

H-1B Visas still available!



ATTY. JOEL R. BANDER

PROTECTING RIGHT & \$

THE US Citizenship & Immigration Services (USCIS) announced on April 9, 2009 that it will continue to accept H-1B petitions for the fiscal year 2010. USCIS has only received approximately 42,000 petitions counting toward the general 65,000 cap and approximately 20,000 petitions for the 20,000 cap for aliens with advanced degrees. This turnout contrasts with our experience in 2007 and 2008, when USCIS was immediately swamped with more petitions than visa numbers available on the first two days of the filing season beginning April 1. During those years, USCIS conducted lottery and rejected thousands of applications that were not fortunate enough to be selected in the lottery. While many still expect USCIS to reach its ceiling this year, the question is whether USCIS will still conduct lottery once the ceiling has been reached.

Last year, USCIS issued a regulation allowing a minimum window of five business days for USCIS to receive H-1B cap-subject cases and thereafter, run a random lottery selection to determine which cases filed within this window will be eligible for a cap number. This is due to the excessive number of petitions received. However, for this year, the general cap has not been met during the five-day window, giving rise to the speculation that no general lottery will be conducted. Some predict a "mini lottery" for cases filed after the five-day window if the number of additional filings exceeds the remainder of the cap. Until USCIS makes an announcement, it is not certain how the selection

will be made.

One thing is certain, though. Those who failed to beat the April 1 rush can still file their petition and hope to be selected for processing. They still have time, but must act NOW.

Contact Bander Law Firm now to know if H-1B is an appropriate visa petition for you. H-1B is a temporary work visa for individuals with a bachelor's or higher degree to be employed in a professional occupation. The petition must be filed by a U.S. employer on behalf of a foreign beneficiary. If the beneficiary is presently in the United States as a nonimmigrant, he must be in valid status to apply for a change of status. The petition may also be filed for a beneficiary outside the United States, in which case, the visa will be applied for and issued in the U.S. consulate in the beneficiary's home country.

Bander Law Firm, LLP has been providing immigration services for over 15 years and has multilingual staff who communicates effectively in Tagalog, Korean, Spanish, Sinhala, Farsi and Mandarin. Our firm provides free initial consultation on immigration matters, except criminal-related matters. Please feel free to call Bander Law Firm at 213-873-4333 regarding your legal concerns. Bander Law Firm provides a full range of legal services in the fields of Immigration, Mortgage Litigation, Personal Injury, Criminal and Removal Defense, Civil and Business Litigation, Wage and Hour Litigation and Class Action lawsuits.

Atty. Joel R. Bander is the partner of Bander Law Firm, LLP. With over 15 years of litigation and immigration experience, Mr. Bander is a leading litigator and accomplished trial strategist. He has successfully handled numerous cases before Federal, State, Civil, and Criminal Judges and has participated in hundreds of arbitrations and trials.

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(Advertising Supplement)

Ang VAWA self-petition



TAPAT SA BATAS

ATTY. RHEA V. SAMSON

NOONG 1994, ang US Congress ay nag-enact ng Violence Against Women Act (VAWA) bilang bahagi ng comprehensive crime bill. Kahit ang pangalan ng batas ay Violence Against Women Act, ang mga lalaking biktima ng karahasan ay eligible rin para sa VAWA. Dahil sa VAWA, ang isang dayuhang asawa o anak ng isang US Citizen (USC) o Permanent Resident (PR) na nakaranas ng abuso o karahasan mula dito ay maaaring mag-file ng immigrant petition ng walang tulong o pagsang-ayon ng USC o PR. Noong 2000, nagkaroon pa ng positive changes sa VAWA dahil hindi na kailangan ang extreme hardship sa dayuhan kung siya ay paaalisin sa US, na dating requirement sa VAWA noong 1994.

Marami sa mga nakaranas ng pang-aabuso at karahasan mula sa asawang USC o PR ang nag-aakalang kailangan nilang manatili sa abusive relationship upang makakuha ng green card. Sila ay nagtititiis ng iba't-ibang klaseng abuso dahil may pagbabanta ang asawa na hindi itutuloy ang kanilang petition o sila ay ipapadeport na. Ang mga biktima ng abuso at karahasan ay dapat maging informed na may paraan pa para makuha nila ang kanilang green card at manatili sila dito sa US na hindi kailangan tiisin ang pang-aabuso ng kanilang asawang USC o PR. Ito ay sa pamamagitan ng self-petition sa ilalim ng VAWA.

Upang mag-"self-petition" sa ilalim ng VAWA, ito ang mga kailangan ng dayuhang asawa:

Siya ay asawa ng mapang-abusong USC o PR. Kung hindi sila kasal, di maaaring mag-self-petition sa ilalim ng VAWA. Kung ang asawa ay nonimmigrant, o yung naka-H1-B, H3, F1, B2, J1, o kaya ay walang status dito sa US, di maaaring mag-"self-petition" sa ilalim ng VAWA. Kung ang dayuhan ay nakakuha na ng divorce decree sa kanyang asawang USC o PR, maaari pa rin siyang mag-"self-petition" sa ilalim ng VAWA

ngunit ito ay kailangang i-file sa loob ng dalawang taon mula sa pagkuha ng divorce decree.

Siya ay nakatira dito sa US at nanirahan kasama ang kanyang mapang-abusong asawang USC o PR noong nakaraan;

Siya ay nakaranas ng panakit o lubos na karahasan sa kanyang asawang USC o PR habang sila ay mag-asawa. Ito ay mapapatunayan sa pamamagitan ng medical reports, police reports, at pahayag ng mga nakakita ng pang-aabusong ito. Ang abuso ay maaari ring extreme mental cruelty kagaya ng pagbabanta na ipa-deport ang dayuhan, social isolation katulad ng paghiwalay sa mga pamilya at kaibigan, at hindi pagpayag na ito ay magtrabaho;

Siya ay may good moral character. Ang good moral character ay mapapatunayan sa pamamagitan ng pagkuha ng local police clearance, state-issued criminal background check, at mga report galing sa lugar na tinirahan niya sa nakaraang tatlong taon.

