Economic Downturn: Immigration Issues for Layoffs, Terminations, Mergers, Acquisitions, Restructurings and How These Impact Foreign National Workers.

As our economy continues in its downward spiral, company mergers, acquisitions and restructurings ("transactions") are likely to continue. In general, since a merger, acquisition or restructuring is a "corporate transaction", the immigration issues often get left in the dust. For this reason, it is important that immigration repercussions that arise from a merger, acquisition or restructuring are considered and that Business Immigration Counsel is brought into the "deal" or arrangement at the appropriate time – earlier rather then later. This is especially the case since Business Immigration Counsel may be able to save money for the parties to the transaction.

Immigration regulations closely tie the employer's identity, location and ownership structure and any change in a merger/acquisition may immediately invalidate an alien employee's non-immigrant visa. The loss of nonimmigrant visa validity could immediately affect an employee's work status in the U.S. For example, if a transaction is undertaken and the successor party fails to amend the H-1B petition and/or the underlying Labor Condition Application (the "LCA") then the H-1B nonimmigrant may be out of status. The U.S. Department of Homeland Security, Citizenship and Immigration Service ("CIS") has made it clear that there is no "grace period" and that once an H-1B non-immigrant is no longer employed with the H-1B sponsor then the individual is deemed to be out-of-status.

It is for this very reason that Business Immigration Counsel advise employers who are involved in a transaction to be sure to annotate the Public Access File ("PAF") prior to the transaction so that the successor organization clearly assumes the liabilities of the H-1B nonimmigrants. This "assumption" can be added to the PAF prior to the closing of the transaction and this way there is no requirement that there be amendments to the H-1B be submitted. However, amendments to H-1Bs may be desired by H-1B employees if they will be traveling outside the U.S.

Depending upon an individual's progress in the green card process, Immigrant Visa Petitions may also be affected. A determination will need to be made as to whether or not the new company owner would be considered to be a "successor-in-interest". If the organization's new owner has assumed all of the past owner's liabilities, then the new owner may qualify as a "successor-in-interest". If the new company is a "successor-in-interest" then the green card process can be continued by the successor organization.

Hence, the new employer would continue with the green card process on behalf of the foreign national employee without having to start the green card process/labor certification/PERM from the beginning.

The third and one of the most important issues with which a business owner or transferor should be concerned is the Form I-9. A "successor-in-interest" can assume the I-9 liabilities of the organization. Failure to comply with I-9 requirements may result in serious sanctions. Therefore, before a transaction is undertaken, an examination of the Forms I-9 of the organization should be conducted through either an audit or a review. If the successor organization does not assume the Forms I-9 of the prior organization then new I-9s can be done for each of the organization's employees. Such Forms I-9 should be prepared for all employees to avoid any allegation of an unfair immigration-related employment practice such as document abuse or discrimination on the basis of citizenship or nationality.

Immigration repercussions should be considered early on in any transaction. Initially, an analysis of the immigration status of all of the organization's alien employees and a determination of the form of the corporate change on their status should be considered. Following this analysis, filings of any applications necessary to maintain the employees' status can be appropriately considered.

In an ongoing attempt to keep HR professionals up-to-date with business immigration law rules and regulations, our office continues to forge strategic alliances with various professional organizations that are able to obtain and provide important information to their members.

When traditional immigration approaches do not work, our knowledgeable and skilled legal team offers many visa options to meet immigration goals. Please feel free to contact us at any of our several office locations, and speak to a member of our staff in one of the 15 languages spoken, English, Spanish, French, Japanese, Korean, Slovak, Czech, Polish, Tagalog, Hindi, Tamil, Italian, Russian, Chinese, and German.

To meet a growing demand for Canadian Immigration Law Services, Nachman & Associates formed a Canadian Division in 2005. Managed by licensed Canadian legal staff and with offices in Montreal and Toronto, as well as New York and New Jersey, our Canadian Division attorneys are in the unique position to assist with cross-border issues.

Nachman & Associates, P.C. is also proud to announce the 2007 formation of a Global Immigration Division to assist clients with immigration services to countries such as the UK, China, New Zealand, Australia, and more. Our Global Division staff is fully equipped to assist with international transfers to and from the United States. If you, or any member of your staff, are interested in receiving more information about with regard to changes in the corporate structure or in connection with a merger or acquisition or layoff or termination. Please contact us at 201-670-0006 (x100) or at info@visaserve.com. Feel free to visit us on the web at www.visaserve.com.