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Immigration Alert:

Comprehensive Immigration Reform Bills Offer Backlog Relief, New Benefits in Employment-based Immigration Categories

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This week, the United States Senate is debating a historic overhaul of our nation's immigration laws. Two competing bills are on the floor, the "Securing America's Borders Act" (S. 2454), offered by Senate Majority Leader Bill Frist (R-TN), and a substitute proposal developed in the Judiciary Committee and backed by committee co-chairs Arlen Specter (R-PA) and Patrick Leahy (D-VT).

Most recent press coverage of the debate has centered on varying approaches to border security, stricter enforcement of immigration law within the U.S., whether to implement a new "guest worker" program for low and unskilled jobs, and what form of relief, if any, should be provided for the undocumented population.

We want our clients to be aware that there are also extremely helpful provisions being discussed to relieve backlogs and visa shortages in current employment-based immigration programs, with particular benefits for aliens who hold an advanced degree in science, technology, engineering or math. In a hopeful sign that these proposals are less controversial than others receiving the media attention, they are contained in BOTH Senator Frist's bill and the Judiciary Committee substitute.

Briefly, the proposed changes are:

- **H-1B Cap Relief:** The general H-1B cap would be raised to 115,000, with a mechanism added that if the cap is reached in a given year it is automatically increased 20% for the next year. The cap would not apply at all to an alien who has earned an advanced degree in science, technology, engineering or math.
- **Permanent Employment-Based (EB) Backlog Relief:** The worldwide total annual quota for employment-based permanent residence preference categories is more than doubled, from 140,000 to 290,000. Spouses and children immigrating with an EB beneficiary are exempt from being counted. The per-country and per-preference allocations within the total are also adjusted to more accurately reflect usage.

- **Certain Aliens Made Exempt from EB Quotas:** Aliens who have earned an advanced degree in science, technology, engineering or math and who have been working in a related field in the U.S. under a nonimmigrant visa for 3 years will not be subject to annual numerical limitations for permanent immigration in an EB preference category at all. Aliens in the “extraordinary ability” and “outstanding researcher” categories and aliens who have received a “national interest waiver” are also exempted.
- **Labor Certification Standard Eased for Certain Aliens with a U.S. Advanced Degree:** Where an alien has an advanced degree in the sciences, technology, engineering or mathematics from an accredited university in the U.S. and is employed in a related field, a more favorable standard is applied for the labor market test in the labor certification process.
- **Employment Benefits for Foreign Students:** The period which can be authorized for optional practical training related to the alien's area of study is raised to 24 months. In addition, foreign students will be permitted to accept off-campus employment in a position unrelated to the field of study, subject to recruitment and wage attestations by the employer, for up to 20 hours per week during the academic term or 40 hours in vacation periods.
- **New Visa for Certain Advanced Degree Students:** A new foreign student visa category is established, F-4, for aliens attending an accredited graduate program in mathematics, engineering, technology or the sciences in the U.S. to pursue an advanced degree. In this category, the alien would be exempt from the normal student visa requirement for intent to return home at the completion of studies. F-4 status will be valid during the alien's studies for an additional period of one year after completion if the alien is actively pursuing a related offer of employment, and, provided a permanent residence process is started for the alien within the one year, for as long as necessary to complete the permanent residence process. In addition, in that process, an alien in F-4 status (or one who would have qualified for F-4 status prior to the law being enacted) may apply for adjustment of status notwithstanding any backlog in the relevant EB preference category or per-country quota, and wait for the visa to become available.

These favorable changes are similar to proposals passed in the Senate in December 2005 by a vote of 85-14. At that time, many of our clients wrote letters or signed on to a special statement of support that was endorsed by nearly 800 U.S. businesses and universities. While that bill did not ultimately pass the House of Representatives, the advocacy efforts were highly effective in keeping the relief proposals at the forefront of discussion for this year, so that we have the opportunity again for relief to be enacted.

If the Senate now passes a comprehensive bill containing the changes, the next step will be a conference to reconcile the legislation with the House of Representatives' bill, H.R. 4437. We urge you to contact the Senators and Members of Congress from your area to express continued support through the conference committee process for H-1B and EB backlog relief.

If you have any questions please contact a member of the Foley Hoag LLP Immigration Practice Group.

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