AUGUST 16, 2018

PRESENTED BY:
JOSEPH NULLMEYER, ESQ., GENERAL COUNSEL, MITCHELL MARTIN INC.
JUNETTE ENG, DIRECTOR OF OPERATIONS & COMPLIANCE, MITCHELL MARTIN INC.
KRISTINE ROXAS, IMMIGRATION PROGRAM MANAGER, MITCHELL MARTIN INC.

GUEST SPEAKER:
YUAH JESSICA CHOI, ESQ., PARTNER, LANDAU, HESS, SIMON, & CHOI

HOSTED BY:
MITCHELL MARTIN INC. and TALENT TECH LABS

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Speakers

Joseph Nullmeyer, Esq.
General Counsel

Joseph Nullmeyer, Esq. is the General Counsel of Mitchell Martin Inc. At Mitchell Martin, he manages the immigration program and has formerly served as General Counsel at another large staffing agency, overseeing the business immigration function. Joseph previously presented on the topic of business immigration at the Pennsylvania Bar Association's 2016 Inside-Outside Counsel Summit. He is an active member of the American Immigration Lawyers Association and is currently serving on the Board of Directors of the Association of Corporate Counsel Greater Philadelphia Chapter

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Speakers

Junette Eng
Director of Operations

Junette Eng is the Director of Operations and Compliance of Mitchell Martin Inc. and has been managing the back-office operations related to risk, compliance and immigration for the past 12 years. She is responsible for evaluating and managing operational procedures, maintaining the organizational standards of conduct and ensuring all operations and our immigration program are in compliance with rules and regulations.

Speakers

Kristine Roxas
Immigration Program Manager

Kristine Roxas is the Immigration Program Manager of Mitchell Martin Inc. She is responsible for overseeing the day to day Immigration program on H-1B and PERM processing. As the in-house expert, Kristine maintains up-to-the minute knowledge of changes in immigration policies/regulations and provides education and guidance to the staff on current laws, policies and other immigration topics.

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Guest Speaker

Jessica Choi
Attorney at Law

Yuah Jessica Choi Esq. is a Partner at Landau, Hess, Simon & Choi, has been representing individuals and corporations in all types of immigration matters, including nonimmigrant visas, immigrant visas, PERM Applications, EB-5 Investor Visas, as well as family–based cases and naturalization since 2006. Jessica has lectured on business immigration topics at numerous conferences and seminars including the Philadelphia Bar Association's Bench Bar & Annual Conference and the Pennsylvania Bar Institute. In addition, Jessica has co-authored articles pertaining to business immigration law including, "Foreign Worker-Related Issues to Spot Before Commencing a PERM Case", and has been published extensively in Korean daily newspapers in the Philadelphia area. She has served as the Chair of the American Immigration Lawyers Association's Philadelphia Chapter, as well as the Vice Chair, Treasurer, Secretary, New Members Division Chair, Annual CLE Conference Co-Chair, and CLE Liaison.

Roadmap

- **Trends in Employment Based Immigration**
- **Most Impactful Recent Changes**
  - F1-Student – STEM OPT
  - H-1B Visa and Third-Party Worksite Placement
  - H-1B Visa and Requests for Evidence
  - Recent Policy Memos
    - Notice to Appear
    - Denials without an RFE
- **Recommendations on How You Can Help Retain the Talent**

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TRENDS IN EMPLOYMENT BASED IMMIGRATION

❑ Global Talent Acquisition Pool & Filling Talent Gaps

- ❑ Unemployment rate below 4%; more than 6 million jobs are vacant
- ❑ 500,000 workers come to the U.S. annually on a temporary basis
- ❑ ***2018 Envoy Global Immigration Trends Report*** – survey of 201 hiring managers and 200 HR professionals
  - ❑ 59% expect their demand for foreign national workers to increase in 2018, same as 2017
  - ❑ 70% say hiring or developing foreign talent is "very or extremely important" to:
    - ❑ Fill skills gap (77%)
    - ❑ Global competitiveness (76%)
    - ❑ New perspectives on the company's way of doing business (78%)
    - ❑ Knowledge of markets and business practices outside the United States (75%)
    - ❑ Manage and expand a global business (69%)

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TRENDS IN EMPLOYMENT BASED IMMIGRATION

- **Buy American/Hire American Executive Order (April 18, 2017)**
  - Allows agencies to "propose new rules and issue new guidance…to protect the interests of United States workers…." and
  - "Suggest reforms to help ensure the H-1B visas are awarded to the most-skilled and highest paid beneficiaries."
- **Overall increased scrutiny for H-1B visa transfers, extensions and amendments (rescission of memo that required deference to previous H-1B application decisions)**
- **Computer programmer memo – heightened burden**
- **Recent denials on H-1B petitions filed.**

TRENDS IN EMPLOYMENT BASED IMMIGRATION

- **41% increase in H-1B petition denials from the 3rd to 4th quarter of FY 2017 (Forbes Analysis of USCIS Data, July 25, 2018)**
- **January 25, 2017 Executive Order: Enhancing Public Safety in the Interior of the United States – contains immigration enforcement and removal priorities**
  - Increased site visits focusing on wage/DOL issues
  - More targeted H-1B site visits
  - Acting Director: increase workplace enforcement by “four or five times”
- **H-1B Third-Party Worksite Policy Memo (Issued February 22, 2018)**

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TRENDS IN EMPLOYMENT BASED IMMIGRATION

