Approved: 2-28-07
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 16, 2007 in Room 231-N of the Capitol.

All members were present except:
Senator Ralph Ostmeyer- excused

Committee staff present:
Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:
Mira Mdivani
Rae Ann Davis, Department of Commerce

Others attending:
See attached list.

Mira Mdivani, Attorney Immigration Law Practice, provided the committee an overview on employer immigration compliance, work visas and family immigration. (Attachment 1) It takes approximately 13 years to become a US citizen. The workforce is made up of 19% foreign born, according to a 2004 study. Approximately 11,000.000 to 20,000,000 undocumented persons from Mexico are in the U.S.(Bear Stearns study based on amount of money transferred to families) The need for legal work visas is 3.5 million per year and the available work visas fall far short of requirements.

Family Immigration - Hurdles to Jump and Family Separation

- U.S. Citizen marries a person legally in the U.S.
- U.S. Citizen marries a person illegally in the U.S. - in order to become "legal," after waiting for approval of family petition by USCIS (Approximately 12 months) and transfer of the file to the Consulate (another 12 months), the foreign spouse must leave the U.S. and wait abroad (e.g. in Mexico - currently approximately 13 - 18 months) before being able to come to the U.S. legally. Standard for I-601 Hardship Waiver; "Mere separation" of family for 10 years is not considered to be "extreme hardship"
- U.S. Legal Permanent Resident marries a person legally in the U.S. or abroad (never had illegal status)
  a) Visa Bulletin - Allowable Levels of Immigration
  If a U.S. Legal Permanent Resident (US LPR) marries a citizen of Mexico, the foreign spouse must wait in Mexico for over seven (7) years, to come to the U.S. legally. The foreign spouse is not allowed to visit the U.S. during the seven year wait; the LPR will lose U.S. residency if waits in Mexico with family.
  Consequences for families: seven years of separation, children growing without a parent, divorces, crossing the border illegally to be together - what is the justification for such policy?
  If the foreign spouse of a US LPR is from England: over five (5) years of wait and the wait to sponsor a brother from the Philippines; 23 years.

Legal vs. Illegal

1. US Citizen, US Lawful Permanent Resident, F-1 student, H-1B Professional Worker, H-2B seasonal worker, L-1executive, Asylee and Refugee, Temporary Protected Status (TPS) from Honduras, El Salvador, Somalia, Lebanon, etc., "Deferred Inspection" I-130 pending based on Violence Against Women Act, T & U visas, A visa, TN Canadian and Mexican workers, "S", etc
2. Crossed the border from Mexico illegally, no visa, no passport, work permit expired.
3. 3 and 10 bars: Illegals including Out of Status
   Problems:
   Entered without inspection (EWI) alien married to a US citizen - no way to become legal while staying in the US.
   Inconsistent policy on illegal entrants: marriage to USC and three kids not enough to cure illegal entry but Temporary Protected Status (TPS)

Problem: Once out of status always out of status in many cases.
Children brought here without inspection and raised here, thinking they are Americans

Employer Immigration Compliance begins with outdated I-9 list and there is a severe shortage of work visas and employment based green cards.

Rae Anne Davis, Deputy Secretary, Kansas Department of Commerce, spoke to the committee on H1B and H2B visas. (Attachment 2) The US Citizenship and Immigration Services places a 66,000 nationwide limit on new petitions for H-2B workers each federal fiscal year (October 1 - September 30) which is divided in half with 33,000 available beginning October 1 and the remaining 33,000 available April 1, to provide equitable distribution across the United States. Foreign workers employed legally in the United State; any time during the last three years may be employed repeatedly and these workers are not included in the 66,0000 annual petition limit. Each H-2B petition typically includes numerous workers performing the same job at the same location for the same prevailing wage. Kansas receives about 100 applications yearly, covering 5,000 - 7,000 workers. Primarily the occupations are in landscaping, construction, painting/roofing and remodeling, carnivals, and other low-skilled jobs. The qualifying criteria to apply for the H-2B visa follows:

- The job and the employer's need must be one time only, seasonal, peak load or intermittent
- The job must be for less that one year (for seasonal need, it must be less that 10 months)
- There must be no qualified and willing US workers available for the job. US workers are defined as native-born or naturalized citizens or persons already possessing legal permanent residency status

The H-1B Work Visa program allows employers to hire nonimmigrant foreign workers for the short term, but for the purpose of performing in a specialty occupation, or as a fashion model of distinguished merit and ability. As defined in federal legislation, a "specialty occupation" requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific speciality. Examples of specialty occupations are sciences, medicine and health care, education, biotechnology and business specialties. Many employers use the H-1B visa process to bring foreign workers into the country then apply later to change the worker's status from nonimmigrant to permanent worker. Current federal law permits 65,000 foreign workers each fiscal year to be issued H-1B visas, and may be valid for up to three years and are renewable for up to an additional three years.

Dennis Hodgins, Legislative Research, provided the committee with an overview on Federal Benefits. (Attachment 3) The information proivded included immigration terms, immigration classification and visa categories, overview of immigrant eligibility for federal programs, and immigrant eligibility restrictions. An explanation of legislation in Colorado and Arizona was provided.

Kathie Sparks, Legislative Research, explained the I-9 forms and that the verification is under the federal Immigration Reform and Control Act of 1986. (Attachment 4) The federal Act requires each employer to have in his or her records a completed Form I-9, Employment Eligibility Verification, for each and every employee, including U.S. citizens hired after November 6, 1986. Unlike tax forms, I-9's are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in their own files for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. The employment eligibility verification form, lists of acceptable documents, and the statutes that cover the drivers licenses was provided.

The meeting was adjourned at noon. The next scheduled meeting is January 17, 2007.