

'When do I have to be paid the prevailing wage?' other common questions in employment-based immigration

by FRANKLIN W. NELSON, ATTORNEY AT LAW

THE first part in a series of the employment-based immigration process.
"When does my employer have to start paying me the wage indicated on my labor certification?", "Can I change jobs without starting all over?", "What happens if I get laid off? These are just some of the question I get asked, probably several times a week, on average, by both the employers and the alien beneficiaries I represent in my immigration practice. They are all hoping to get a definitive, easy to understand answer from me. Unfortunately, however, the answers to just about all of the questions I get asked regarding the employment-based immigration process is, "it depends." Most of the time, there is no "right" answer; the best I can do is give my clients what I believe to be the "best" answer given their particular circumstances. Also, my answers always start with an explanation of the employment-based immigration process, since a basic understanding of the process is usually necessary in order to understand my answer - so that's where I'm going to start this series, with an overview of the employment-based immigration process, from inception to lawful permanent residency.

Obtaining Lawful Permanent Residency through a job offer
Although most people refer to this as a "labor certification" (or simply an "labor cert" or "LC"), the labor certification application is actually only the first of three separate applications that need to be filed in order to obtain a "greencard" through a job offer.

The Application for Alien Labor Certification is filed with the Department of Labor ("DOL"), not USCIS. The purpose of the application is to test the labor market to determine whether there are any U.S. workers both qualified and willing to work in the position being offered. This requires a test of the labor market and this is why labor certifications require advertising. If, after advertising for the position, no qualified U.S. workers apply, DOL will certify that no U.S. workers are available for the position. This entitles the employer to file an immigrant visa petition on behalf of the alien beneficiary - the second step in this three-step process.

The previous paragraph is a very, very short description of a very, very complicated process. In order to truly test the labor market, the job offer must be bona fide - in other words, it must be an actual job offer, for actual employment, to fill

an actual need the employer actually has. One of the many things this means is the employer must offer, at a minimum, the "prevailing wage" for the position. The reason for this requirement is rather obvious. If, for example, an employer advertised for an Accountant, but was only willing to pay minimum wage, aliens who needed their greencards might apply, since it would be worth it to them to work for a substandard wage in order to get the immigration benefit. However, no U.S. workers would apply since minimum wage is far below the wage any qualified Accountant would be willing to accept. Hence, such a job offer is not bona fide since it does not truly test the U.S. labor market. This is why questions regarding when/whether/how to pay the prevailing wage often do not have straightforward answers. The goal is to ensure the job offer continues to appear bona fide, to both DOL and USCIS, and prevailing wage issues can have varying impacts on DOL's and/or USCIS's perception in this regard depending on the circumstances of the case.

In my next segment, I'll discuss the prevailing wage issue in more detail, including how the prevailing wage for a labor certification case can differ from an H1B prevailing wage, and how that difference can present difficult questions for both the employer and the alien beneficiary when transitioning from H1B classification to Lawful Permanent Residency.

Mr. Nelson obtained both his Bachelor's Degree in Economics and his Juris Doctorate Degree from the University of Southern California. He has been practicing law since 1990 and immigration law since 1994. A member of the American Immigration Lawyers Association, the Los Angeles County Bar Association, and the American Bar Association, Mr. Nelson is admitted to practice before all courts in the State of California, the United States District Courts for the Northern, Central, and Eastern Districts of California, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. Further inquiries should be directed to Attorney Nelson at his Pasadena Office by calling (626) 683-3451.

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Atty. Franklin W. Nelson

Unmasking 'foreclosure consultants'

OVER 35% of current homeowners within the State of California are facing or will face the prospect of foreclosure. Having experienced real estate market melt down in the past, California law makers enacted CALIFORNIA CIVIL CODE §2945 which contain the "California Foreclosure Consultant Act". This law is meant to protect homeowners in foreclosure from fraud, deception, harassment, and unfair dealings by soliciting parties.

California Civil Code §2945 defines a foreclosure consultant as any person who offers or makes any solicitation to act on behalf of any homeowner in order to stop or prevent the sale of the property. Instead of helping desperate homeowners, many of the "foreclosure consultants" charge high fees sometimes secured by a subordinate lien on the property. By law, California Civil Code 2945.4, foreclosure consultants are not allowed to charge, demand, or make a claim for any compensation until they fulfill their contractual agreements. In addition, foreclosure consultants must disclose "a notice of cancellation" in all their



contracts. It needs to be printed on at least 14-point boldface type and completed with the name of the foreclosure consultant. Today many foreclosure consultants are former brokers of the real estate industry. Ironically, the individuals who brokered the homeowners into dire mortgage are now offering to "save" them!

