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## US Employment And Related Immigration Issues

by Alan Lee, Esq.

*The following article is based on an address given by Alan Lee to the Spanish-American Institute in New York (June 10, 2004)*

### Why The Long Term Outlook For Employment And Job Opportunities In America Is Good

We're looking at long-term need in the United States for workers. We seem to be coming out of a recession and the employment figures in the last months have shown that hiring is up. Many Americans are still out of work, and short-term measures should be utilized to get them back to work. Such methods as were utilized during the Great Depression in this country -- public works projects-- would go a long way to solve the problem. In the long run, this country will need workers as will many other countries. The largest generation of Americans, the baby boomers, will begin to retire very soon and there are not enough workers in the next generation to replace them. It has been estimated that within 10 years, the number of baby boomers 55 and older will begin a growth trajectory outstripping that of the younger generations nearly fourfold and that the number of U.S. residents 55 and older will rise from 63 million today to 83.7 million by 2014 and 101.4 million by 2024. Analysts have estimated that 76 million baby boomers will be retiring this decade and next, but only 45 million Generation X'ers are in the pipeline to take their place. This represents a shortfall of over 30 million workers. Rates of birth in the U.S. population, although higher than in Europe, will not even begin to produce enough workers to meet the need. So for all of you wondering where the jobs will be in the future, they will be there. In that time, Americans will worry more about inflation as the competition among employers for workers will fuel a rise in workers' salaries with a corresponding rise in the costs of products needed to pay for the increase in salaries. In that time, we will come to appreciate even more the benefits of immigration to this country. Alan Greenspan, chairman of the Federal Reserve, has already stated before Congress that short of a major increase in immigration, economic growth cannot be safely counted upon to eliminate deficits and the difficult choices that will be required to restore fiscal discipline. I believe that this country must act today, and must raise the quotas for immigration at this time rather than waiting until the crisis hits. At that time, we will not have the luxury of easing into the situation as other countries more able to comprehend the situation faster will have ramped up their immigration processes to take in those who could help in the continuing economic development of their homelands. We will be left behind, and countries which are left behind swiftly become second-rate powers.

### Major Legalization Proposals And Bills Being Considered In Washington

From President Bush's immigration proposal in January 2004 to the bills which are actively before Congress, the watchword is "earned". No one in Washington wishes to be accused of giving away the store, and so the politicians are avoiding the words "legalization" and "amnesty". The ideas that are floating around would give legal status to aliens who have been in the United States by a certain date and for a period of time and can demonstrate that they were working by a certain date. President Bush's is the most nebulous as it was only a proposal. From its available details, the proposal is a guest worker program with the guest workers leaving at the end of their periods of legal stay. He implied that those who were undocumented in the U.S. would have to be here and working at this time through his phrase "undocumented workers now here". That would seem to indicate that individuals would have to have achieved such status by January 7, 2004. In Congress, the Border Security and Immigration Reform Act of 2003, also essentially

a guest worker program, would require illegals to show presence on the date of its enactment. The Border Security and Immigration Improvement Act would require aliens to be illegal and employed in the country before August 1, 2003. The Immigration Reform Act of 2004 would require aliens to be illegal before January 21, 2004 and to have been in the United States for least five years before that day and working for 3 years. Persons not meeting the five-year physical presence, illegality or three-year work requirement but physically present in the U.S. on the law's introduction date would be eligible for a transitional worker status which could later be converted to permanent status. The Safe, Orderly Legal Visas and Enforcement Act (SOLVE) will allow an earned adjustment to aliens who have been here for five years or more on the date of its introduction, May 4, 2004, and can demonstrate two years of employment in the U.S. and the payment of taxes. Persons here less than five years or without the required work history would be eligible for a transitional status of five years during which they could meet the requirements for full residence status.

As you can see, the emphasis is on "earned". We have therefore been urging and will continue to urge those individuals who have been working illegally to somehow document that work as the proof may be necessary in the future in case any of these pieces of legislation ultimately become law.

I should note a minor piece of legislation, the DREAM Act, which is moving through Congress as it may be applicable to students at this institute. This Act would give conditional residence to children entering the United States before the age of 16 who have good moral character and have lived in the United States for five years and graduated from high school or obtained a General Education Development certificate in the U.S.. The conditional residence period would be valid for six years, after which individuals could file to remove the conditional basis of their residence status upon meeting certain conditions. Children at least 12 years of age and enrolled full time in a primary or secondary school would be allowed to receive a stay of removal and employment authorization if in the U.S. for five years.

