

Business Immigration Weekly for September 26, 2014

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Practices: Immigration

UNITED AIRLINES/FORMERLY CONTINENTAL AIRLINES FINED \$270,000 FOR RE-VERIFICATION OF LAWFUL PERMANENT RESIDENTS IN THE I-9 PROCESS

The Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel") and United Continental Holdings, Inc./United Airlines, Inc. ("United Airlines"), now United Airlines and formerly Continental Airlines settled claims over violations that Continental Airlines allegedly violated provisions of the Immigration and Nationality Act ("INA") relating to Employment Eligibility Verification. Specifically, the airline is alleged to have requested more documents of US lawful permanent residents in that it unlawfully reverified their employment authorization documents. The claims resulted from an investigation dating from July 2013 and were only limited to Continental Airlines' practices and not United Airlines.

The airline disputed the charges and settled the claims for \$270,000. Of this amount \$55,000 was set aside as a fund for Continental Airlines employees that were negatively affected by the airlines' practices. The airline must notify these employees and send them a Back Pay Notice Letter providing them an opportunity to come forth and receive compensation for their damages. Additionally, as part of the settlement, the airline agreed to:

- Not engage in discriminatory practices on the basis of national origin or citizenship;
- Not request more documents than are necessary in the Employment Eligibility Verification process;
- Accept documents that appear to be facially valid;
- For a period of two years, ensure that employees that are responsible for administering the Employment Eligibility Verification process have the most current version of the Form I-9 Employer Handbook;
- Ensure that employees that are responsible for administering the Employment Eligibility Verification process receive adequate training;
- Review and revise its internal employment practices to ensure that they do not violate the INA;
- Notify the Office of Special Counsel of any changes to employment practices and allow the Office to comment;
- Ensure that the airlines' internal reporting software does not include the expiration of Permanent Resident Cards; and
- For a period of two years, provide the Office of Special Counsel with a list of all employees with expiring employment authorization that must be reverified with the Office reserving the right to inspect these Forms I-9.

All employers in the United States must verify the employment authorization of each employee hired after November 6, 1986. This employment verification process is completed via the Form I-9, Employment Eligibility Verification. This process is to ensure that US employers are hiring only individuals who have valid authorization to work in the United States. As part of the I-9 process, employees must indicate in Section 1 of the Form I-9 whether they are US citizens, US noncitizen nationals, Lawful Permanent Residents or Aliens with limited employment authorization. Lawful permanent residents have permanent authorization to work in the United States and therefore should not have their employment authorization reverified. Many employers are confused by this because many lawful permanent residents provide a Form I-551 Permanent Resident Card that contains an expiration date.

GRAND AMERICA HOTELS AND RESORTS FORFEITS ALMOST \$2 MILLION TO DHS FOR HIRING UNDOCUMENTED WORKERS

The Grand America Hotels and Resorts ("Grand America") which owns hotels and resorts in Utah, Wyoming, Arizona, California and Idaho must forfeit almost \$2 million to the Department of Homeland Security ("DHS") after it was found to have hired undocumented workers, terminated them and then rehired them through temporary staffing agencies. The US Attorney's office in Utah and the US Immigration and Customs Enforcement ("ICE") settled the claims with Grand America which resulted from an investigation dating back to 2010. After Grand America was warned in a Form I-9 audit that it was hiring unauthorized workers, the company terminated the workers and then rehired about a third of them, in many instances using fraudulent names or Social Security numbers, through a series of temporary staffing agencies that Grand America itself established.

This case is a clear warning and example of how not to proceed if your company is audited by ICE or any other government agency. It is surprising that Grand America's management and decision-makers were not criminally charged. Grand America was first audited by ICE in 2010. This audit resulted in a finding of approximately 130 undocumented employees. Grand America terminated these employees in 2011 after it received a warning notice from ICE. A year later, ICE found that Grand America rehired many of these employees through staffing agencies that the company created. At that point, search warrants were issued and Grand America agreed to cooperate with the investigation in exchange for the US Attorney not filing criminal charges against the company and its management. As a result of the settlement, and in addition to the \$2 million forfeiture, Grand America must complete extensive remedial measures concerning its employment practices and training of staff in charge of the Employment Eligibility Verification process and E-Verify process.

Government audits and investigations relating to the Employment Eligibility Verification process are on the rise. Every year there is a record number of audits and unfortunately company self-audits are not sufficient to root out training deficiencies or practices and policies that appear to be lawful, as in the Continental Airlines case, but are in fact fines and unwanted press waiting to materialize. It is notable that the airline was not in fact fined for hiring undocumented workers, but was fined for not complying with the laws relating to Employment Eligibility Verification. Employers should be aware that the vast majority of fines in this area are assessed for "paper" violations, e.g., failure to prepare the I-9 or properly complete it. Although a relatively simple form on its face, the I-9 is a minefield of liability. Employers should note that it may only be a matter of time before the

Office of Special Counsel or ICE knocks on your door. If your company has questions or concerns on the Employment Eligibility Verification process or employment practices in general, please contact us.

EMPLOYMENT AUTHORIZATION AND DEFERRED ENFORCED DEPARTURE EXTENDED FOR LIBERIANS

DHS announced this week that it has extended employment authorization and Deferred Enforced Departure ("DED") for qualifying Liberians. President Obama announced that the administration would extend DED for qualifying Liberians through September 30, 2016. The extension will enable individuals who are already covered by DED to retain this protection and will permit eligible Liberians to continue to work while they file their applications. The US Citizenship and Immigration Services ("USCIS") will issue a notice in the Federal Register which will provide information on the automatic extension of employment authorization and instructions on how eligible Liberians can apply for a new Employment Authorization Document valid through September 30, 2016.

Currently, the employment authorization of Liberians covered under DED will expire on September 30, 2014. Through the publication of a notice in the Federal Register, the DHS will automatically extend their employment authorization for six months through March 30, 2015. This automatic extension will allow covered Liberians to apply and receive new employment authorization documents valid through September 30, 2016. Once issued, a copy of the Federal Register Notice granting this automatic extension of employment authorization will be sufficient documentation for Form I-9, Employment Eligibility Verification, purposes and will demonstrate employment authorization from October 1, 2014 through March 30, 2015. Employers should re-verify the employment authorization of these individuals shortly before March 30, 2015. At that point, these individuals must provide a valid employment authorization document in order to continue to demonstrate their ability to continue working in the United States.

Similar to Temporary Protected Status, DED allows eligible individuals to remain in the United States for limited periods of time according to directives issued by the US President. DED provides certain protections to nationals of the designated country such as protection from removal from the United States, eligibility for an employment authorization document and travel authorization. DED is not a path to US lawful permanent residence. Currently only Liberia is designated for DED.