

Immigration, Investment & Employment Law Updates

5th Micronesia Real Estate
Investment Conference
“Micronesia Real Estate:
Building Momentum”

Part II, Friday, October 2, 2009
2:00-3:45 pm Workshop I - B

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Workshop Overview

1. Regional Landscape - DHS District 26 includes Hawaii and Guam
2. Hot updates and “best practice” tips for 2009 and on out, that may be applied throughout the U.S., Guam, CNMI
 - “E-Verify” and Paper I-9 Compliance. DHS is pushing ahead toward mandatory compliance of “E-Verify” for federal contractors and subcontractors, starting Sept. 8, 2009.
 - “Interior Enforcement” is Focused on Employers.
 - Legal Workforce is especially critical for Recipients of Federal Funding, Awardees of Federal Contracts.
3. Investment and Job Creation
 - EB-5 Investor Visa. \$1 million investment that creates a minimum of 10 jobs for U.S. workers. Much careful planning needed to take advantage of great opportunities for “immigrant investors” seeking Permanent Residency for themselves and dependent family members (e.g., spouses and children under 21)
 - Transitional E-2 CNMI visas, very limited. Sept 14, 2009, DHS published a proposed rule to recognize a CNMI specific nonimmigrant investor visa classification, as a transitional measure for those CNMI investors who will need more time to apply and qualify under the E-2 visa classification law.
 - Temporary E-2 visas will depend on treaties.
4. Nov. 28, 2009 – CNMI – New Guam-CNMI Visa Waiver Program & U.S. Immigration Laws to be applied in full force.

U.S. Department of Homeland Security – Domestic Map

Domestic Map



WESTERN REGION

- LAGUNA NIGUEL**
- District 20
Seattle
Anchorage
Portland
Spokane
Yakima
- District 21
San Francisco
San Jose
Fresno
- District 22
Sacramento
- District 23
Los Angeles
San Bernardino
Santa Ana
- District 24
San Diego
- District 25
Phoenix
Las Vegas
Reno
Tucson
- District 26
Honolulu
Hagatna, Guam

CENTRAL REGION

- DALLAS**
- District 12
Detroit
- District 13
Cleveland
Cincinnati
Columbus
Indianapolis
Louisville
- District 14
Chicago
Milwaukee
- District 15
Kansas City
Des Moines
Omaha
St. Louis
St. Paul
- District 16
Dallas
Oklahoma City
- District 17
Houston
- District 18
San Antonio
Albuquerque
El Paso
Hartlingen
- District 19
Denver
Boise
Helena
Salt Lake City

SOUTHEAST REGION

- ORLANDO**
- District 8
Atlanta
Charlotte
Charleston
- District 9
Miami
Charlotte Amalie
San Juan
- District 10
Tampa
Jacksonville
Orlando
West Palm Beach
- District 11
New Orleans
Ft. Smith
Memphis

NORTHEAST REGION

- BURLINGTON**
- District 1
Boston
Manchester
Portland
Providence
- District 2
Buffalo
Albany
Hartford
St. Albans
- District 3
New York City
- District 4
Newark
Mt. Laurel
- District 5
Philadelphia
Pittsburgh
- District 6
Baltimore
- District 7
Fairfax
Norfolk

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Under DHS, Immigration Functions are Split into Three (3) New Bureaus:



1. Inspections over Arrivals and Admissions to the U.S.: **Customs and Border Protection (CBP)**
2. Applications for Benefits (Documents for Travel, Work Authorization, Green Cards, etc.): *Citizenship and Immigration Services (USCIS)*
3. Law Enforcement and Deportation: **Immigration and Customs Enforcement (ICE)**

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Security, Integrity of Identity Documents, & Increased “Interior Enforcement” Focused on Employers