Why should the homeowner facing foreclosure consult an attorney? First, an attorney has a broader understanding of the business aspect, political climate and legislative intent on the subject matter. Second, the State Bar has a higher barrier of entry than any other professional field,

thus subjecting its professionals (attorneys) to a higher moral standard. Third, when negotiations are initiated by an attorney creditors respond with a higher likelihood of settling the matter efficiently. Finally, an attorney can review and apply violations of the law and highlight those violations when conducting negotiations with the homeowners lending institution. elbert@habashylawfirm.com or call 800.2494.LAW(529) X102.

Mr. John Habashy is an attorney at law, graduated from USC, with an extensive loan modification experience.

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CREATIVE SMILES



DR. NELLY LYN MONTILLA

DIABETES is a disease that affects the way your body uses food. There are two types. Type 1 is referred to as insulin dependent or immune-mediated diabetes, and is caused by the inability of the pancreas to produce insulin. Insulin is necessary for the vast number of blood cells in our body to use glucose, a sugar that helps sustain life. Type 2 is often referred to as non-insulin dependent or adult onset diabetes and is the much more common form, occurring in roughly 90% of the cases. With type 2 diabetes, your body does not make enough insulin or cannot properly use it. Your physician has most likely informed you of the complications of untreated or poorly controlled diabetes, which include kidney failure, gangrene or possible amputation of the lower extremi-

Diabetics are at risk for dental infections

ties (legs and feet), blindness, or stroke. As dentist, I am mainly concerned with the effects on the gums, and immune (disease self-defense) system. Gum (periodontal) disease is generally more common and more severe in patients with diabetes. This is because blood cells in the gums and jawbone that protect us from infection are not as effective. This means that the diabetic needs to work more diligently on oral hygiene, brushing and flossing, as well as make sure the disease is as controlled as possible. If you have a dental infection, and require either a root canal or need to have a tooth removed, there are some important things for you to remember. Make sure you eat your normal breakfast before you go to the dentist. If you are taking insulin, take your normal dosage unless your dentist and physician have agreed to alter the dosage. If you have not eaten and are in pain or feel a high degree of stress prior to a dental procedure, this can cause your blood sugar to drop. By eating (we use the expression, "keep

them sweet") and taking the proper amount of insulin, you reduce the potentially dangerous complication of hypoglycemia (low blood sugar). Diabetics, especially poorly controlled diabetics, are at an increased risk for infection- that includes potential complications from dental infections. If your diabetes is under poor control "brittle", and your blood sugar is very high, dental surgical procedures may need to be delayed until you are under better control. In some cases, you may need to take antibiotics prior to certain dental treatments to reduce the risk of infection.

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The following information is provided as a general guideline. It is NOT intended in place of professional care. Since every pregnancy may vary, consult your physician or dentist for advice on your particular situation.

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The economic downturn and its effects on laid-off sponsored workers and h1b visa holders

by ATTY. BELLA REYES, J.D., LL.M.

AS of the end of February 2009, almost every aspect of our communities has been affected by the global economic downturn. To address this problem, our new President, Barack Obama, recently signed the "American Recovery and Reinvestment Act of 2009," more fondly referred to as the "Stimulus bill." This bill provides a large number of tax credits and billions in U.S. dollars to programs that support American businesses and families, including extending the Unemployment Insurance benefits for thousands of laid-off workers.

However, precisely because of the economic problems in American businesses nowadays, many Sponsored workers and H1B visa holders have been displaced by being laid off of work. As if losing one's employment and source of income is not devastating enough, it is worse because one's immigration status is threatened to be lost too. Most of the time, family members are also involved.

Available remedies for laid-off sponsored workers and h1b visa holders

If you were a Sponsored worker or H1B visa holder and you were recently laid off, please do not lose hope. There are available remedies for you. Please call our office to discuss options available to preserve your status. We would be happy to assist you in finding other Employers/Sponsors for you.

Unemployment benefits for laid-off sponsored workers and h1b visa holders

Many laid-off Sponsored workers are eligible to apply for unemployment benefits. What are "unemployment benefits?" Briefly, these are benefits paid from unemployment insurance programs governed by State laws following federal guidelines. Such insurance programs are paid for by each State's employers. For unemployment benefits to be provided, the programs require that employment be lost

through no fault of the employee. This means that if the employee voluntarily resigns or is terminated for cause, he or she is ineligible for unemployment benefits.

