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IT'S THE LAW

Immigration Law In The Hospitality Industry

THE VISA LOTTERY

An Easier, Faster, Cheaper Alternative To The Burdensome Labor Certification Process For Restaurant Workers

My hotel and restaurant clients often are shocked when I explain to them the complexity and expense of applying for legal permanent residence (a "green card") through employment sponsorship. The most common method of employment sponsorship, called labor certification, currently takes at least 2-3 years in Virginia. In Maryland and the District of Columbia, applicants can expect to wait a total of 5 years or longer to receive their green cards.

In addition to the alarming processing delays in the labor certification process, obtaining a green card through this method is time-consuming and burdensome. The sponsoring employer must show that no U.S. workers are "able, willing, qualified, or available" to fill the position being offered to the foreign national worker, which means advertising the job in a local newspaper or trade journal, and then interviewing U.S. workers who apply. The employer must keep careful track of all applications and resumes received, confirm in detail why the applicants are not qualified, and provide justification for its requirements for the job.

Obtaining a green card through labor certification also can be quite expensive. A quick survey of immigration law firms online revealed legal fees of \$10,000 or more to complete the process. For a worker

earning minimum wage, or a restaurant struggling to survive in today's tough economy, such an expense can be hard to justify.

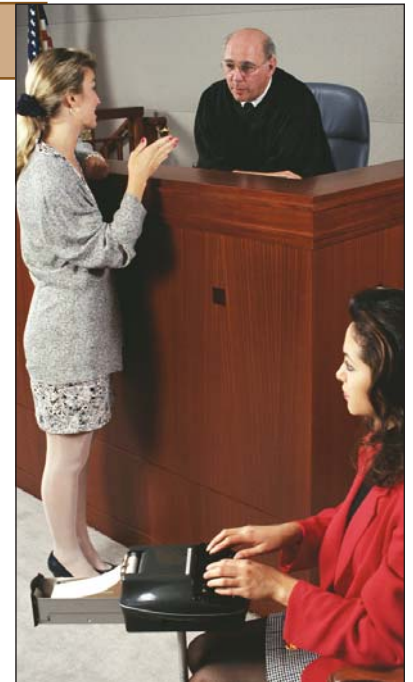
Fortunately for foreign national restaurant employees and their employers, there is a glimmer of light at the end of the immigration tunnel, the Diversity Immigrant Visa Program, or "Visa Lottery." Although, as its name indicates, the visa lottery does not guarantee a green card, the chances of becoming a permanent resident through the visa lottery (based on last year's statistics) are better than 1 in 200. The lucky "winners" who are selected each year can bypass the entire labor certification process and skip directly to the final step of the permanent residence process. The visa lottery costs nothing to enter, and winners of this year's lottery must become permanent residents no later than September 30, 2005. Simply put, for most workers the green card lottery is the easiest, fastest, cheapest way to become a legal permanent resident.

On Tuesday, August 19, 2003, the U.S. Department of State's Bureau of Consular Affairs ("BCA") issued instructions for the next Diversity Immigrant Visa Program (DV-2005), which are available on the BCA's website at www.travel.state.gov/dv2005.html.

In the DV-2005 lottery for the first time all applicants must submit

their visa lottery applications online at <http://www.dvlottery.state.gov> during the application period Saturday, November 1, 2003 through Tuesday, December 30, 2003. The online application must include an electronic photograph (in JPEG format) of the applicant and his/her spouse and each child under 21 years of age. All applicants must have either a high school education or its equivalent, or at least two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The list of qualifying occupations, which includes "chefs and head cooks" and "food services managers," can be found at <http://travel.state.gov/ONET.html>. In addition to the education/ experience requirement, all applicants must be natives of a qualifying country. The countries whose natives DO NOT qualify for DV-2005 are Canada, China (Mainland-Born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

The visa lottery application process is straightforward, and most applicants should be able to complete and submit the application without any outside assistance. However, once applicants are select-



ed for the DV-2005 lottery, their case proceeds on an expedited schedule and failure to follow the required procedures can result in disqualification. Because of these timing concerns and the confusing details of the final "green card" application, applicants who are selected in the DV-2005 lottery may wish to retain a qualified immigration attorney to assist them with the final step of their case.

Becki L. Young has been working in the field of immigration law since February 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues.

Contact her to learn more or to schedule a personal consultation by calling (202) 232-0983 or e-mailing to youngb@blylaw.com.