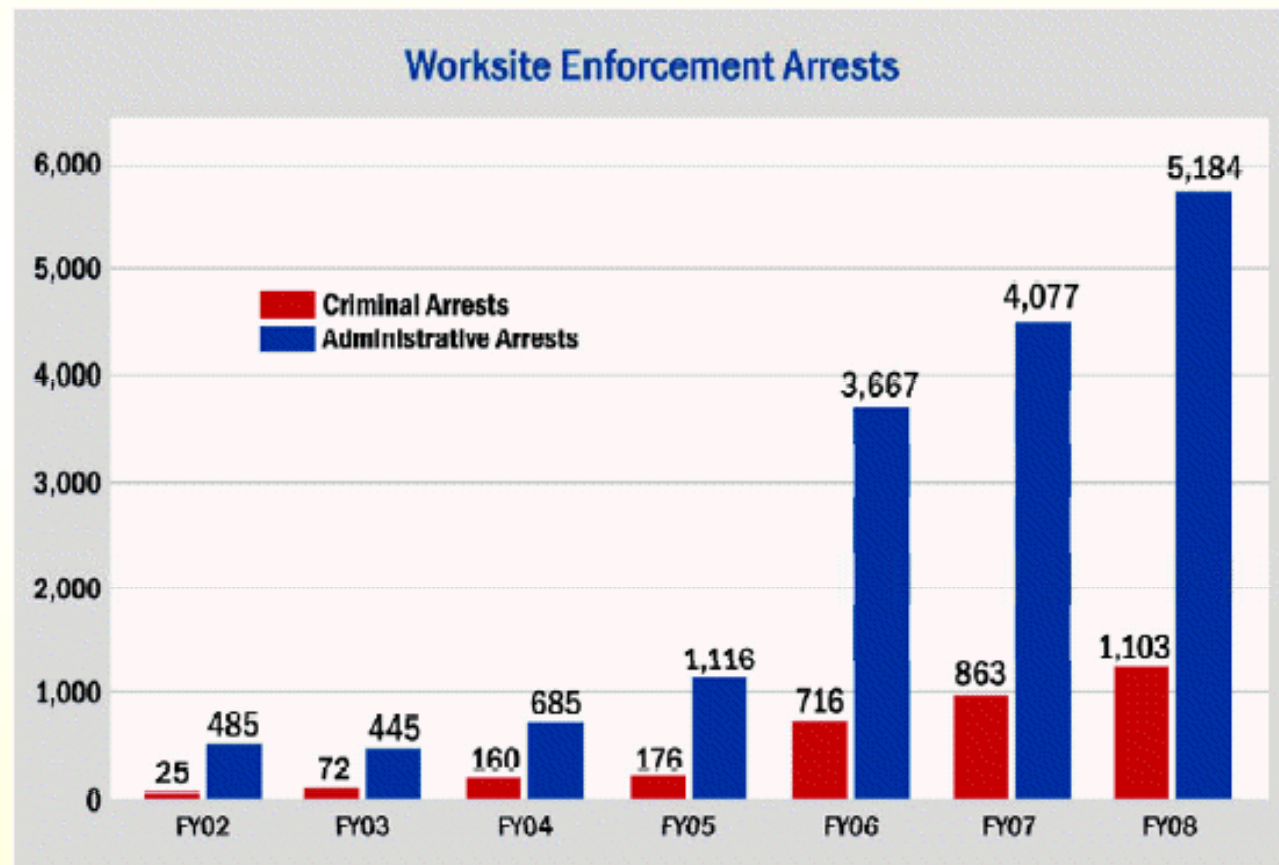
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Huge Surge in “Interior Enforcement”

Aggressive Audits, Higher fines,
Administrative and Criminal Arrests,
Harmful Press about employers and undocumented
workers who have violated the law

<http://www.ice.gov/pi/news/factsheets/worksite.htm>



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Penalties

- \$110 to \$1,100 for each paperwork violation
- \$375 to \$16,000 for “knowing” employment of unauthorized worker
- \$3,000 per unauthorized employee
- imprisonment for a pattern and practice of knowing violations
- Federal Contractors: debarment from future contracts for up to one year

“Interior Enforcement” is here to stay

111th Congress burdened with economic bailouts, wars, etc.

- **Worksite Enforcement** is being accepted as a long-due necessity. Too lax between 1986 and 2007. Every employer in the U.S. is required to have a Federal Form I-9 on file for EACH EMPLOYEE hired after Nov. 6, 1986.
- “Interior enforcement” approach by multiple federal agencies and states to reduce the magnet of jobs for undocumented workers is seen as critical to achieving Comprehensive Immigration Reform.
- **Employers** may be expected to pay the price for violations, especially in the current job market. Public may not be as sympathetic in 2009.
- **Target industries** (e.g., construction, restaurant and hotel service, agriculture, etc.) need to pay extra attention, but no industry is exempt.
- **Immigration Reform** will bring on very heated debates in 2009 and 2010.

