AUSTIN FRAGOMEN ON CURRENT TRENDS IN IMMIGRATION LAW

If you want to know what the latest trends are in immigration law, you could not ask for a better source than Austin T. Fragomen, partner at Fragomen, Del Rey, Bernsen & Loewy, LLP. He has extensive experience practicing in this field and has also served as staff counsel to the U.S. House of Representatives subcommittee on immigration, citizenship and international law and testified before Congress on a range of immigration issues.

Because more companies are operating internationally, corporations are now seeking immigration law services on a worldwide basis, not just in the United States, says Fragomen. For instance, they need to ensure that employees working abroad have the proper papers and vice versa. Previously, when a client needed immigration services in another country, the firm would use a "vendor"—that is, a local lawyer in that jurisdiction, he explains. However, to provide services globally and ensure better quality control, the firm now has offices worldwide in cities such as Toronto, London, Paris, Frankfurt, Sydney and Hong Kong to handle these needs directly.

Trends in immigration law are global, too. Fragomen says there are several "megatrends" that are not specific to any particular country. For example, he has seen a heightened focus on security directed primarily on who is entering a country. As a result, nations are increasing the screening of immigrants and, in some cases, setting special rules for people from Islamic countries.

The current economic crisis has also impacted immigration law across the world, says Fragomen. A key goal is "protecting domestic labor markets from an influx of workers from abroad, even skilled workers," he explains. In addition, Fragomen says that better border control and prevention of the employment of illegal immigrants is an issue in all industrialized countries.

Fragomen notes that, in the U.S., one of the biggest issues is what to do with the 12 million or so illegal immigrants already here. Should the government grant them amnesty as it did in 1986? Treat them as criminals? Force them to leave and then apply for readmission? Deport them? Each of these options poses its own challenges. For example, illegal immigrants are protected by the search and seizure laws, notes

Fragomen. So officials cannot stop someone simply because he or she looks like an illegal alien in order to deport that person; they must have reasonable suspicion that an individual is here illegally, he explains.

Selling an amnesty program would be difficult, says Fragomen, especially given the country's 10% unemployment rate. The government could have passed an amnesty program before "the wheels fell off of the economy". Now, he believes that "the economy would have to show some signs of improvement to get amnesty passed." And even if an amnesty program was enacted, it would not be a cure-all. "If you legalize all current illegal immigrants, how do you prevent the build-up of a new group?" asks Fragomen.

Effective enforcement of U.S. immigration laws is also a dilemma. Requiring documentary proof of legal status for employment, such as a passport or social security card, has proven to be ineffective as "forgery is rampant," says Fragomen. There is an alternative, however. The E-Verify Program is a system operated jointly by the Department of Homeland Security (DHS) and the Social Security Administration (SSA), in which participating employers can check the employment eligibility of new hires online by comparing information from an employee's Form I-9 against SSA and DHS databases. Fragomen explains that E-Verify is currently a voluntary program for most companies, except those with government contracts or who have taken TARP money. But several states, such as Arizona and Colorado, have mandated the use of E-Verify by all employers, he notes.

E-Verify may soon become mandatory nationally. Fragomen says that Senator Charles Schumer will introduce a comprehensive immigration bill by the end of this year, which will address all of these issues and others, such as increasing the caps on H-1B work visas and "green cards." It will also likely include the mandatory use of E-Verify. In addition, the bill may tackle the issue of document forgery by requiring all U.S. citizens to be issued secured biometric identification cards. In fact, Fragomen believes that we "need secure ID cards for E-Verify to be really effective."

The bill being drafted by Sen. Schumer has "the best shot it could possibly have at being passed", says Fragomen. But he remains skeptical. As a result, Fragomen and his firm are committed to staying involved in the legislative debate to try to "represent the interests of our clients" as the law develops.

—Robin L. Barton

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