Siya ay nagpakasal sa kanyang mapang-abusong asawang USC o PR in good faith, o totoo ang kanilang kasal. Kung ang kasal ay bigamous, maaari pa ring mag-self-petition sa ilalim ng VAWA kung ang dayuhan ay naniwala ng libheng magpakasal ang asawang USC o PR noong sila ay ikasal.

Si Attorney Rhea V. Samson ay abogado dito sa California at sa Pilipinas. Nagtapos siya ng kanyang Juris Doctor Degree sa Ateneo de Manila University Law School. Siya ay nagturo sa Ateneo De Manila University ng Essentials of Philippine Business Law, Obligations and Contracts, Corporation Law, Partnership Law at Labor Laws and Social Legislation. Siya rin ay nagkatha ng librong, "Working With Labor Laws, A Comprehensive Guide on Conditions of Employment, Employee Benefits Under Special Laws, Termination and Retirement" na inilathala ng Ateneo de Manila University Press at University of Hawaii Press. Itong libro niya ay kasalukuyang textbook sa kursong Labor Laws and Social Legislation ng Ateneo de Manila University. Siya ay humuhugot ng inspirasyon mula sa kanyang mga magulang na sina Engr. Roger Samson at Gng. Bella Valle Samson, na tubong Batangas. Si Attorney Samson ay mahilig mag-kape at manood ng The Filipino Channel.

Nagbibigay si Attorney Samson ng free initial consultation sa kanyang opisina, Samson Law Corporation, 3550 Wilshire Boulevard, Suite 1765, Los Angeles, CA 90010; telephone no: (213)637-5630; fax no: (213)637-5637; email address: samson@samsonlawcorp.com; website: www.samsonlawcorp.com.

(Advertising Supplement)

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

Q: My employer is proposing to reduce my hourly pay supposedly because of the bad economy. If our company is really losing money and I have to agree to a pay cut to keep my job, then I will. My problem, however, is that out of the more than the 10 employees who have the same job duties as me, it seems I am the only one being asked to take a pay cut. Is this fair? What are my rights when it comes to taking pay cuts?

A: Employers may routinely change the terms or amount of an employee's compensation. The change may be favorable (e.g., employees get a pay raise) or unfavorable (e.g., employees get a pay cut). The employer's ability to change an employee's compensation will partly depend on the employment relationship and the parties' agreements.

The employment relationship may be based on a written contract or a collective bargaining agreement (CBA) in the case of union members. Or it may be an "at-will" employment.

Contract-based Employment

ment: If the employment is based on a contract, then the terms and conditions, including compensation, is governed by the contract. The terms of a contract may be changed during the term of the contract only if both parties agree to the change. Therefore, employee compensation cannot be changed during the term of the contract unless the employee agrees to the change. If, for example, the contract employee does not agree to the pay cut, but the employer cuts the employee's pay anyway, the employer has violated the contract and may become liable for damages. Changes in the contract usually have to be in writing and signed by both parties.

At-will Employment: If there is no employment contract or CBA, the employment relationship is considered "at-will." This means that the employment relationship may be terminated by either party without liability. In at-will employment, employers may reduce an employee's compensation without the employee's express consent. The employer may notify the employee about the pay cut in as little as a week. An employee may be deemed to have accepted the pay cut if

WHEN IS IT ILLEGAL?

When employees take a pay cut

the employee continues to work for the employer after receiving notice of the pay cut. If the employee does not like the pay cut, the employee may quit and look for a job elsewhere and the employer will not be liable for damages.

However, an at-will employment relationship does not give employers permission to discriminate or retaliate against employees by way of compensation. A decrease in compensation must not have an unlawful reason behind it. Employers may not decrease employee compensation based on the employee's gender, age, religion, race/ethnicity, disability, marital status, or pregnancy. Employers may also not decrease employee compensation in order to retaliate against employees who have asserted their legal rights, or against "whistleblowers."

When employers ask their employees to take a pay cut, employees will necessarily ask why. Some reasons will appear obvious and reasonable. For example, the company may be unable to stay afloat in this bad economy. It may start to lay off people or ask some employees to take a pay cut instead.

Some reasons may not be so obvious. An employee who

just turned 65 might be asked to take a pay cut. The same thing may happen to a pregnant employee or one who wanted to collect unpaid overtime. In these scenarios, where only specific employees are targeted but other employees are not affected, the implementation of a pay cut should be investigated to determine if the employer is engaged in unlawful discrimination or retaliation. Under these circumstances, it might be wise for the employee to consult with an experienced employment attorney to discuss how he or she may protect his or her rights.

C. Joe Sayas, Jr., Esq. is an experienced trial attorney who has successfully obtained significant results, including several million dollar recoveries for consumers against insurance companies and big business. He is a member of the Million Dollar-Advocates Forum—a prestigious group of trial lawyers whose membership is limited to those who have demonstrated exceptional skill, experience and excellence in advocacy. He has been featured in the cover of Los Angeles Daily Journal's Verdicts and Settlements for his professional accomplishments and recipient of numerous awards from community and media organizations. His litigation practice concentrates in the following areas: serious personal injuries, wrongful death, insurance claims, unfair business practices, wage and hour (overtime) litigation. You can visit his website at www.joesayaslaw.com or contact his office by telephone at (818) 291-0088.

(Advertising Supplement)

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