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Where are we heading?

E-Verify for Federal Contractors

(Ready or Not)

- Immediately after the Nov. 4 election, the Bush Administration published Final Regulations on Nov. 14, 2008, requiring Mandatory E-Verify starting Jan. 15, 2009. Federal contractors (and some Subcontractors) were told to anticipate a rush between Nov. 14 and Jan. 15, to meet the short deadline, but the implementation was delayed several times as a result of litigation filed opposing the rule. Currently, it is scheduled to be implemented on Sept. 8, 2009. Language will be inserted in **federal contracts** mandating that Federal Contractors use E-Verify to confirm employment eligibility of all persons hired during a contract term, **and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the U.S.** (includes Guam).
- The Senate took up the issue July 9, 2009 in the course of considering the DHS appropriations bill. The Senate passed an amendment offered by Senator Sessions of Alabama that codifies E-Verify legislatively. The Sessions amendment requires that federal contractors use E-Verify to determine the employment eligibility of both newly-hired employees and existing employees who are assigned to work on federal contracts. The same language will be required in **Subcontracts over \$3,000 for services or construction.**

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What does Immigration Law have to do with Federal Bailouts, Federal Contractors and Flowdown Subcontractors?

E-VERIFY is now MANDATORY for many Federal Contractors and recipients of federal bailout funds, starting Sept. 9, 2009, and E-Verify may open access to State and Federal Contracts, but beware:

- E-Verify is not a substitute for I-9 paper compliance – Most employers do not appreciate how hyper-technical the I-9 rules are, until a complaint, audit, raid, arrest, etc.
- E-Verify does not stop I.D. theft.
- Both E-Verify and I-9 require detail-oriented oversight by owners, managers, and hiring personnel.
- E-Verify data may be linked to wage and tax reporting.
- Employer agrees to permit DHS and SSA officials to make surprise inspections.
- DHS is data mining E-Verify, resulting in the identification of compliance failures, intended or unintended, resulting in inspections from ICE. Uneducated or unrepresented businesses should be aware that those employers agreeing to initiate E-Verify program are increasing, not decreasing their exposure

Acceptable Documents on Lists A, B, C

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0647; Expires 08/31/12
Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last First Middle Initial Maiden Name

Address (Street Name and Number) Apt. # Date of Birth (month/day/year)

City State Zip Code Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following)

- A citizen of the United States
- A permanent resident of the United States (see instructions)
- An alien lawfully permanent resident (Alien # _____)
- An alien authorized to work (Alien # or Admission # _____ and expiration date, if applicable: month/day/year)

Employer's Signature Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee's owner, under penalty of perjury, that I have used it for the completion of this form and that to the best of my knowledge the information is true and correct.)

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip+4) Date (month/day/year)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

Document title:	List A	OR	List B	AND	List C
Issuing authority:					
Document #:					
Expiration Date of any:					
Document #:					
Expiration Date of any:					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on _____, and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative Print Name Title

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A New Name of applicant: _____ (If Date of Birth (month/day/year) is applicable)

C If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS
All documents must be unexpired

