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The Law Firm of Tidwell, Swaim & Associates, P.C.

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A Solution for I-9s that Actually Works!



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The Immigration Service, in this case ICE, is promoting an employer's sanctions program that actually gives most employer's relief from the headache known as I-9s. This will not work for all companies, especially those in certain industries like construction, manufacturing, landscaping, etc., which have a fairly good chance of employing workers who are not legally in the U.S. although they may have a Social Security card and driver's license (valid or not). The

ICE program will work for companies which have a low probability of employing someone without valid status, but like all companies, must deal with the complexity and liability that I-9s present.

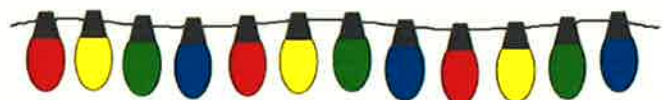
As background, the Immigration Reform and Control Act of 1986 created the Employer's Sanctions program which is administered through the I-9 form, which all employees hired after 1986 must complete, along with the employer. The purpose of the program is to try to prevent companies from hiring people who do not have authorization to work in the U.S. We can debate the relative success of this program but one thing is clear: the I-9 completion and follow-up requirements are almost impossible to comply with perfectly or even close to perfection. Almost every company has some type of I-9 liability, as discussed below. The ICE program, called IMAGE, eliminates virtually all I-9 liability at no cost to the employer.

There are basically two types of I-9 liability, referred to as paperwork violations and "knowing" violations. For paperwork violations, where there is a mistake on the actual I-9 form, there can be technical or substantive violations. The former is a violation which does not impact the enforcement of the Employer's Sanctions program (obviously vaguely defined and enforced) and for which there is no civil fine or future liability. The latter, a substantive violation, does impact the program and results in a paperwork civil fine and can lead to criminal liability in the future.

The "knowing" violations mean the employer knows or should have known the employee was not authorized to work, despite what the I-9 contains but more often in cases where there is employment but no I-9 form completed for that employee. For companies who have no problems hiring U.S. workers, ICE already has a program called E-Verify which solves the "knowing" issue. The employer enrolls with ICE and checks each new hire with them to make sure the prospective employee has valid work authorization of some type. By doing this the employer is immune from a "knowing" violation but is still liable for paperwork violations. And paperwork violations are what most employers have the most problems with.

The IMAGE program solves paperwork problems. Generally, the employer will enroll in the E-Verify program, which only applies to hires after the date of enrollment. Then the employer asks to join the IMAGE program, also administered by ICE. At this point ICE will

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Happy Holidays!

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How Long Can I Travel Outside of the United States if I Want to Apply for Naturalization?

There are many misconceptions as to how long a Lawful Permanent Resident (LPR) may travel outside of the U.S. while maintaining eligibility for naturalization. One such misconception is that there is a “one-year rule” that allows permanent residents to maintain their status and re-enter the U.S. so long as they are not abroad for more than one year. While it is true that a permanent resident who has been outside of the U.S. for less than 365 days may use their “green card” for re-entry, this is not necessarily a guarantee. Moreover, if allowed to re-enter the U.S., this trip may render the LPR ineligible to apply for naturalization. The requirements for naturalization concerning time spent outside of the U.S. are referred to as the: (1) continuous residence requirement; and (2) physical presence requirement. These are not the only requirements for naturalization, but will be the only two discussed for the purposes of this article.

To satisfy the continuous resident requirement, the LPR must have resided continuously in the U.S. for the five years (or, in certain cases, three years) immediately preceding the filing of his or her application for naturalization. To avoid confusion, this article will only reference the five-year rule. This five-year period (“relevant period”) should be calculated by starting at the proposed date of filing and counting backwards. Although continuous residence does not require that the LPR physically remain in the U.S. for the entire relevant period, the two rules for continuous residence in the context of naturalization are defined by time spent outside the U.S. First, if an LPR has an absence of one year or more during the relevant period, continuous residence has been broken. This rule is absolute and the LPR would have to wait until that absence falls outside of the relevant period before applying for naturalization.

If, however, the LPR has an absence of less than one year, but more than six months, there is only a presumption that continuous residence has been broken.

This presumption places the burden on the LPR to establish that he or she did not abandon their residence in the U.S. during this absence. In this case, the LPR faces a decision. They can wait until the absence falls outside of the relevant period and then apply for naturalization or they can apply for naturalization and provide evidence that they maintained strong ties to the U.S. during this absence. Strong ties to the U.S. would include owning a residence/property, filing Federal income taxes, maintaining employment, attending school, and/or having family here.

