PROSKAUER ROSE LLP

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A report for clients and friends

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In this month's issue:

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Law & The Workplace™

DHS Reissues Social Security "No-Match" Rule with No Changes

For over one year, the U.S. Department of Homeland Security (DHS) has been vigorously working to implement its Social Security "no-match" regulation, initially published in August 2007, despite a lawsuit challenging the legality of the rule filed by a coalition of business and labor groups and a preliminary injunction issued by a Federal district court in October 2007 to block implementation of the rule. (See timeline below for a brief procedural history regarding the "no-match" rule.) Most recently, on October 28, 2008, DHS issued a supplemental final rule to the "no-match" regulation without making any substantive changes from the August 2007 Final Rule. DHS acknowledges that it simply "reaffirms the text of final rule issued on August 15, 2007." While the rule remains unchanged, the preamble of the supplemental final rule now includes additional background and analysis in an effort to address the issues raised by the court in the preliminary injunction order. The preliminary injunction order currently remains in effect. However, DHS has announced that it plans to return to the district court in the coming weeks to request that the injunction be lifted so that it can proceed with implementation.

A Refresher on How the Rule Impacts Employers

Under the rule's provisions, an employer can be found to have "constructive knowledge" that an employee is unauthorized to work in the U.S. if an employer "fails to take reasonable steps" in specific instances, including: 1) After receiving a letter from the Social Security Administration (SSA) stating that the name and number submitted for an employee does not match SSA records ("no-match" letter); or 2) after receiving a written notice from DHS that the immigration status document or employment authorization document used by the employee when completing Form I-9 does not match DHS records (DHS Notice of Suspect Documents).

The rule also outlines the specific steps an employer may take in order to benefit from a "safe harbor" protection against a "constructive knowledge" finding. To gain "safe harbor" protection, an employer, within a maximum of 93 days from receipt of a SSA or DHS written notice, must be able to successfully resolve the discrepancy with the relevant government agency, or, if this is not possible, be able to complete the Form I-9 process again with new documents, including one document that contains a photograph. If these

steps can not be completed, in order to benefit from the "safe harbor" protection an employer must terminate the worker.

In the preamble to the August 2007 Final Rule and the supplemental final rule, DHS emphasizes that employers are *not* required to follow the "safe harbor" procedures, and that there may be other steps an employer could take that would be considered "reasonable" by DHS.

However, an employer that does not follow the "safe harbor" procedures risks a potential finding by DHS that it had constructive knowledge that an employee was unauthorized to work. Consequences for "knowingly" employing individuals without work authorization include civil sanctions ranging from $250 to $10,000 for each employee and criminal penalties in some circumstances.

(See Proskauer Rose Client Alert August 2007 for a more in-depth discussion on the rule's "safe harbor" procedures.)

If There Are No Changes to the Rule, What's Different?

While the provisions of the regulation remain unchanged, the preamble to the rule now includes additional legal analysis and a Final Regulatory Flexibility Analysis. DHS states that through this additional information, DHS has addressed the questions raised by the U.S. District Court for the Northern District of California in its preliminary injunction order issued in October 2007. It is yet to be seen whether the court will agree.

The court held that a preliminary injunction blocking implementation of the rule was warranted to prevent irreparable harm. Specifically, the court found that the effect of the rule's implementation would be "severe," and that "[t]he magnitude of DHS's safe harbor rule is staggering." The court referenced DHS' own estimates that at least 140,000 employers would receive SSA "no-match" letters affecting approximately 8 million employees.

The court identified three issues in its justification for the preliminary injunction order, and DHS provided responses respectively in the preamble to the supplemental final rule issued on October 23, 2008:

1) Reasoned Analysis for Change in DHS' Position: The court found that DHS failed to supply a "reasoned analysis" in the August 2007 final rule to justify a change in DHS' position regarding the immigration implications of no-match letters. Specifically, the court found that DHS now adopted the stance that a no-match letter may be sufficient by itself to put an employer on notice that employees referenced in the letter are unauthorized to work in the U.S., and, thus, impart constructive knowledge to the employer. Prior to the issuance of this rule, the Immigration and Naturalization Service (INS), DHS' predecessor, took the position that a no-match letter without any other evidence or suspect information would *not* be sufficient to establish constructive knowledge on the part of the employer. The court

acknowledged that DHS may have the authority to change its position, but held that it cannot do so without providing a "reasoned analysis."

