Global Immigration Update

Australia
Subclass 457 Labour Market Testing Requirement Takes Effect November 23 (November 19, 2013)

The labour market testing requirement for the Temporary Work (Skilled) (subclass 457) visa programme, which was approved earlier this year, took effect on November 23, 2013, the Department of Immigration and Border Protection (DIBP) recently confirmed.

The New Labour Market Testing Requirements

Subclass 457 sponsors will be required to demonstrate that they made efforts to find suitably qualified and experienced Australian workers for nominated positions at any time in the twelve months before the submission of nomination applications and must submit evidence of local recruitment efforts, unless they are exempt. For purposes of the new requirement, Australian workers will include Australian citizens and permanent residents, as well as temporary visa holders in the working holiday or work and holiday programmes who are working for the sponsoring employer in the agricultural sector.

When labour market testing is required, sponsors must provide information about all advertising or other recruitment efforts taken in relation to the nominated occupation in the preceding twelve months. Sponsors must include the following details: where the advertising or other recruitment activities took place; the dates recruitment activities occurred; the geographic target audience; and the outcome of the recruitment, including the number of applications received, number of applicants hired and the general reasons why other candidates were not selected.

If a sponsor or an associated entity has laid off Australian workers in the same or a similar occupation to the one nominated, the sponsor must show that its recruitment attempts post-date the layoffs.

Occupations Requiring Labour Market Testing

DIBP has released a list of occupations that will be subject to the labour market testing requirements. Although not officially confirmed by DIBP, occupations that do not appear on this list will most likely be exempt if they require a diploma, bachelor's degree or higher qualification, or equivalent experience. Applications will also be exempt if the labour market testing requirements would be inconsistent with Australia's international trade obligations or for visa applicants who would assist with relief and recovery efforts after a major disaster.

What Employers Should Do in Anticipation of the Upcoming Requirements

Employers are urged to consider in advance the potential impact of the labour market testing criteria on their business and to contact their immigration service provider to plan for the changes.

For occupations that will require labour market testing, employers should start gathering information on their recruitment efforts in the past twelve months for the positions they intend to nominate after November 23.

Employers should prepare for application backlogs and longer government processing times in the coming weeks, as many sponsors will likely try to file applications before the labour market test requirements took effect on November 23. After November 23, processing may slow down as adjudicators become familiar with the new requirements.

United States
New Employer Compliance Obligations Take Effect in Virginia and California (November 21, 2013)

In California and Virginia, employers are subject to new immigration-related obligations that take effect in the near future.

State E-Verify Provisions Take Effect in Virginia

Beginning December 1, 2013, employers in the Commonwealth of Virginia with more than an average of fifty employees in a twelve-month period must register and participate in the federal E-Verify program if entering into a contract worth at least $50,000 with any agency of the Commonwealth. Pursuant to House Bill 1859, affected employers must use E-Verify to check the identity and work authorisation of newly hired employees performing work pursuant to a qualifying contract.

Failure to comply with the new law may result in debarment from contracting with any agency of the Commonwealth for a period of up to one year. The debarment will cease when the employer registers and participates in E-Verify.

Virginia joins sixteen other states that already require employers and at least some state contractors doing business in the state to participate in E-Verify, including Alabama, Arizona, Colorado, Georgia, Florida, Indiana, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Carolina, Tennessee, and Utah.

California Broadens Anti-Retaliation Protections for Foreign Workers

Beginning January 1, 2014, employers in California will be subject to several new laws that limit adverse employment actions against foreign workers who change their personal information, engage in whistleblower activity or attempt to exercise a right under California's labour laws.

New Assembly Bill (AB) 263 prohibits employers from terminating or taking other adverse action against an employee for updating his or her personal information, unless the change relates to a skill, qualification or knowledge required for the job. This provision may limit the ability of an employer to terminate the employment of a foreign worker who provided false documents during the Form I-9 employment verification process and later offers new documentation of his or her authorisation to work. After January, companies are encouraged to consult with their attorney and employment law counsel before terminating a California employee in this circumstance.