It is possible for an LPR to establish continuous residence for the relevant period, but still fail to meet the physical presence requirement. To satisfy the physical presence requirement, the LPR must have been physically present in the U.S. for at least half of the relevant period. In other words, an LPR that has not made any trips outside the U.S. longer than six months will still not be eligible for naturalization if the total of their absences adds up to more than half of the five years immediately preceding. Just as with continuous residence, this is calculated by starting at the proposed date of filing and counting backwards. Thus, if the LPR is often making short trips outside the U.S., he or she should be cautious to keep track of the total number of days.

As a general rule, LPRs should fully understand any possible consequences before traveling outside of the U.S. This is especially true if the LPR intends to be outside the U.S. for a substantial amount of time and/or intends to apply for naturalization. To be safe, it is always best to consult with an experienced immigration attorney before any travel outside of the country.



Sikhay Thai Lao Cuisine

By Alexander Farquhar

Nestled in a fairly unassuming strip mall in the Bonnie Brae neighborhood of Fort Worth is a real gem of a restaurant, Sikhay Thai Lao Cuisine.

Despite the fact that I grew up no more than a stone's throw away from this restaurant, I had never been until my grandmother-in-law recently recommended it (very highly). My wife and I decided to try it out and we are both very glad that we did.

As soon as we walked in, we were greeted very warmly by Andre Voraritskul, the General Manager. He knew it was our first time there simply because he did not recognize us. After you eat at Sikhay Thai Lao Cuisine, you will want to go back, and if you do, Andre will remember you. When we told him that we had gotten a recommendation from my grandmother-in-law, he was able to tell us the last time she was in the restaurant, who she was with, and in which booth they sat.

Before seating us, Andre asked whether we had any food or gluten allergies and if either of us were vegetarian or vegan. With a close friend who is highly allergic to gluten, I was glad to find out that they have separate cooking surfaces for gluten free options.

We settled into our booth and opened our menus to find a wide variety of options that all looked very good. There



were several stir fry dishes, noodle soups, fried noodle and fried rice dishes, curries, and authentic Lao foods. There were also several flavors of boba tea smoothies available.

It was hard to decide where to start! We decided to start with an order of spring rolls and fried Laos sausages. Because it was our first time, they also brought us a complimentary order of crab rangoons. Each came with its own unique dipping sauce and each was absolutely delicious. For our main courses, I chose the red curry (kaeng daeng) and my wife chose the rice salad (nam kao). Both dishes were exceptional. Their olieng (intense black iced coffee) is very flavorful and—considering that it is coffee—surprisingly refreshing.

The staff is amazing as well. Throughout our meal, Andre and other members of the staff ensured that everything was to our satisfaction and that we had everything that we needed.

With no hyperbole, I can say that my dinner at Sikhay Thai Lao Cuisine was one of the most satisfying restaurant experiences I have ever had. I am looking forward to my next trip since I wasn't able to try everything that I wanted to. I will definitely be trying one of their boba tea smoothies and the sticky rice sundae next time.

If you are in the mood for some incredible Thai and Lao food, at a great price, in a relaxed and casual setting, I cannot recommend Sikhay Thai Lao Cuisine strongly enough.

Sikhay Thai Lao Cuisine

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A Solution for I-9s that Works! (continued from page 1)

conduct an audit of the I-9s for that company. And here is part of the value to employers: as long as the company's I-9s contain fewer substantive violations than 50%, all fines are waived. In essence, ICE gives the company a free pass on all of their I-9s completed up to the date of the audit. And going forward, the company can never be audited again for those I-9s. After the I-9 audit, ICE will help the company create a "written hiring and employment eligibility verification policy" and require the company to complete an internal audit (NOT an ICE audit) each year. ICE also provides information to the employer "before, during and after the inspection". In effect, ICE partners with the employer so in reality there cannot be any paperwork violations in the future because the employer can simply ask ICE if the I-9 is correct for each hire. In fact, at a presentation given by ICE at a recent meeting of the GlobalHR Roundtable at DallasHR, an ICE officer clearly stated the company which goes through the IMAGE I-9 audit will not be audited again in the future.

In summary, a company which is at a low risk for hiring employees without work authorization can enroll in the E-Verify program to eliminate liability for "knowing" violations and then enroll in the IMAGE program and eliminate liability for paperwork violations. The I-9 process ceases to be a headache for everyone involved and places responsibility for enforcing immigration law where it should have been since 1986: with the Immigration Service.

Interestingly, but not surprisingly, the IMAGE program was started in 2006 but ICE is only now promoting it with employers. So, with the caveats stated above, IMAGE is finally the relief from I-9 responsibility everyone has been waiting over thirty-two years for.



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