

MONDAY, MAY 22, 1989

Protecting a Foreign Boss From the INS

Last summer, a major U.S.-based hotel chain found itself in need of a controller following the unexpected resignation of the incumbent. No U.S.-based replacement was available, so the foreign conglomerate that had recently acquired the hotel chain decided to send a senior finance executive from London to supervise the accounting function temporarily. The chain's vice president for human resources had to deliver the news that it would take one to three months to get a work visa. Headquarters did not take the news well.

By contrast, in January, a large California-based consumer electronics firm developed an unexpected vacancy when a senior vice president in the U.S. suddenly became incapacitated. An executive from the firm's overseas parent was able to fly to California within two days to take charge of the division. When the foreign company had bought the California firm, it had anticipated just this kind of problem and put in place an "E visa program" for top executives, along with a "Blanket L program" for other executive and managerial transfers. When a European was tapped to fill the position at the California company for the next several years he was sent to the U.S. under an L-1 visa obtained in *one day* under the Blanket L program.

While this alphabet-soup of visas may seem like a mix that most managers would rather avoid, immigration issues of the type mentioned above are very relevant to

every U.S. business that is foreign owned or that may become foreign owned, as well as domestic companies with substantial international operations.

While it would be helpful to know the exact number of U.S. companies owned by foreigners and their total number of employees, no such figures exist because there are no federal reporting require-

Manager's Journal

By Lawrence P. Lataif

ments. However, an article by Victor J. Riley Jr. in the November-December issue of Chief Executive Magazine states that purchases of U.S. firms by foreign companies in 1987 totaled \$12 billion. In 1988, the British alone spent more than \$32 billion to acquire 400 U.S. companies. Foreigners are expected to account for 20% of all takeovers in the U.S. in 1989. In Cleveland alone there are 141 foreign-owned firms. Approximately 400 foreign banks are operating in the U.S. today.

These foreign owners are discovering the importance of being able to move trusted senior people into the U.S. quickly to respond to unexpected developments. Ironically, foreign companies that espouse autonomous and independent functioning of their U.S. subsidiaries are most vulnerable, for it is these companies that are least

prepared for unexpected high-level vacancies.

U.S. managers often cope with the shock of foreign acquisition by embracing the offer of autonomous operation wholeheartedly. The foreign owners and executives are understandably reluctant to be offering autonomy on the one hand and appear to be preparing to send replacements with the other. Little attention is therefore paid to visa issues by either side at the time of acquisition.

But when an unprepared foreign parent decides it does need to send an executive over, there is likely to be shock and disbelief when they learn that work visas did not become available on demand when the U.S. company was acquired. Acquisition documents running hundreds of pages typically make no mention of visa issues for the acquiring owners or executives. When the inconvenience of this omission sinks in, U.S. management is likely to be held accountable.

What's a manager to do when faced with the prospect of foreign ownership? The following practical suggestions should help.

• *Raise the issue of immigration with foreign executives and management—and do so at the earliest opportunity.* When posed in terms of: "How can we maintain the maximum flexibility to deal with unforeseen situations?" the foreign owners will be very appreciative. They realize much better than Americans the impor-

ance of arcane U.S. visa requirements, and the manager who raises this issue is likely to be perceived as savvy by the new foreign owners.

• *Suggest putting in place special corporate programs to facilitate the temporary transfer of foreign managers and executives.* The most useful of these are a Blanket L-1 program for intracompany transfers, an E-1/E-2 program for treaty traders and treaty investors, and an H-3 training program. In conjunction with the array of individual visa petitions available, these programs will speed up dramatically the transfer of key personnel.

• *Centralize control of your company's current business visa cases.* For a company that's not foreign owned, a routine immigration mishap may be only a minor annoyance. However, for foreign owners these mishaps can cause serious delays if the immigration and Naturalization Service scrutinizes the company's every visa application. By taking control of immigration filings, U.S. managers will be perceived as helpful and understanding. This is particularly important given the often perceived cultural gap between U.S. managers and new foreign owners.

• *Make certain you are complying with the Immigration Reform and Control Act of 1986.* The act requires that every U.S. employer comply with certain recordkeeping requirements for every employee, whether alien or citizen. While the act's audits and enforcements have not been massive, they can be very troublesome to foreign owners if they result in immigration officials concluding that the company is playing fast and loose with the immigration laws.

