel to the United States using that program. It also requires Visa Waiver Program countries to share counter-terrorism information with the United States and check travelers against INTERPOL and other databases. The Act is a reaction to recent terrorist attacks, including those in Paris and San Bernardino.

Although protecting the United States from terrorism is essential, Congress should consider some modifications to the Act before it is passed. As drafted, there are concerns that the Act will target descendants of Syrian or Iraqi nationals who have no connection to those countries other than by parentage (i.e., a child born to Iraqi parents and living in Belgium, with a Belgian passport, who has never been to Iraq). The Act also excludes those who have travelled to countries alleged to be supporting terrorism in the past five years, but it does not provide waiver provisions for those who pose no threat, such as journalists or humanitarian workers. It is also not clear that tightening the Visa Waiver Program will prevent extremists from entering the United States. In fact, Saudi Arabia is not included on the list of designated countries, even though it produced fifteen of the nineteen 9/11 hijackers.



As the Senate considers the Act and before voting to pass it, it should require modifications addressing these concerns.

SAENZ MENCIA V. ALLRED EXPLAINED

Contributed by Ian Rochstein, Associate Attorney

Farms and ranches that hire shearherders from abroad using the H-2A visa will want to take note of the recent Tenth Circuit case *Saenz Mencía v. Allred*. Congress created the special visa category for shearherders and goatherders because of the unique demands of the occupation, where employees work around the clock caring for flocks in the remote locations where the animals graze. This schedule makes hours difficult to calculate, so the regulations have set the minimum wage for H-2A shearherders at \$750 per month plus food and lodging. Their employers must pay for all visa fees and may not charge the employees for recruitment or travel expenses.

The Special Procedures that govern the provisions of H-2A shearherder work state that the duties of a shearherder include attending livestock while they graze, caring for them in various ways as the need arises, and doing other related farm work on “an incidental basis.” The regulation the Procedures are based on describes shearherders as lacking “a reasonably regular workday or workweek,” and the Special Procedures themselves require shearherders to be “on call for up to 24 hours per day, 7 days per week” on a “range or pasture.”

In this case, a Peruvian citizen who was hired under an H-2A shearherding visa claimed that his pay was inadequate, arguing that the work he performed did not qualify as shearherding and the monthly wage for H-2A ranch hands should apply instead of the wage for H-2A shearherders. According to the record, Mr. Saenz did not work in a remote location, but rather in the immediate vicinity of the ranch headquarters, and was regularly monitored by his employers. These animals were also not grazing on a range or pasture; Mr. Saenz fed them hay. The plaintiff also did not work irregular hours that would be difficult to compute, but had a fairly regular schedule working eight to ten hours per day, in contrast to the 24/7 work of shearherding. The court also found that Mr. Saenz did more than “incidental” work outside of the realm of shearherding to qualify as an H-2A shearherder, and was therefore an H-2A ranch hand under the regulations.

The court concluded by finding that the burden was on the employer to make sure that Mr. Saenz’s assigned duties were consistent with those of an H-2A shearherder, and it was not the duty of the employee to complain about the nature of his work. The court found that the employer owed Mr. Saenz the higher minimum wage for H-2A ranch hands for all of his hours worked, even for the work he had done as a shearherder. The lesson to employers here is simple: be absolutely sure that you are only assigning your foreign employees work that is allowed by the conditions of their visa, and consult your immigration counsel if you are unsure of your company’s compliance!

Firm News

NEW ADDITION TO JLF: IAN ROCHSTEIN, ASSOCIATE ATTORNEY

Ian Rochstein received his Juris Doctor degree from the Boston University School of Law and earned his undergraduate degree in International Relations and Spanish from Johns Hopkins University in Baltimore, Maryland. During law school, Ian served as a student attorney for the Employment Rights Clinic and American Legislative Practice Clinic, was a member of the *Boston University International Law Journal*, and earned his Spanish for Lawyers Certificate. He also has experience working at the law firm M&M Bomchil in Buenos Aires, Argentina and studying at the Universidad Carlos III in Madrid, Spain.

After law school Ian worked with the immigrant community of Boston with Greater Boston Legal Services. He gained experience working on employment based visas as an associate at a private Massachusetts immigration law firm while also focusing on the implementation and effects of comprehensive immigration reform.

Ian is admitted to the bar in New York and Massachusetts and is a member of the American Immigration Law Association (AILA). In his free time, he enjoys cooking, travel, live music and comedy, and rooting for New York sports teams.



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