

Jackson Lewis Employers' Immigration Update - No. 18, June 2015

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H-1B Numbers Up More Than 35%

USCIS received approximately 233,000 petitions for fiscal year 2016 beginning in October 2015. Last year, USCIS received 172,500 petitions, meaning there was an increase of over 35% from last year. USCIS randomly selected petitions to meet the general category cap of 65,000 and the advance degree exemption cap of 20,000. Based on this year's numbers, it appears that barely more than one in three petitions was selected.

Labor Board Orders Conditional Reinstatement of Undocumented Workers

"[C]onditional reinstatement is an appropriate remedy where an employer knowingly employed individuals who lack authorization to work in the United States and then discharged them in violation of the [National Labor Relations Act]," the National Labor Relations Board has held in a case on remand from a federal appeals court. *Mezonos Maven Bakery, Inc.*, 362 NLRB No. 41 (Mar. 27, 2015).

Relying on the U.S. Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), the Board originally held that back pay to undocumented workers was not an appropriate remedy for the employees' unlawful termination for engaging in protected concerted activity. However, it did not address the possibility of ordering the workers' conditional reinstatement. While the federal appeals court in New York affirmed the Board's conclusion on back pay, it "remanded the case to the Board for consideration of issues relating to petitioners' request for conditional reinstatement." The NLRB then granted conditional reinstatement, concluding "conditional reinstatement is the only means available to the Board to provide relief to the discriminatees and the principal means of deterring future unfair labor practices," because a later Supreme Court decision barred it from awarding back pay to undocumented employees.

Justice Department Settles Largest-Ever Immigration-Related Discrimination Claim

The Department of Justice has announced that, on May 27, 2015, it "reached an agreement...with Luis Esparza Services, Inc. (LES), a farm labor contractor company based in Bakersfield, California, resolving claims that the company discriminated against individuals because of citizenship status in violation of the Immigration and Nationality Act (INA)." The DOJ "found that LES required work-authorized non-U.S. citizens to produce documents issued by the Department of Homeland Security as a condition of employment, but did not require the same of U.S. citizen workers." The \$320,000 settlement is the largest the DOJ has ever obtained for this type of case.

H-4 Dependent Spouses Eligible to Apply for Employment Authorization

USCIS has begun accepting applications for employment authorization from certain H-4 dependent spouses of holders of H-1B visas. The employment authorization is available to nonimmigrants who meet certain requirements related to the permanent residency process.

If you have questions about these or other developments, please contact our Immigration practice.

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