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form I'S-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form D5-1350)
4. Employment Authorization Document (that contains a photograph) (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form		5. U.S. Military card or draft record		5. Native American tribal document
		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		8. Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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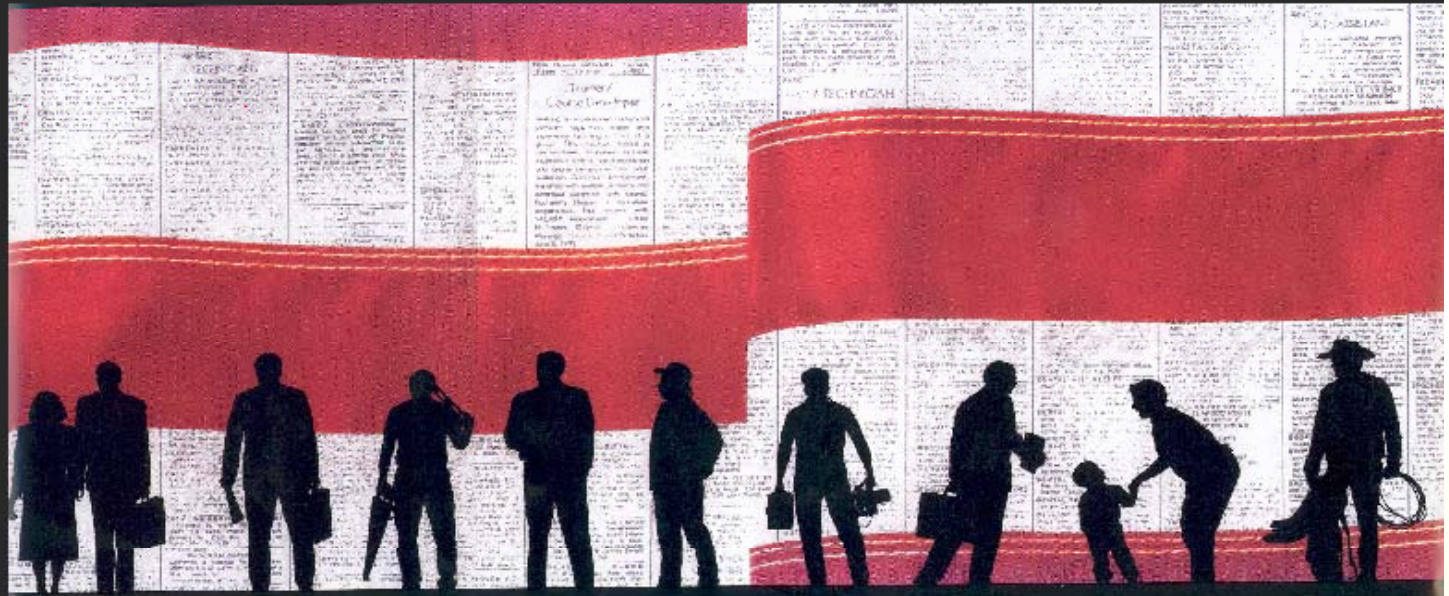
Also, avoid getting sued for discriminatory hiring practices by potential hires

- ALL employers must properly complete I-9's within 3 days of hire – both the potential hire and the “same” employer's representative must sign restricted parts of the form.
- ALL E-Verify employers must notify workers that they are using E-Verify with posters at the worksite.

Especially now, when potential hires are looking for jobs, Employers may find themselves defending charges for alleged discriminatory hiring practices, or other non-compliance with federal law.

Postings Required

**IF YOU HAVE THE RIGHT TO WORK,
Don't let anyone take it away.**



If you have a legal right to work in the United States, there are laws to protect you against discrimination in the workplace.

You should know that – No employer can deny you a job or fire you because of your national origin or citizenship status.

In most cases employers cannot require you to be a U.S. citizen or permanent resident or refuse any legally acceptable documents.

If any of these things have happened to you, you may have a valid charge of discrimination that can be filed with the OSC. Contact the OSC for assistance in your own language.

Call 1-800-255-7688. TDD for the hearing impaired is 1-800-237-2515.

In the Washington, D.C., area, please call 202-616-5594, TDD 202-616-5525

Or write to:
The Office of Special Counsel
Civil Rights Division
U.S. Department of Justice
P.O. Box 27728,
Washington, DC 20038-7728

U.S. Department of Justice
Civil Rights Division

Office of Special Counsel for
Immigration-Related Unfair
Employment Practices



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Visa Waiver Program; Guam Visa Waiver Program; Guam-CNMI Visa Waiver Program

- As of November 28, 2009, both the **Visa Waiver Program** (VWP under INA 217) and the **“Guam –CNMI Visa Waiver Program”** (INA 212(l)) will be in operation in Guam and CNMI.
- Key Differences:

35 countries	12 countries
Up to 90 days	Up to 45 days
Anywhere in U.S.	Only to Guam &/or CNMI
ESTA	No electronic registration
I-94W	I-94

EB-5 Immigrant Investor Visa Program

Investment “Job Creation” Opportunities in Guam and CNMI can provide a successful platform for serious Immigrant Investors seeking green cards through Investments of \$1 million.

Must generate and sustain full-time employment for 10 qualifying U.S. workers over a minimum of two years.

Qualifying for a green card through investment can be very complicated, and usually takes several years.

Immigration Law is very complex and it is not possible to address all situations in an informational overview workshop. Wishing all of you great success and prosperity and welcome the opportunity to meet with you during this conference and to work together in the future.

Thank You.
Ruth Oh

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