EMPLOYERS BEWARE!

Employer found liable for three (3) years of back wages where employee never worked for employer a single day under H-1B, where the employee worked for another employer under H-1B at a higher wage, and where the employee spent approximately two of the three years in Indonesia unavailable to employer (Limanseto v. Ganze OALJ Cas No.: 2011-LCA-00005). The ALJ ordered that the employer MUST prove a bona fide termination to end its federal liability under the Immigration and Nationality Act and the Secretary of Labor's labor condition application regulations. Bona fide termination of an H-1B worker requires the employer to: 1. give notice to the worker of their termination pursuant to State and Federal laws 2. give notice of such termination to Immigration and Customs Enforcement and request cancellation of Form I-129 and 3. *payment* for worker's transportation to their home country.

The ALJ in this case has presented a framework for employers to follow to protect themselves against claims for back wages for terminated H-1B employees. However, a thorough analysis of the INA and the DOL regulations shows that this framework may not be appropriate or inclusive enough to insulate the employer from "federal liability." Employers should consult their legal representative to discuss policies and procedures for proper and complete cancellation of their H-1B employees.