

## Employee Selected Attorneys

Some companies permit their employees to select the attorney who will work on obtaining the employee's Permanent Resident visa (Green Card) or Non-immigrant visa (H1-B, etc). You should consider the following factors before adopting this practice.

### Legal Representation

When seeking a visa based upon employment, the Citizenship and Immigration Services (CIS) requires the **Company** to petition for the foreign-born worker. Most employees are **not** permitted to submit employment-based petitions for themselves but rather they are the beneficiaries of the petition submitted by the Employer. This is the definition of "sponsorship".

In some cases it may "appear" that the attorney is representing the employee but this is not the case. The attorney is actually representing both the company and employee in the matter of obtaining this particular visa. Most employers do not permit their employees or prospective employees to select the attorneys who will represent them. Most employers want to evaluate the credentials and experience, as well as costs and fees, before selecting legal representation.

Recent changes in the law require employers to pay for a significant portion of the visa processing. While employers **may** require their employees to pay for some portion of the visa process, you should remember that the source of payment does not determine representation. Employees can pay for a part of the process while the attorney is representing the Company. Since the attorney is representing the employer through a significant portion of the process it is the employer who should decide who ultimately provides legal representation.

### Duplicated Effort

When employees select the attorney who will represent the company and when there are several employees seeking visas, Human Resources staff are often faced with significantly increased workloads, similar conversation and coordination with multiple attorneys on the same subjects. Consequently a diversity of procedures and increased difficulty in coordinating the work is required. This needlessly multiplies the number of questions that must be answered, the number of times the same documentation is submitted and lowers the potential for a smooth and coordinated immigration process.

Employees, going through the visa process often "compare notes" on the work of their different attorneys and this raises additional and unnecessary questions for HR to answer.

Every time a new attorney is added to the mix, Company personnel must cover the same introductory material to bring the new attorney "up to speed" regarding the Company's business, finances, organization structure and internal procedures.

### Cost Analysis

With different methodologies for assessing costs, comparing relative costs for different attorneys is often difficult, if not impossible. Costs for additional procedures, such as advertising, educational credential evaluation, medical exams, etc. often vary widely. Some attorneys charge by the hour and other charge per petition. Some have additional fees for additional work and others do not. Some charge for miscellaneous costs such as copying, Express Mail, telephone consultation, etc. and some do not.

With a diversity of attorneys in the process it is quite difficult to forecast costs and prepare necessary information for annual budgeting. Cost control, efficiency of effort and economies of scale are often lost. Companies often recognize that costs must be compared to the service provided and the lowest cost vendor may not provide the best value.

### **Experience and Success Rates**

Employers are counting on the success of the visa process to ensure these valuable employees are available to work and the fees paid are not lost because a case is denied. Success rates and experience levels vary widely among those providing visa-processing services. A higher level of experience often results in streamlined procedures, increased services provided and significantly higher success rates.

### **Employee Satisfaction and Concentration**

Since the employment visa process can take five years or more years, it is critical that the employees receive timely processing and frequent communication from the attorney. Absent this communication the employee can make up in fiction what they lack in fact. This often means a significant loss of productivity of the employee since much time is spent attempting to obtain needed information from their attorneys. Additional significant time and effort can be wasted seeking pertinent information "on-line" or from their friends, both of which can add needless confusion to an already complicated process.

### **Summary**

Employers, who limit their employees to a pre-selected attorney can save money, reduce duplicative work, improve communication, enhance budgetary and processing control and have more satisfied and productive employees.