AB 263 and Senate Bill (SB) 666 prohibit employers from taking adverse action against employees who attempt to exercise a right under California's labour laws. AB 263 penalises employers who engage in unfair immigration-related employment practices, such as requiring more or different documentation during the Form I-9 employment verification process or improperly using E-Verify to check an employee's work eligibility, in retaliation for the exercise of workplace

right. SB 666 penalises employers who report or threaten to report the immigration status of an employee or an employee's family member to government authorities in retaliation for the employee's exercise of a right under state or local labour laws. Performing Form I-9 obligations or taking action at the direction or request of a federal agency are exempted. Penalties for violations of SB 666 include fines and suspension or revocation of a business license.

United Kingdom
Home Office Expands Expedited Processing and Customer Service Options (November 22, 2013)

The UK Home Office recently announced several initiatives aimed at improving customer service for visa applicants.

The Home Office will pilot the Great Club, an invitation-only and personalised visa service programme for high-level executives. Participants in the program will be offered their own immigration account manager who will help them through the immigration process. Pilot Great Club participants will remain subject to all standard requirements and processes.

The Home Office also aims to increase the number of countries in which priority visa processing is offered, from 67 to 90 by April 2014. Under these programmes, the details of which can differ depending on the country, eligible applicants can pay an additional fee to have their applications moved to the front of processing queues. Applicants cannot use the priority visa service if they have an adverse immigration record. This month, for example, priority visa processing became available in Nepal.

In India, the Home Office will introduce the VIP mobile visa service. Users of the service do not have to visit a UK diplomatic post. Instead, UK visa teams go to applicants to collect their completed forms and biometric data. This process reportedly takes less than five minutes. And in southern India, a new Passport Pass-Back programme will be piloted, allowing visa applicants to have their passports returned to them within seven to ten days of submitting their applications.

European Union
Nine Countries to Remove Work Restrictions for Bulgarians, Romanians on January 1 (November 22, 2013)

Bulgarian and Romanian nationals will soon be able to work freely throughout the European Union (EU) after work restrictions for these nationals expire in nine countries on January 1, 2014. Austria, Belgium, France, Germany, Luxembourg, Malta, Netherlands, Spain, and the United Kingdom will allow Bulgarian and Romanian nationals to work in their countries as other EU nationals do, without having to obtain work authorisation.

Spain currently imposes work restrictions only on Romanian local hires and not on Bulgarian nationals.

When Bulgaria and Romania joined the European Union in 2007, established EU member countries could elect to maintain work restrictions for nationals of both countries until January 1, 2012. Member countries had the option to renew the restrictions until 2014, if lifting them would have adversely affected the domestic labour market. All other EU members by now offer Bulgarians and Romanians unrestricted access of the right to work in their countries.

Switzerland, which is not an EU member, will continue to subject Bulgarian and Romanian nationals to work permit quotas separate from those for third-country nationals.

Croatia is the newest EU member state after joining on July 1, 2013. As was the case with Bulgaria and Romania, some EU states have chosen to treat Croatians as they treat nationals of existing EU states, while others have opted to impose temporary work restrictions, which they can do for up to seven years, provided that certain conditions are met.

Israel
Government Stops Issuing Birth Certificates to Children of Foreign Nationals (December 2, 2013)

Israel has ceased providing government-issued birth certificates to children of foreign nationals. A child born in Israel to foreign parents currently receives a hospital-issued, hand-written birth notice only. These birth notices document only the family name of a child's mother. Adding a child's father's name may require a court order, based on DNA proof of paternity.

The new policy will likely make obtaining passports and other identity documents difficult for foreign residents of Israel.

Canada
Immigration Compliance Reviews and Inspections to Increase in 2014 (December 2, 2013)

Employers should be prepared for increased scrutiny in 2014, as part of the Canadian government's overall review of the Temporary Foreign Worker Program.

The government is expected to publish new regulations before the end of the year that will greatly expand the powers of the compliance wing of Employment and Social Development Canada over employer compliance reviews and inspections. Once the new regulations take effect, employer compliance reviews and worksite inspections are anticipated to rise in frequency as 2014 progresses.

France
Immigration Fraud Scam Targets Foreign Nationals (December 3, 2013)

Foreign nationals in France should be on guard against an ongoing immigration fraud scheme.

Individuals posing as officers from the French migration office (OFII) reportedly telephone foreign nationals, falsely claiming that victims have not yet completed all immigration formalities. The perpetrators then pressure the victims to pay a fee to complete the necessary formalities or face deportation. The perpetrators may already possess personal information about the victim, such as date of birth and arrival date in France.

The OFII is aware of the scam and has filed complaints with the appropriate police agencies.