These suggestions can't guarantee a harmonious relationship between U.S. managers and foreign owners, but they can go a long way toward achieving the shared goal of harmonious relations.

Mr. Lataif is the partner in charge of immigration law in the Washington, D.C.,

Immigration Law May Alienate Your Foreign Professional Staff

An international oil tanker company in the U.S. recently needed a director of maintenance for its world wide fleet, someone who specialized in Japanese shipyard engineering and architecture, and it needed him immediately. Delay was stranding the entire fleet.

A year ago, many companies would have hired a foreigner with the requisite skills, put him to work and then applied for a visa. However, just before the dawn of the new age in immigration law, the com-

Manager's Journal

By Lawrence Lataif

pany in question endured the downtime, not daring to proceed without careful prior compliance with the tough new Immigration Reform and Control Act of 1966.

The act, which takes effect June 1 but which has certain retroactive aspects to Nov. 7, rewrites almost a century of American immigration law. It transforms the business of hiring foreign executives and professionals from a matter of routine personnel processing to a veiling, often urgent, issue requiring the involvement of top management. Successful corporate compliance with the new act and its regulations will demand a high level of coordination among top management, personnel

managers and legal counsel. Most corporations are neither prepared for nor, in many cases, even aware of the need for this level of involvement.

The act, in general, has the following provisions:

- Every employer, under threat of perjury, must verify in writing that all employees—U.S. citizens as well as aliens—are eligible to work and that the required documentation has been examined.
- Every company must develop an extensive "Employment Verification System" and keep records of work authorization.
- Failure to comply can, in the extreme, land corporate senior managers in prison.

One significant reason why increased coordination and centralization are called for arises from the fact that the act generally holds parent corporations responsible for the violations of any of its subsidiaries or divisions.

The Employment Verification System affects recruiting, promotions, transfers and terminations of every foreign employee except those who have permanent-residence visas. Currently, violations of the verification system can trigger sanctions ranging from fines for paper-work violations to criminal misdemeanor and felony prison terms for senior managers of companies repeatedly violating the law. Top executives, therefore, need to monitor

and set policy for employment verification and business-visa processing for foreign employees.

While the old immigration law theoretically required visas before hiring, employers could hire first and apply for visas second with no threat of sanctions against them. Consequently, many if not most foreign executives were routinely offered employment before consideration was given to the appropriate business visas.

As with the oil-tanker company, critical initiatives may be stymied or delayed pending application for, and issuance of, the visa. Several months ago, one major European electronics company saw its carefully planned multimillion-dollar research and marketing program for a new computer product jeopardized because 15 key executives and professionals with specialized knowledge had not yet obtained work visas.

In another case, the buyer of a major U.S. company refused to sign the contract to purchase until it received assurances that two key foreign executives would have indefinite work authorization to manage the company after acquisition.

Promotion and transfer decisions affecting foreign workers who want to move to the U.S. or are already in the U.S. no longer can be made without advance planning, with the paper work delegated after the fact to the personnel department. This is true because many categories of non-im-

migrant visas are limited to the specific job for which the person initially was granted work permission. Giving the foreign employee a promotion or a transfer to a different job could invalidate the work visa.

Along with the new law are regulations that have received little publicity but that also will require a high degree of involvement by senior management. Under these regulations, any immigration filing (for example, a company's application for a visa) becomes a permanent part of the company's immigration compliance profile. The Immigration and Naturalization Service's evaluation of the company's current and future applications will take into account prior filings—whether they were made before or after the act became effective. Senior management, therefore, will have to live with the representations made in all filings.

In this strict new world of American business-visa law, exaggerated boilerplate claims such as "He's critical to the operation of our division" will not stand up to INS review, especially if after two months the employee is gone and the division continues to function smoothly. Given the potential for a company to be penalized by past filings, it is now advisable, if not necessary, to conduct an internal audit of prior immigration filings in order to calculate potential exposure.

In short, business-visa and compliance procedures will become a constant corporate concern. The steady stream of expected litigation and regulation changes will require permanent channels of coordination and centralization among top management, legal counsel and personnel departments.

In the same way that discrimination, tax, securities and other areas of government regulation have become routine responsibilities of corporate management, so, too, have immigration and business-visa matters.

Mr. Lataif is special immigration counselor in the Washington office of Jones, Ingham & Poyner.