- **Notice To Appear Memo (July 5, 2018)**
  - Instructs USCIS officers to issue a NTA to any individual who is "not lawfully present" in the U.S. at the time his or her immigration benefit is denied
  - Expected to impact a broad range of immigration cases
  - Delayed the initial implementation date of July 28, 2018 until further operational guidance is issued
- **H-1B Request for Evidence Memo (July 13, 2018)**
  - Agents will be able to deny applications that are incomplete or have errors, without first issuing a Request for Evidence
  - Effective **September 11, 2018**
- **Accrual of Unlawful Presence - F1, J, M visas (August 9, 2018)**
- **Potential Elimination of H-4 EADs**

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F1 STUDENT EMPLOYMENT, OPT

- **Optional Practical Training (OPT) – temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization.**
- **E-verify Companies can hire F1-OPT students for a period of 12 months.**
- **STEM OPT Extension – students in the Science, Technology, Engineering and Mathematics (STEM) field are eligible for a 24 month EAD extension**
  - **USCIS website has been updated with new guidance on third-party placements**
  - **No new or amended rule (with notice and opportunity for public comment)**
  - **Training Plan (Form I-983) – Employer to implement a formal training program to augment the student's academic learning through practical experience and to have it's own supervisory personnel to provide appropriate training in connection with the specified opportunity at the location(s) specified in the Form I-983.**

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REQUEST FOR EVIDENCE (RFE) AND DENIALS

Uptick in Requests for Evidence and Denials

- ***"Right to Control" (Employer-Employee relationships)***
  - USCIS adjudicators will scrutinize contractual relationships among H-1B petitioners, subcontractors and end-clients to assess whether petitioners will retain the right to control H-1B employees throughout the period of employment.
  - Petitioners planning third-party placements of H-1B employees will be asked to submit contracts, specific itineraries, and detailed information from end-clients covering the entire period of employment.
  - USCIS may limit H-1B approval periods to the length of time corroborated by contracts and other end-client documentation, or deny cases if documentation is deemed insufficient.

➢ *What action can be taken?*

- Provide an End-Client letter:
  - Explaining the relationship between the Client to Vendor.
  - Confirming that the End-Client does not have control over the H-1B worker in terms of hiring, firing, as well as providing benefits and taxes which are the employer's responsibilities.
  - For Clients that use a *Managed Service Provider (MSP),* a supporting letter on Client company letterhead stating the relationship between the Client and the *Managed Service Provider (MSP).*

REQUEST FOR EVIDENCE (RFE) AND DENIALS

- ***"Specialty Occupation"***
  - Single Degree Standard - Job description must show the complexity or uniqueness of the role that it can be performed only by an individual with a **Bachelor's degree or higher** in a specific specialty field.
  - Certain roles (i.e. data analysts, business analysts, quality assurance analysts, computer systems analysts, SAS analysts, production/technical support) don't automatically qualify as a specialty occupation and have now become more challenging for employers to file an H1B and get an approval.

➢ *What action can be taken?*

- Provide an End-Client letter with:
  - A more detailed job description explaining the specific duties and how specialized and complex the role is;
  - The minimum "Educational requirements of a Bachelor's degree of higher in a specific specialty field of study"
  - Long term duration of the assignments

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Recommendations

HOW YOU CAN HELP RETAIN TOP TALENT?

- Provide all necessary supporting evidence for the H-1B petition at the outset
- An End-client letter on your company letterhead and a more detailed job description that shows Evidence of a Specialty Occupation to include Educational requirements

  … "for this position we require a minimum of a Bachelor's Degree in Computer Information Systems or Computer Science or other related field of study".
- Work orders that contain a duration of at least one year
- For clients using a Managed Service Provider (MSP), a Supporting letter on your company letterhead describing the relationship between the you and the MSP
- For student visa candidates on F1 STEM-OPT, offer the ability for the contingent worker to work on-site at the employer's place of business
- Remain agile as immigration changes are published

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About Mitchell Martin Inc.

- Privately held IT and Talent Solutions Company
- 35 years of high touch service to our clients nationwide
- $195M in sales and 1,500 billable resources in 38 states
- MMI specializes in niches including ERP, Cyber Security, AI, Business Intelligence and PMO
- Diverse client base in industries such as manufacturing & distribution, consumer products, life sciences, defense, financial services, media and energy
- Foundation of Innovation: Talent Tech Labs Incubator

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About Talent Tech Labs

- 5 years in operation
- 1600+ Talent Technology companies reviewed and rated
- 25+ incubated and accelerated companies
- $750k average funding per company
- 50000+ community members
- 50+ mentors

TALENT TECH LABS

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About Landau, Hess, Simon & Choi

- One of the oldest law firms in the United States with an exclusive practice in U.S. immigration law.
- Majority women-owned business certified by the Women's Business Enterprise National Council (WBENC).
- A member of the International Network of Boutique Law Firms ("INBLF").
- Listed in "The Best Law Firms of America," published annually by U.S. News & World Report, and recognized by Super Lawyers, Best Lawyers, and the International Who's Who of Corporate Immigration Lawyers.
- Specializes in handling complex cases in all legal matters related to immigration law, ranging from employment sponsorship, employer compliance issues, family-based petitions, asylum law, and deportation defense.
- Represents corporations all over the world in various industries including healthcare, technology, consulting, higher education, finance, manufacturing, and consumer products.

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