

Immigration

June 1, 2007

Temporary Guest Worker Program

When the Senate resumes next week they will continue to debate The Comprehensive Immigration Reform Act of 2007 (S. 1348), which affects the number of immigrant workers allowed into the United States by revising current visas and creating a new one through the establishment of the “Y Visa Program”. This program offers provisional visas to address future labor needs of temporary foreign workers and discourages future illegal employment of undocumented individuals. This program is divided into four separate groups: Y-1, a non-seasonal temporary worker; revised H-2A, a seasonal temporary agricultural worker and Y-2B, a seasonal temporary non-agricultural worker; and Y-3, their spouses and minor children. Y-1 is potentially renewable whereas the revised H-2A, Y-2B, and Y-3 are not. Revised H-2A, Y-2B, and Y-3 are all slightly revised forms of current visas, thus the only major change is the creation of the Y-1 visa¹.

The Y-1 visa is established in Title IV of the Act. To be eligible, an alien must show an offer of employment, pay a \$500 fee, pass a medical exam, pass a background check, and retain a residence abroad which they have no intent to abandon. The Act provides for 400,000 visas per year for non-seasonal temporary workers coming to the U.S. Under the original Act, the cap could have been adjusted to up to 600,000 available visas. However, the Senate has recently passed an amendment to this program, cutting the number of available visas in half. Thus, if the Act is passed, the maximum number of Y-1 visas available each year will be 200,000. To ensure that Y visa holders are working while in the U.S., the workers are allowed 60 consecutive days to look for new work and can only be unemployed for a total of 120 days over the duration of the visa². Workers who come to the U.S. unaccompanied by dependents are given a Y-1 visa for two years, which can be renewed two more times for a total of six years. The worker, however, must live outside of the U.S. for one year between each renewal. Workers who come to the U.S. accompanied by dependents may renew their visa once, but the dependents, who receive Y-3 visas can only stay for one of the two-year periods. The family must also demonstrate that their household income is 150% of the U.S. poverty guidelines and that their medical costs are covered by medical insurance in order to obtain their visa¹.

To contact us, write to:

Frost Brown Todd LLC
2200 PNC Center
201 East 5th St.
Cincinnati, OH 45202-4182

Frost Brown Todd LLC
400 West Market Street
Floor 32
Louisville, KY 40202-3363

¹ Press Release on the Comprehensive Immigration Reform Act from Senator Kennedy's Office – A Cosponsor of the Act. http://kenedy.senate.gov/newsroom/press_release.cfm?id=600B2F13-D0DD-4053-8FC1-A95EE721AB9B

² Text of the Comprehensive Immigration Reform Act of 2007 (S. 1348), found at the Library of Congress Website: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s.01348>:



Client Advisory

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The Act also puts greater pressure on employers to look for American workers first before bringing in a Y visa worker. Under the Act, employers are required to recruit U.S. workers at least 90 days before applying to the Y Visa Program, to offer the job to any eligible U.S. worker, and to make sure that the employer has not displaced a similarly-employed U.S. worker. Employers who violate provisions of the Y visa program or who consistently violate the wage and hour laws will be barred from requesting Y visa workers for up to three years. Also, workers can seek unpaid backpay and benefits from employers who break the law and the Department of Labor can fine these employers up to \$5,000 for each violation per affected worker in the case of willful violations².

There are currently several amendments to the Act that are being debated in the Senate. These amendments include creating a visa employer fee that employers would be required to pay for all foreign workers whom they employ³. For further information, please contact a member of our [Immigration Practice Group](#).

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³ Text of Amendments to S. 1348 proposed in the Senate: <http://thomas.loc.gov/cgi-bin/query/R?r110:FLD001:S06409> and <http://thomas.loc.gov/cgi-bin/query/R?r110:FLD001:S06486>