In response to the court's concern, DHS provides four reasons for the issuance of the rule. First, DHS cites the need to eliminate ambiguity regarding an employer's responsibilities after receiving a no-match letter. Second, DHS references governmental and nongovernmental resources that indicate that a no-match letter is considered a "legitimate indicator" of unauthorized employment. Third, DHS points out that since no-match letters are sent to employers who submit wage reports with at least 11 workers with no-matches, the letter is a useful tool in targeting employers who may have a number of unauthorized workers in their workforce. Finally, DHS argues that the rule is necessary as it reaffirms the principle that employers may be liable for hiring unauthorized workers on the basis of constructive knowledge.

2) Department of Justice Guidance on Antidiscrimination Liability: Additionally, the court found that DHS exceeded its authority by interpreting the antidiscrimination provisions of the Immigration Reform and Control Act (IRCA). Specifically, the August 2007 Final Rule provides that employers would not be found to have engaged in unlawful discrimination under the Immigration Nationality Act (INA) if employers uniformly followed the safe harbor procedures without regard to an individual's perceived national origin and/or citizenship. The court held that DHS overstepped its reach since the role of interpreting INA antidiscrimination provisions is reserved to Department of Justice (DOJ) Office of Special Counsel (OSC) for Unfair Immigration-related Employment Practices.

In response, DHS rescinds its statements in the August 2007 Final Rule which addressed potential antidiscrimination liability faced by employers. Instead, the supplemental final rule redirects employers who seek clarification on these issues to DOJ's guidance, published in the *Federal Register* on October 28, 2008. The DOJ guidance affirms that after considering the "totality of relevant circumstances," OSC will not subject an employer to an antidiscrimination lawsuit under the INA if an employer uniformly applied the safe harbor procedures to all employees without the intent to discriminate based on actual or perceived citizenship status or national origin.

3) Impact on Small Business Entities: Finally, the court also found that DHS failed to conduct and supply a Final Regulatory Flexibility Analysis (FRFA) which addressed the impact of the rule on small business entities.

In response to this concern, DHS provided a FRFA in the supplemental final rule. The FRFA includes DHS' reaction to public comments received in connection with the Initial Regulatory Flexibility Analysis published in March 2008. Overall, DHS concluded that the economic impact would not be significant to small businesses. DHS minimized and/or dismissed much of the costs and risks commonly associated with the rule, such as the potential loss of authorized, legal employees and lost productivity costs due to time spent resolving no-match issues.

It is expected that DHS will soon return to court to argue that the preliminary injunction should be lifted. We will keep you apprised of developments regarding the implementation of this rule.

History and Challenges to the Implementation of the Social Security "No Match" Rule

- August 15, 2007 — DHS published final rule in *Federal Register*.
- August 29, 2007 — Group of business/labor and immigrant groups filed a lawsuit to prevent implementation.
- August 31, 2007 — Plaintiffs' request for temporary restraining order granted by District Court in the N. District of California.
- October 10, 2007 — District Court issued preliminary injunction finding that Plaintiffs raised serious questions regarding the rule.
- November 23, 2007 — District Court granted DHS' motion to stay proceedings until March 1, 2008 pending DHS' new rulemaking efforts.
- March 26, 2008 — DHS published supplemental notice of proposed rulemaking in *Federal Register*.
- April 25, 2008 — Public comment period on supplemental proposed rule ended.
- October 28, 2008 — DHS published supplemental final rule which makes no substantive changes to the August 2007 Final Rule.

TN Period of Stay Increased to Three Years

Effective October 16, 2008, US Citizenship and Immigration Services (USCIS) increased the period of time Trade-NAFTA (TN) professional workers can be granted TN status from one year to three years. Under the new rule, TN workers may now be granted an initial admission period of three years and also may obtain extensions of stay in increments of up to three years. The period of stay for NAFTA dependent (TD) spouses and unmarried minor children also has been increased from one year to three years. However, this new rule does not grant individuals in TD status permission to work.