However, some of these laid-off Sponsored workers do not apply for unemployment benefits, even if they are eligible to do so, for fear that such benefits may cause problems due to the public charge removability provisions under Immigration laws. Under the current Immigration laws, persons may be removed (deported) if they become subject to "public charge" within five years of their entry to the United States.

It is important to understand that unemployment benefits are not public charges per se because first, they are from insurance programs paid for by the employers; second, there is no government fee for this service; and third, there is no requirement for the employee to pay it back to the State. In fact, unemployment benefits are considered "taxable income" by the IRS. Thus, eligible laid-off Sponsored workers should apply for these benefits while they are unemployed.

This article is not intended to provide the reader any legal or tax advice. For more information on applicable legal remedies or tax benefits for you, please call our office at (714) 530-0042 or visit our website at bellareyes.com.

Bella Reyes is a Federal Tax and Immigration Attorney and has been practicing for over 12 years. She has clients in several states, including California, Texas, Nevada, Maryland, Washington, D.C., Florida, New York, and New Jersey. She is a member of the bars of the U.S. Supreme Court, U.S. Tax Court, and Maryland. Ms. Reyes graduated from Georgetown University Law Center and is one of the first female graduates of the Ateneo De Manila University. Her office is located at 421 N. Brookhurst Street, Suite 200, Anaheim, California 92801. She can be reached at Tel. (714) 530-0042, and her website address is: bellareyes.com.

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ON FENG SHUI



JENNY LIU

ABOUT the client: Sharon and her husband Daniel own a multi-million dollar car auction business in the Orange County region with two branch offices. Sharon and Daniel are hardworking business people who work long hours to earn their income.

Q: Why did Sharon and Daniel call you?

Master Jenny: Sharon and Daniel had become involved in a lawsuit two years ago and were now on the verge of bankruptcy. They had been in the business for many years and were not ready to give it up. It seemed to Sharon that no matter how much money they earned, it was never enough. There was always some unexpected expense or problem cropping up. Sharon felt strongly that something was simply not right. She and Daniel decided to get their feng shui checked.

Q: How was their office feng shui?

Master Jenny: Sharon and Daniel are both Western Direction Pattern people. One of their two buildings is oriented on the southwest/northeast axis that matches them. However, their personal offices were in the east sector and their main door faced south-east. Both the east and southeast

Troubled business - Feng Shui case study

directions are associated with the wood element and are incompatible to them. The wood energies conflict with Daniel's earth and Sharon's metal elements and are likely to bring troublemakers in the form of paperwork problems or lawsuits.

In their second building, Sharon's personal office is located in the southeast corner, which again does not match her. Daniel's office is located in the northeast corner. Although the northeast matches him, that particular year, the northeast direction had annual stars that can bring challenging people who take advantage of him.

Q: What is a key feng shui adjustment you recommended for them?

Master Jenny: Among many of the feng shui adjustments I recommended, the most important was for them to create personal offices in the west sector of their buildings. Because Sharon could not easily relocate her office in the second business location, I suggested she minimize her time in this office and try to accomplish most of her work in the other, more compatible building.

Q: Did you have any special recommendations for Sharon and Daniel?

Master Jenny: I also recommended for Sharon and Daniel to do their birth charts to find out if they were doing business in a compatible field to them. Often, working in the wrong field

leads to challenges. Both charts confirmed that their personal Wealth Sectors were weak and money comes and goes. Also, the car industry was not compatible to them. Because they could not give up their line of work, it was vital for them to learn special mantras and meditations in addition to the feng shui adjustments to release defeating energies.

Q: Did they follow through with making the adjustments?

Master Jenny: Sharon meticulously followed my recommendations in adjusting furniture placement, staff location, colors, crystals, and most importantly, acquiring Chi Art with mantras to adjust her business' feng shui.

Q: Did the feng shui adjustments help them?

Master Jenny: Sharon gratefully shared her story with the attending participants at a recent seminar. I was extremely touched by her story as she explained her situation and how the feng shui and meditations have been a great help to her and her business. She pointed out that after two years of legal preparation and several months of living with the feng shui adjustments and meditations, the judge completely ruled in her favor without even looking at the documentation. In her mind, there is no doubt about the power and effectiveness of feng shui. The benefits of the couple thousand dollars she invested in the feng shui consultation far outweighed the quarter

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LARRY YANG is a graduate of Georgetown University Law Center with a master's degree in Law and practices before California State Courts, United States District Courts, the California Appeals for the 9th Circuit and U.S. Bankruptcy Courts.

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Call our office for appointment
(626) 284-1142
and ask for Angie or Jess.
Atty. Yang will personally interview you

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