Take precautions if you receive a suspicious call from someone claiming that there is a problem with your immigration records or demanding payment of fees. You should also contact your immigration service provider, who can forward the information to the OFII.

United States
The Upcoming H-1B Cap Season: Planning Ahead Is Key (December 4, 2013)

The FY 2015 cap season will begin on Tuesday, April 1, 2014. Though the opening day of the filing period is still several months away, it is not too early for employers to begin assessing their H-1B needs and filing labour condition applications (LCAs) with the Labor Department.

Advance LCA preparation is particularly critical this cap season. There is expected to be a heavy volume of LCA filings in the first quarter of 2014, which could cause processing slowdowns at the Labor Department. In addition, another federal government shutdown could occur in mid-January, which would suspend LCA processing during the height of the busy cap preparation period.

Obtaining LCAs early will help your organisation avoid delays and ensure readiness to file H-1B cap cases when the season opens. Early filing can also help your organisation meet its non-cap H-1B needs, including location changes for current H-1B employees.

Pros and Cons of Early LCA Filing

Employers should be aware that filing LCAs well before April 1, 2014, will result in a shorter initial period of employment for new H-1B beneficiaries and will require earlier extension filings. However, these administrative burdens are outweighed by the advantage of having an LCA in hand well before the cap filing season and in the event of another federal shutdown.

Although the maximum validity period is three years for both H-1B petitions and LCAs, the H-1B petition must be covered by an LCA that is valid for the entire period of employment. Because LCAs may not be filed more than six months before the requested employment start date, the H-1B validity period will be truncated when the LCA is filed early.

For example, an LCA filed on December 31, 2013, can request an employment start date no later than May 31, 2014. If certified, the LCA will be valid through May 30, 2017. An FY 2015 H-1B cap petition supported by the LCA will be filed on April 1, 2014, with an employment start date of October 1, 2014. The employer can request a petition validity period only through May 30, 2017, the expiration date of the supporting LCA. This would result in an initial period of stay of two years and eight months – four months less than the three-year maximum initial period of stay permitted under the regulations.

Multislot LCAs

If your organisation anticipates a genuine need for more than one H-1B worker in an occupation at a specific worksite, consider filing a multislot LCA.

A single LCA can be sought to cover multiple employees in an occupation. These multislot LCAs give employers greater flexibility to respond to time-sensitive H-1B needs, such as the relocation of H-1B employees to new worksites and the onboarding of new hires porting from H-1B employment with another organisation. Seeking multislot LCAs now can also help your organisation avoid H-1B delays in the event of another federal shutdown early next year.

Mexico Immigration Agency Simplifies International Travel Authorisation for Minors (December 5, 2013)

The Mexican immigration authority announced that minors traveling outside of Mexico without their parents or legal guardians will soon be able to present a standardised, simplified form upon exiting the country. The form is not yet available, but the National Immigration Institute (INM) is expected to release it soon.

All individuals under 18, whether Mexican or foreign nationals, require authorisation to travel outside of Mexico without both parents or legal guardians.

Previously, parents or legal guardians were required to grant consent for each international trip by signing a document, which was subsequently notarised and presented to immigration officers when the minor exited the country. Parents living abroad were required to legalise the document for use in Mexico — a lengthy process in some countries.

China Government Restricts Entry of Short-Term Interns and Trainees (December 5, 2013)

According to recent reports, foreign nationals intending to enter China as trainees or interns for less than three months are experiencing increased difficulty in obtaining business visas, though there has been no official announcement of a change in policy from the Chinese government.

Currently, Foreign Affairs Offices in several cities in China, including Shanghai, are no longer issuing business visa invitation letters for this group of travelers. Certain Chinese consulates, including those in the United States, are no longer issuing a business visa even if the trainee or intern can show a visa invitation letter. Public Security Bureaus in Shanghai have discontinued extensions for visas for interns and trainees in certain cases.

It is not clear at this time whether the Chinese authorities will make these changes official or whether they will eventually ease restrictions. Under the circumstances, there may still be visa options for those seeking to enter China for short-term assignments on a case-by-case basis, depending upon their proposed activities and eligibility. Employers should contact their immigration service provider for assessment and assistance.

Student (X1 and X2) visa holders studying at Chinese universities continue to be eligible for in-country training and internships, provided they obtain permission to change status from their local Public Security Bureau.