The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to obtain temporary entry into the United States to engage in certain professional activities that require at least a bachelor's degree or appropriate credentials demonstrating status as a professional. TN-qualified occupations are specified in Annex 1603 of the North American Free Trade Agreement (NAFTA) and in Department of Homeland Security regulations. The list includes accountants, computer systems analysts, economists, graphic designers, engineers and mathematicians/statisticians, among others. (For a complete list of qualified

occupations, see http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=167#Ap1603.D.1.)

Canadian citizens may seek TN admission at a U.S. port of entry by submitting proof of Canadian citizenship, educational and/or experiential credentials and a letter from the prospective U.S. employer describing the nature of the professional employment offered, as well as the length of stay. Canadian citizens are not required to apply for a visa in advance at a US consulate or to file a petition with the USCIS to obtain TN status. Mexican citizens are required to obtain a visa before applying for TN admission at a U.S. port of entry, but they, like Canadians, do not require the filing of a petition with USCIS.

At the conclusion of the TN period, the TN worker may apply for a renewal of the status at a port of entry using the same application and documentation procedure required for the initial admission. In the alternative, if the TN worker is in the U.S., the employer may file a petition at the USCIS regional service center to extend the TN status.

The increase in the maximum period of stay for TN workers is expected to reduce the cost and inconvenience of having to apply annually for an extension, which may now be done only once every three years. It also is expected to provide U.S. businesses with a more stable and predictable workforce.

Important Changes to the Visa Waiver Program

The Visa Waiver Program (VWP) enables nationals of 27 countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. The following countries currently participate in the VWP: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

We describe below recent developments with regard to the VWP.

ESTA Required for Visa Waiver Program Participants

In June, DHS introduced the Electronic System for Travel Authorization (ESTA), an online system that provides electronic travel authorization for VWP travelers. ESTA will become mandatory for VWP travelers from current VWP member countries on **January 12, 2009**. ESTA applications can be found online at https://esta.cbp.dhs.gov. The application, which must be completed and authorized in advance of travel, requests basic biographical information and also includes the eligibility questions typically requested on the paper Form I-94, Arrival-Departure Record. Responses generally are received immediately, but can take up to 72 hours. An approved ESTA travel authorization is valid, unless revoked, for up to two years or until the traveler's passport expires (whichever comes first). (See our June-July 2008 Immigration and Nationality Law Update for more information regarding travel under ESTA.)

New Countries To Be Added

In October, President Bush announced that the VWP will expand to include the Czech Republic, Estonia, Latvia, Lithuania, Hungary, the Republic of Korea and the Slovak Republic. Beginning on November 17, nationals from these newly added countries will be able to travel to the U.S. under the VWP, provided they possess a biometric passport and register online through ESTA. (The mandatory ESTA registration begins immediately for nationals of the new VWP countries.)

Passport Requirements for VWP Travelers

Passports issued by VWP countries on or after **October 26, 2006** must be e-Passports. E-passports include a computer chip that stores important biographical and biometric information, including a digital photograph of the passport holder.

For VWP travelers who possess passports issued before **October 26, 2005,** they can still travel to the U.S. without a visa if their passport includes a machine-readable zone.

Nationals from VWP countries with passports issued between **October 26, 2005** and **October 26, 2006** can travel to the U.S. under the VWP as long as their passport includes a machine readable zone and a digital photo.

If a VWP traveler does not hold a passport that meets these requirements, he/she will not be able to travel to U.S. without first obtaining a visa.

Holiday Travel

The holidays are often the most popular time for foreign nationals to travel home. We therefore recommend that all foreign nationals review their travel documents as soon as possible to determine if they will need to apply for new visas prior to traveling abroad. The U.S. Embassies and consulates are often deluged with requests for visa appointments from the end of November until after the new year, so it is important to make visa appointments as soon as possible.

Key Steps for Visa Processing

1. Review your visa status, and determine whether you need a visa to enter the U.S. after traveling abroad. With some exceptions, most foreign nationals who maintain nonimmigrant statuses (i.e., H, L, O) in the U.S. will require a visa in addition to the petition approval.

2. Schedule an interview appointment abroad. Visit the web site of the U.S. Embassy or Consulate (http://usembassy.state.gov/) where you will apply for your visa to find out how to schedule an interview appointment, pay fees, and any other instructions. If you plan to apply in a country that is not your home country, ensure in advance that the Consulate will accept your application.

