

Immigration

Lobbying for H-1B Visas

by Lawrence M. Lebowitz, Mathew T. Phillips and René Cortazzo

As immigration practitioners eagerly performing roles as our clients' advocates on Capitol Hill, we were dismayed when we entered Congressman Ron Klink's office for our first meeting of the day and faced a bumper sticker that read, "Give US a Break, Stop Immigration." From that point on, the day could only improve, and it did.

On March 30, 2000, three members of Cohen & Grigsby's Immigration Group participated in the "National Lobby Day" activities in Washington, D.C. sponsored by the American Immigration Lawyers Association ("AILA"). This entailed meetings with staff members from the offices of Pennsylvania Congressmen William Coyne, Mike Doyle, Ron Klink, and Frank Mascara, as well as Senator Rick Santorum, to request support on pending H-1B visa bills.

The most significant pieces of legislation are H.R. 3893, introduced by Representatives David Dreier and Zoe Lofgren, and S. 2045, introduced by Senators Orrin Hatch and Spencer Abraham.

These bills are essential to employers who utilize H-1B employees and to the U.S. economy. In fiscal year 2000 Congress allotted 115,000 new H-1B visas, which was effectively reached on March 20, 2000, less than six months into the fiscal year.

H.R. 3893 would increase the number of approved H-1B nonimmigrant visas from 115,000 in 1999 to 200,000 in fiscal years 2001, 2002 and 2003. This bill would also set aside visas—10,000 for employers of higher educational institutions and government/non-profit research institutes and 60,000 for individuals who hold

master's or higher degrees (or their equivalents).

S. 2045 would extend the H-1B cap to 195,000 for fiscal years 2000, 2001 and 2002 and exempt from the cap any employees of higher educational institutions and research institutions, as well as foreign students graduating from U.S. schools with master's or Ph.D. degrees.

Both bills also contain provisions that would eliminate the priority date issue for Chinese and Indian nationals seeking to obtain permanent residence (green cards) in the U.S. Currently, each country has a limited number of immigrant or permanent visas allotted each fiscal year. In the employment-based categories, both China and India utilize the maximum number of visas allowed per year, creating a significant backlog and delay as they wait for the next fiscal year's allotment. Both bills would eradicate this ongoing problem by allowing other countries' unused visas for that particular fiscal year to be utilized by Chinese and Indian nationals.

The top priority is changing the public's perception that hiring H-1B workers results in the displacement of U.S. workers. As employers (particularly those in the information technology industry) are aware, there are simply not enough U.S. workers to fill these "specialty occupation" positions. In fact, Alan Greenspan, Chairman of the Federal Reserve, recently testified before Congress that worker shortages have "serious implications" for our economy and that, unless a solution is found to this shortage of workers, either inflation will rise or profit margins will be squeezed "with either outcome capable of bringing our

growing prosperity to an end."

After encountering the "Give US a Break, Stop Immigration" bumper sticker during our first meeting, we were understandably apprehensive. While we may not have made much progress with Representative Klink, our other meetings were very productive.

Of specific note is our meeting with Congressman Coyne's aide. When we explained that some of our clients who conduct business in the Congressman's district might be forced to send their work overseas due to the lack of H-1B workers, the aide's attention (and we hope the Congressman's support) became focused on H.R. 3893.

Our meeting with Senator Santorum's legislative counsel was also very productive. He listened to each of our concerns and how they impact Cohen & Grigsby clients, the Senator's constituents and the U.S. economy as a whole. We also discussed a meeting for Senator Santorum and H-1B employers about the implications the cap has on individual businesses and the economy and what can be done.

On the whole, the time was well spent by our Immigration Group at AILA's National Lobby Day. Our main concern was keeping our clients' businesses strong and doing our part in contributing to the U.S. economy's unprecedented growth rate by helping to enable employers to continue to hire sorely-needed skilled workers from abroad by utilizing H-1B visas.

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International Internet Sales

by V. Susanne Cook and Bruce H. Chiu

With Internet access around the world exploding, international e-commerce is becoming a common occurrence. E-commerce offers attractive solutions to bridging geographic distance and time zone factors. As international business embraces e-commerce, it must recognize that many important legal considerations, including domain name selection and protection, privacy and contract formation must be addressed upfront.

Domain Name Selection

The domain name of a company, like its name and trademarks, is a powerful commercial tool that defines the company and its products by distinguishing it from competitors and their products. Some businesses have found that the domain name version of their name or mark has already been registered by somebody else in bad faith solely for the purpose of selling it to the highest bidder ("cybersquatting"). There are a growing number of dispute resolution mechanisms that are available for these businesses. Under U.S. law, the Anticybersquatting Consumer Protection Act of 1999 gives businesses the right to initiate litigation in U.S. courts to resolve cybersquatting claims. Alternatively, businesses may file arbitral claims with entities such as the Geneva-based World Intellectual Property Organization to resolve cybersquatting claims under the Uniform Domain Name Dispute Resolution Policy published by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN's policy appeals to businesses because, as an international arbitral procedure, it is believed to take less time from initiation to resolution. While significant progress has been made to deal with cybersquatters where two parties have legitimate claims to the commercial exploitation of a domain name, the domain name registration system remains a first-come, first-serve system

with preference given to the first-in-time national trademark registration and then to the first-in-time domain name registration. Accordingly, companies must understand that domestic and foreign trademark registrations now serve the dual function of securing trademark as well as domain name rights in that respective jurisdiction of registration.

Privacy

The degree of protection accorded to consumer information collected by companies differs significantly from one country to the next. In the United States, there are few general rules restricting the use of consumer information. At this time, industry-specific laws are just emerging, such as those that govern website operators who knowingly collect data from children under age thirteen. However, unless a U.S. business specifically limits the geographic scope of its website to the United States, the website may be subject to international privacy laws which are stricter and broader in reach than those in the United States. For example, the European Union has adopted a Directive on the Protection of Personal Data which offers broad protection against misuse of personal data. Under the EU Directive, each website accessed by a buyer located in the European Union must comply with privacy standards that assures that the owner of the data controls its use and it is protected from unauthorized disclosure to third parties. While enforcement procedures under the EU Directive are still evolving, the European Union has made it known that it will enforce compliance with the Directive vehemently.

Operational Considerations

A "binding contract" in one country may be viewed as a pre-contract negotiation in another country. If a U.S. manufacturer sells a product over the Internet to a buyer located in

Germany, the applicable law will be the U.N. Convention for the International Sale of Goods (the "Convention") unless the parties specify otherwise in a binding contract. The distinction between the Convention and U.S. law is material. For example, in the United States, an offer to sell goods published on the manufacturer's website is not likely to be considered a binding offer on the seller. In contrast, under the Convention, the same website is more likely to result in a binding contract as soon as a customer transmits to the manufacturer an acceptance communication via the Internet. If the chosen product is no longer available, under the Convention the manufacturer may be in breach of contract. Carefully worded disclaimers and/or choice of law provisions offer important legal protection. Likewise, customer fulfillment, payment processing and settlement in the international context may raise taxation, customs, export control and currency exchange/control issues not necessarily encountered in domestic contexts.

Conclusion

Mitigation of legal risks must be accounted for at the website development stage and, in this fast-paced e-commerce environment, through periodic legal reviews of the website itself and related transaction documentation.

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