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Water Cooler Talk: Immigration Insights From ‘The Proposal’

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This article is part of a monthly column that connects popular culture to hot-button labor and employment law issues. In this installment, we focus on the immigration challenges highlighted in the romantic comedy “The Proposal” and how they relate to real-world visa processes and employer compliance.

“The Proposal” is a romantic comedy starring Sandra Bullock and Ryan Reynolds that tells the story of Margaret Tate, a Canadian executive who faces deportation from the U.S. due to visa issues. In a desperate attempt to stay in the country, she coerces her young assistant, Andrew, into a fake engagement.

Like the whirlwind storyline of most films of this genre, the immigration process can be a tornado of paperwork, interviews and uncertainty. While in the movie Margaret resorts to a fraudulent marriage of convenience, real-life individuals cannot rely on farcical plot contrivances and must navigate intricate legal pathways to secure their lawful status in the U.S.

Beyond individual challenges, the broader landscape of employer-sponsored visas has also faced scrutiny. Foreign business visas made waves late last year when Apple Inc. agreed to pay \$25 million to settle allegations by the U.S. Department of Justice that the company discriminated against U.S. citizens. This was significant as large technology employers rely on employment-based immigration to provide and retain thousands of highly skilled workers coming into the U.S. every year.

In April, U.S. Citizenship and Immigration Services noted the number of applications for the H-1B visa lottery for skilled workers dropped by nearly 40% following their tightening of rules aimed at reducing fraud.^[1]

To further examine the complexities of employing foreign workers, we spoke with Robert Lee, leader of our firm’s immigration practice. The considerations below are based on our discussion about compliance concerns and maintaining proper status while navigating the visa process.

Visa Alphabet Soup

There is one key thing to know about American work visas: In most cases, a foreign national cannot just get a work visa and find a job later. U.S. immigration law requires U.S. employers to sponsor an individual for a particular type of work-authorized visa before arrival. The most common employment-based nonimmigrant visa classifications are:

- H-1B: Primarily for professionals with a minimum of a bachelor's degree in a specific field. This is likely the visa status Margaret had.
- L-1: For intracompany transfers within multinational corporations. This visa enables a U.S. employer to transfer an executive, manager or a specialized knowledge worker from one of its affiliated foreign offices.
- O-1: Reserved for individuals with extraordinary ability in their field. One sure-fire way to guarantee this one — win a Nobel Prize. A fraudulent marriage to a character played by Ryan Reynolds was an easier solution for Margaret.
- E-1 and E-2: For treaty traders and investors.
- TN: For professionals from Canada and Mexico to stay temporarily under the United States-Mexico-Canada Agreement, formerly known as the North American Free Trade Agreement.

Each visa category comes with its own set of rules and requirements, making it essential for employers to understand the nuances to avoid potential pitfalls.

Termination of an H-1B Worker

An employee's immigration status is directly linked to their employment, so if they are terminated or if they resign, they are no longer authorized to stay in the U.S. However, there is a grace period of up to 60 days during which employees can transfer their H-1B to a new employer or take other actions, like changing their status to a visitor or student.

Failing to do so within the grace period can lead to serious consequences. Note that if the employer terminates an H-1B employee prior to the expiration of their approved H-1B status, then the employer must take certain steps to ensure an effective termination, including updating the USCIS that the employee is no longer working for the employer and assuming responsibility for the costs of the return trip abroad.

Travel Restrictions and H-1B Status

Traveling abroad while an H-1B petition is pending can be risky, which could be what got Margaret into trouble. In the movie, she departs the U.S. for a publishing conference in Frankfurt while a petition to change her status to H-1B was pending. That would certainly jeopardize her visa status. Additionally, if you depart the U.S. and your H-1B status expires while you are abroad, you will not be able to reenter the U.S. in H-1B status until the extension petition is approved.

Consequences of Illegal Hiring

Penalties for hiring noncitizen workers vary based on the circumstances. If such hiring was done unknowingly, and was an isolated incident, the result can be a relatively minor monetary fine. For more egregious cases involving a pattern or practice of knowingly hiring or continuing to employ undocumented workers, substantial fines or even criminal charges and jail time could result.

I-9 Compliance

Another aspect of immigration law is I-9 compliance. There are particular issues employers should be aware of when processing I-9 forms, including timeliness and remote worker considerations.

The I-9 form is essential for verifying employee eligibility to work in the U.S. Timely completion is crucial. Employers must complete their portion within three business days of the employee's start date, and failure to adhere to these timelines can lead to penalties.

Remote work also doesn't change these requirements. Employers must still verify documents, even if it's done remotely through a trusted third party or through alternative methods for employers registered with E-verify. Employers need to treat all employees equally both in the hiring process and in any subsequent internal compliance efforts in order to avoid potential discrimination claims.

When Marriage Is Involved

In "The Proposal," Margaret coerces Andrew into marriage in order to avoid deportation, but of course, in this Hollywood ending they end up actually falling in love.

In the real-life marriage-based immigration process, the married couple would file a petition and produce copious documentation to demonstrate the bona fides of the marriage such as joint accounts, insurance documentation and housing records.

Wedding pictures and copies of itineraries for trips taken together should also be produced. There would be an interview of the married couple where the immigration officer could ask numerous questions that a real couple should know about each other.

While it's unlikely an immigration officer will make a surprise visit to your potential in-law's house in Sitka, Alaska — like they did in the movie — it is a guarantee that the process will be rigorous and the possibility of further investigation and verification that the marriage is genuine through other methods.

Conclusion

While "The Proposal" offers a lighthearted take on changing your visa status, the process for employers demands serious attention and expert guidance. From understanding the intricacies of various visa categories to ensuring compliance with I-9 regulations, understanding the rules can significantly decrease the risk of having any issues in securing and maintaining proper visa status for your foreign national employees.

[1] <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>.

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