3. Prepare necessary documentation and pay the visa application fee. While each Consulate has a list of specific requirements, all visa applicants will need to complete Form DS-156 (Nonimmigrant Visa Application) online, provide two passport-style photos, and present the original I-797 Approval Notice. We recommend that foreign nationals also carry a complete copy of the original petition filed with USCIS. Birth and marriage certificates also may be required to demonstrate an applicant's familial relationship to the principal beneficiary.

4. Ensure that you build time into your travel plans for the return of your passport and visa. Once an application is granted, many Consulates deliver passports by courier from 2-7 days after the initial appointment. Some Consulates allow individuals to arrange pick-up of their passports and visas. Remember that the Consulate has the discretion to require additional screening, which could result in substantial delays in the issuance of a visa.

5. Renewing visas in Canada or Mexico, once a viable alternative to returning to an individual's home country, is becoming less feasible as wait times for visa appointments have become quite lengthy, and requests for expedited appointments are facing higher scrutiny. In addition, keep in mind that third-country nationals who seek to apply for a visa at a consular section in Canada or Mexico may require the appropriate Canadian or Mexican visa to enter those countries. Further, applicants should be prepared to wait several days in Canada and/or Mexico while their visas are being processed. Recently, U.S. Consulates in Mexico have significantly limited their acceptance of applications by third country nationals. Please review the Consulate's Web site (http://ciudadjuarez.usconsulate.gov/nivtcns.html) prior to scheduling an appointment to verify eligibility.

December 2008 Visa Bulletin

The visa bulletin for the month of **December 2008** continues to show availability in all employment-based preference categories, but no progression from the November bulletin in any of the backlogged categories except fourth-preference religious worker, which is now current.

The first employment-based preference (EB-1) category remains current for all nationalities. The second preference employment-based (EB-2) category for China-born and India-born applicants remains at November levels of June 1, 2004 and June 1, 2003, respectively, while all other second preference employment-based categories are current.

Additionally, immigrant visa availability in the employment-based third preference (EB-3) categories for professionals or skilled workers alike also remains at November levels with China- and India-born applicants at February 1, 2002 and October 1, 2001, respectively;

Mexican-born applicants at September 1, 2002; and applicants from all other countries including the Philippines, at May 1, 2005.

ICE Reports Record Breaking Enforcement

U.S. Immigration and Customs Enforcement (ICE) recently presented its annual report (available at http://www.ice.gov/doclib/about/ice07ar_final.pdf), a summary of the agency's efforts across a wide range of law enforcement areas. ICE is an agency of the Department of Homeland Security and it's mission is to protect national security and uphold public safety by targeting criminal networks and terrorist organizations and shoring up vulnerabilities in the nation's immigration system and borders. Fiscal year 2007 marked a notable year for ICE, during which it set new enforcement records and launched new initiatives.

Some of the most noteworthy ICE statistics from that year are:

- The removal of a record 276,912 illegal aliens from the United States;
- The initiation of 1,309 fraud investigations, leading to a record 1,531 arrests; and
- The dramatic increase in penalties levied against employers, and the securing of fines and judgments of more than $30 million.

The release of this annual report comes on the heels of what has been called "the largest workplace bust in history," when Immigration agents arrested seven executives and hundreds of employees of a manufacturer of crates and pallets as part of a crackdown on employers of illegal workers. Authorities raided offices and plants of IFCO Systems in at least eight states, in the culmination of an apparent year-long criminal investigation.

Additionally, in October, ICE conducted a major workplace raid at House of Raeford's Columbia Farms plant in Greenville, South Carolina. Federal agents detained more than 300 suspected illegal immigrants at a chicken processing plant that had been under investigation for months. Immigration officials kept the workers inside the plant and spent most of the morning trying to interview them and figure out how many are in the U.S. illegally. Assistant U.S. Attorney Kevin McDonald said a recent review found that immigration paperwork for more than 775 of 825 workers contained false information. Immigration agents scoured the plant for paperwork and other information for the investigation.

