

**Hospitality Law****Comprehensive Immigration Reform and the Hotel Industry***By Michael Wildes, Partner, Wildes & Weinberg**Mr. Wildes*

Everywhere you turn, immigration is in the news. Beginning with Arizona's controversial SB 1070 law, more and more states have begun proposing new legislation to try to close the gap in a broken system. Every president since Ronald Reagan has tried and failed to enact comprehensive immigration reform and without action taking place in Washington, state governments feel compelled to take matters into their own hands.

Why the big fuss? If you're a hotel manager or owner and have tried to procure a visa for a foreign-born employee, you may know how badly this country needs to update its outdated immigration laws. In our current system, individuals without a bachelor's degree in a specialty occupation field will face much difficulty qualifying for a work-based visa. Some employment-based visas, like the H-2B seasonal worker visa, do not require a professional degree but they are restricted to very limited validity periods. If you operate a seasonal business like a ski lodge, an H-2B visa may suit your needs just fine but other hoteliers may find themselves out of luck.

In 2007, executives from Marriott, Hilton, InterContinental, Hyatt, Loews and Starwood sent a letter to President Bush and high ranking members of his administration to express the hospitality industry's urgent need for comprehensive immigration reform. As more and more local municipalities take it upon themselves to pass local ordinances related to immigrants in the U.S., hotels with a foreign-born labor force find themselves stuck between a rock and a hard place. The industry does its best to remain compliant with all relevant laws but if different states, cities, and towns enact their own local statutes, company-wide policies will become unwieldy or impossible to implement.

Staffing a large hotel is no easy task and even the best run facilities experience high turnover. In a country as diverse as ours, not all job applicants will be American-born. As immigration practitioners, we come across scores of individuals every day who wish to live and work in this country with all proper authorization. Nonetheless, unless the position squarely qualifies for an H-2B temporary non-agricultural visa, not much can be done. Many, if not most, hotel staffing positions do not require a bachelor's degree and are therefore limited in their use of the H-1B specialty occupation worker's visa.

If, then, a foreign-born job applicant arrives eager for an open position, the hotel must either assume the legal risk of employing him or her unlawfully, or turn the individual away without employment and without filling an empty slot. At the height of the busy season, that could be a difficult decision to make. Whether it's deserved or not, the hotel industry has earned somewhat of a reputation as a hotbed for unlawful employment. As the Obama administration has shifted enforcement measures toward employer-end investigations, employing unauthorized workers off the books or without verifying employment eligibility could be a costly mistake.

Regarding the widely-held misconception that immigrant labor steals American jobs, the National Bureau of Economic Research published a study that found "no evidence that immigrants crowded-out employment and hours worked by natives." "At the same time," they write, "we found robust evidence that [immigrants] increased total factor productivity." Until the administration succeeds in reducing unemployment rates, however, the idea of welcoming additional workers into an already crowded job pool will not make immigration reform an easier sell.

On the other hand, requiring undocumented immigrants to register to earn legal status will strengthen our economy as an estimated 11 million of these immigrants become full-paying taxpayers. Once registered, they may be called upon to pay back taxes, and penalties. One traditional barrier to immigration reform has been reluctance on behalf of the labor unions whose interests are to protect the American worker. Nevertheless, as Homeland Security Director, Janet Napolitano has said, labor leaders have made it clear that unions cannot compete when a large part of the workforce is operating illegally and in a shadow economy. In fact, Utah's recently passed immigration legislation—which creates a guest-worker policy for undocumented immigrants—was lobbied for strongly by farmers and local business owners.

While it is understandable to want to fast track highly-skilled foreign workers, there is clearly a need for blue collar workers as well. For nationals of many countries, the spouses and children of a green card holder (a person who already undertook a long, complicated and expensive process to emigrate lawfully) must wait several years before they can enter the country legally to rejoin their husband and father. The visa backlog is so long that it may very well encourage otherwise law-abiding people to "jump the line" and arrive without authorization.

As a result of our grossly outdated system of visa quotas, I've seen successful businesses shuttered for failing to show profit within their first year (by that standard, Apple and IBM would have been abandoned long ago). I have seen CEOs refused visas for having majored in the wrong subject, and Oxford-educated doctors turned away because of quota limitations. This year marks the twenty-fifth year since the last substantive immigration reform. Can you think of any aspect of American life that hasn't changed dramatically in the past twenty-five years? And yet our system of immigration is still rooted in the era of Atari computers and Crocodile Dundee.

The American public knows that our system of immigration is broken and wants to know why nothing seems to be done about it. Immigration practitioners know that the often arbitrary and unequally-enforced existing laws do a disservice to our clients and needlessly waste government resources. For example, we know that the same petition, presenting the same facts, might be denied in one government service center but approved in another. All the while, our government representatives see there is a public outcry for change but nobody is willing to risk his or her political career to make it happen.

As a result, the public rhetoric on immigration tends to fall into three generic areas of talking points: improving border security, enforcing the existing laws and strictly prosecuting employers who knowingly hire undocumented workers. It's hard for any politician to be criticized for differing on these three points and the fear of straying from the pack is what has led us to the impasse in which we find ourselves

today.

From the hotelier's point of view, this political twiddling of thumbs means lost revenue. The hospitality industry is less concerned with the high principles of immigration reform than it is with the simple ability to keep its hotels and lodges staffed with capable, willing associates, whether they be American-born or not. American business owners want to remain on the right side of U.S. employment law and want to be able to seek proper work authorization for foreign-born employees in a straightforward and reasonable manner.

Unfortunately, the only way these changes can occur is if Washington arrives at a consensus on U.S. immigration reform and we know that won't be easy. President Obama promised to deliver reform in January 2010 and failed to bring it to fruition but the movement seems to be gathering some speed. The health care overhaul caused so much collateral damage that pushing through another controversial, unpopular piece of legislation will be like convincing a petulant child to take its medicine. It certainly won't taste good at the time but it's the only way this unpleasant situation will ever go away.

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