### **Currently Available Employment Based Methods To Immigrate Most Applicable To Audience**

For those of you in this institute who wish to immigrate to this country through work, the most available method is probably through labor certification from a sponsoring organization willing to go through a recruitment process during which U.S. workers will be assessed for whether they are able, willing, qualified, and available to take the position. If there are not sufficient U.S. workers for the position, you may be able to receive a labor certification approval which is the major step in most cases to immigrating to the United States. You must understand, however, that an employer's application for labor certification does not make you legal at that point in time. You must maintain a legal non immigrant status in order to adjust status to permanent residence in the States. Ways to do such are through a non immigrant working visa such as the H-1B or through continued schooling under F-1 status. In most cases, you must maintain non immigrant status until you are in the last part of your immigration case when you are eligible to file an I-485 adjustment of status application for permanent residence. At that time, you would become eligible for an employment authorization document upon application to the U.S.C.I.S.. I do note that many individuals in the past have been able to adjust status to permanent residency even though illegal because of Congress's passage of section 245(i), which allowed most individuals to adjust status upon the payment of a fine amount (currently \$1,000), but you should not depend upon such a forgiveness statute as it was last applicable to cases filed by April 30, 2001, and no one has a solid idea of when another 245(i) will be passed. Now, you do not have to be a big scientist or be in some exotic occupation to obtain a labor certification. We have obtained approved labor certifications for common occupations such as programmers, cooks, governesses, mechanics, carpenters, etc.

### **Quotas And Timing Of Employment Based Cases**

What is the best time to begin a labor certification application? The answer is now. Currently the employment based categories are all open for immigrant visa issuance. The U.S. operates under a quota system for immigration, under which at least 140,000 immigrant visas are set aside each year for employment based cases. At this time, the quota is available for anyone who has an approved labor certification. In the past, individuals with approved labor certifications had to wait for years until their beginning dates became available in order for them to file further papers with the immigration service. Currently, the quota is open, and final immigration papers can be filed as soon as the labor

certification is approved. While the speed of the Department of Labor in this region has been slow in the past, the department will receive additional funding under the federal budget for 2005 so that the cases will be processed much faster. Also in the works with the Labor Department is its promised PERM program (Program Electronic Review Management System) which it believes will allow labor certifications to be adjudicated within 21 days of filing. Department of Labor officials believe that the program will come into being this year although I do note that they have been promising the same thing since early 2000.

### **USCIS Computer Initiatives And What They Mean For You**

At the Spanish-American Institute, there is much emphasis on the use of computers, and I encourage you to continue and improve on your computer skills because the world of the future will be largely computer-driven. Looking at the situation just from our limited perspective as an immigration law practice, the use of computers has become even more important to us because of its increasing importance to the USCIS. Some of the programs that the USCIS has recently implemented and is announcing for the future are the following:

1. E-filing: The agency has just expanded the list of forms that it will accept under e-filing to include some of the major ones including the I-129 for non immigrant workers, the I-140 for immigrant workers, and the I-539 for changes or extensions of status for individuals in the U.S.
2. The agency has also implemented on its Website online processing dates and an online case status search system which can be accessed by computer literate individuals. It has also created an on-line portfolio system under which individuals can be updated by e-mail by the agency of all actions taken on cases in their portfolios.
3. With its Infopass system, the agency is now attempting to establish appointments for individuals by e-mail receipt after individuals set up appointments by computer so that they do not have to wait outside the immigration offices for long hours as is the case today. A pilot project using Infopass is being tried with the immigration office in Dallas to one-step I-485 applications under which individuals set up their own appointments and bring the entire package of forms and documents for an adjustment of status to permanent residence interview that can be conducted on the same day as the filing.
4. The agency is also advertising that in the near future, it will create a customer center portal under which individuals will be able to interact with the agency directly through the computer giving in queries and receiving answers through e-mail.

Within our practice and others that deal with the immigration agency, computers are and will be tremendously relevant in the future. You will walk into the law office of the future with the latest computers, high speed scanners and other peripherals which can assist the immigration lawyer in his/her interactions with the agency.

### **What It May Help You To Know About What Employers Are Looking At In Hiring Non-Immigrants - Our Advice To Client Companies**

I am also giving you a handout titled "Our Short Outline to Employers Seeking to Hire Aliens". This is obviously not for you to hire people because you're the people who wish to be hired. I give this handout to you only to show you what our advice is to companies that we represent as to what they should look out for in interviewing potential hires without U.S. Citizenship or the Green Card. You may find some of the information relevant to your own situations when you talk with employers now and in the future.

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### **About The Author**

Alan Lee, Esq. is a 25 year practitioner of immigration law based in New York City. He was awarded the Sidney A.

Levine prize for best legal writing at the Cleveland-Marshall College of Law in 1977 and has written extensively on immigration over the past years for the ethnic newspapers, World Journal, Sing Tao, Pakistan Calling, Muhasha and OCS. He has testified as an expert on immigration in civil court proceedings and was given two awards by the Taiwan government for his work protecting human rights in 1985. Readers may visit Mr. Lee's website at <http://www.alankelaw.com>.

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