The Greenville and Pallet raids are two of the latest in a series of massive immigration raids. In August, more than 600 suspected illegal immigrants were detained at a Mississippi transformer plant in the largest single-workplace immigration raid in U.S. history. And in May, federal immigration officials swept into Agriprocessors, the nation's largest kosher meatpacking plant, in Iowa. Nearly 400 workers were detained and dozens of fraudulent permanent resident alien cards were seized from the plant's human resources department, according to court records.

ICE's recent enforcement activities highlight an important issue in the continuing nationwide debate over the best approach to illegal immigration. If the ICE raids result in the placement of unemployed U.S. workers in the positions previously filled by illegal workers, they could impact the economy positively and bolster the argument for ICE's increasingly aggressive enforcement of the immigration law at places of business. However, if the affected plants are unable to fill the positions with U.S. workers and the raids result in a negative economic impact on target businesses, as well as their customers, suppliers and the communities in which they are situated, these workplace enforcement actions could undermine the economic and societal argument for their existence – that illegal immigrants deprive U.S. workers of jobs – and lend support to the assertion that illegal workers play an important role in our economy and society.

There has been talk since the election of pressure being brought on the administration of President-elect Obama to modify the current enforcement style of ICE, particularly the aggressive manner in which workplace raids are carried out. Early unofficial reports suggest that the Obama administration will be receptive to these requests. We will be watching carefully in 2009 to see how this possible change in ICE's enforcement policy develops.

Changes in Medical Examination Requirements

Federal officials recently added the cervical cancer vaccine, Gardasil®, to a list of vaccination requirements that immigrants must obtain prior to becoming permanent residents. The vaccine will be required for all females ages 11 to 26. Immigration advocates argue that the mandatory requirement of this vaccine places an excessive financial burden on immigrants. Gardasil®, which is administered in three shots over a six month period, costs, on average, about $400. This expense is in additon to the fee for the standard mandatory medical examinations, as well as all other filing and preparation fees required in the green card application process.

I-94 Nonimmigrant Admissions Up by 10 Percent in 2007

I-94 nonimmigrant admissions to the U.S. rose by 10 percent from 2006 to 2007, according to the recently released Annual Flow Report for 2007 ("Annual Report") from the Department of Homeland Security's Office of Immigration Statistics (OIS).

The Annual Report noted that, after a multiyear dip in I-94 admissions following the events of September 11, 2001, the number of I-94 admissions last year exceeded the previous peak in 2000. Mexico, the United Kingdom and Japan were the leading countries of citizenship for I-94 admissions.

Background: I-94 Nonimmigrant Admissions

Nonimmigrants are foreign nationals who are admitted temporarily into the United States in one of the nonimmigrant classes of admission. Examples of nonimmigrant classes of admission are visitors for pleasure (B-2 or WT), visitors for business (B-1 or WB), students and their families (Fs or Ms), temporary workers and their families (Hs, Os, Rs, TNs), intracompany transferees and their families (Ls), and treaty traders and investors (E-1/2s).

Generally, in addition to obtaining a visa in advance of travel from a U.S. Embassy or Consulate abroad, an applicant for nonimmigrant admission is required to complete and submit a Form I-94, also referred to as the Arrival/Departure Record, when s/he enters the United States. Upon admission, one part of the Form I-94 is retained by DHS and the other part is stapled into the foreign national's passport to serve as evidence of the nonimmigrant status throughout his/her stay in the U.S. In most cases, the foreign nation's portion of Form I-94 is collected when s/he departs the U.S. and returned to DHS. (Certain Canadian and Mexican visitors are admitted without I-94 cards.)

Thus, the term "I-94 nonimmigrant admissions" refers to the portion of nonimmigrant admissions to the U.S. for which an Form I-94 was required. Each year, OIS prepares a report on the on the number and characteristics of I-94 admissions to the U.S. in the previous year.

Types of I-94 Admissions

The Annual Report divides I-94 admissions into three groups: nonresident, resident, and expected long-term resident.

"Nonresident" nonimmigrant admissions include tourists, business travelers and foreign nationals in transit through the U.S. and commuter students. "Resident" nonimmigrant admissions refer to foreign nationals who typically "live" in the U.S. for extended periods of time. Examples include temporary workers and trainees, students, treaty traders and investors, intracompany transferees, foreign media representatives and exchange visitors.

"Expected long-term residents" are those who are expected to apply for and be granted permanent resident status during their stay in the U.S. Examples include fiancé(e)s of U.S. citizens and their children, as well as victims of trafficking and abuse. This last group has particularly low admission numbers, therefore, trends and characteristics of the expected long-term residents group are not analyzed in the Annual Report.

[Note: The terms "resident" and "nonresident" have different meanings when used in the context of U.S. tax law and other aspects of U.S. immigration law.]

Resident Nonimmigrant Admissions

Resident nonimmigrant admissions grew 13 percent from 3.2 million in 2006 to 3.6 million in 2007, continuing the steady rise observed yearly since 2003.

According to the Annual Report, over half of the resident nonimmigrant admissions in 2007 were made up of temporary workers and their families (54 percent). Together with students (24 percent), temporary workers and their families comprised three-quarters of resident nonimmigrant admissions.

California (14 percent) was the top destination state of resident nonimmigrant admissions in 2007, closely followed by New York (13 percent), and then Texas (8.2 percent), Florida (7.7 percent), and New Jersey (4.4 percent).

New York City (17 percent) leads the list of major ports of entry for resident nonimmigrant admissions in 2007, followed by Los Angeles (8.6 percent) and Chicago (8.3 percent).

The Annual Report noted that the number of temporary worker and trainee admissions rose 13 percent from 2006 to 2007, which was primarily attributable to the number of admissions of H-2A seasonal agricultural workers, H-1B specialty workers, H-2B/H-2R seasonal nonagricultural workers and returning H-2B workers. Entries of intracompany transferees (L-1) also grew 13 percent from 2006 to 2007.

The leading countries of citizenship of resident nonimmigrant admissions were India and Mexico (both 11 percent), Japan (7.5 percent) and the United Kingdom (6.3 percent), which together constitute one-third of the resident nonimmigrant admissions for 2007. The increase in admissions from India was attributed primarily to the specialty workers (H-1B), academic students (F-1), and intra-company transferees (L-1).

Meanwhile, the Annual Report noted that admissions from China were concentrated among academic students (F-1), exchange visitors (J-1) and specialty workers (H-1B). Japan was the only top sending country to show a decline in admissions, which largely was concentrated among the treaty trader and investor (E-1/2) and intracompany (L-1) classes of admission.

India (34 percent), Canada (5.7 percent) and the United Kingdom (5.5 percent) were the top countries of citizenship for H1B admissions in 2007, the Annual Report said. H-1B admissions from India went up 25 percent (32,000 admissions) from 2006 to 2007. Nationals from these countries comprised nearly half of H-1B admissions.

Nonresident Nonimmigrant Admissions

The trend in nonresident nonimmigrant admissions is similar to that of resident admissions. The Annual Report cited a 10 percent increase of nonresident admissions from 30.2 million in 2006 to 33.3 million in 2007. Last year's nonresident admissions likewise outstripped the previous annual high of 30.9 million in 2000.

Visitors for pleasure comprised 83 percent of the nonresident admissions, while 16 percent consisted of business travelers. California (17 percent), Florida (15 percent), New York (13 percent) and Texas (7.5 percent) are the major destinations of nonresident admissions.

The leading countries for nonresident admissions last year were Mexico (21 percent), the United Kingdom (15 percent) and Japan (12 percent).

In our next issue, we will provide a full summary of the new regulation requiring certain Federal contractors to participate in the E-Verify program.

Immigration and Nationality

The Immigration and Nationality Law Update is published by Proskauer Rose's Immigration Law Practice Group. This newsletter identifies and discusses recent developments relating to the field of U.S. Immigration and Nationality Law which would be of interest to the corporate employer.

Proskauer Rose LLP counsels corporate clients and their employees in all areas of immigration, nationality and consular law. This includes obtaining work authorizations and visas to enable companies to hire aliens or transfer personnel between nations compliance with and defense of antidiscrimination and unlawful immigration practices and advice and appearances in special circumstance matters such as asylum claims and removal proceedings. Much of the work involves obtaining appropriate nonimmigrant or immigrant visas to enable corporations to transfer executives, managers, persons with specialized knowledge or other key personnel temporarily or permanently to the United States.

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