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GRASMICK'S BORDER REPORT:

U.S. Immigration for Canadian Businesses and Professionals

September 16, 2010

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"I appreciate the article 'Real Estate Investors: Make Sure You Can Cross That Border!' Your knowledge and expertise is evident. You hit on just about every possible scenario. This would help many Canadians making life altering decisions."

--Property Manager, Windsor, Ontario, 7/10

"As a laid off L-1, your book was vital to remaining long enough to tidy up affairs."

--Canadian bio scientist, 7/10

"Thank you for such an invaluable website—I cannot count the times I have used it!"

--student advisor, BC university, 6/10

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1. PROSPECTS FOR DUAL CANADIAN-CHILEANS -SINGAPOREANS -AUSTRALIANS

If either you or your Canadian employee has dual citizenship from Canada and either Chile, Singapore or Australia, explore these special opportunities. The "H-1B-1" and "E-3" permits include some of the following:

- liberalized or no quota limits,
- lower filing fees,
- no petition,
- spouse can work,
- indefinite renewal--no top time limit
- part-time or multiple employers OK,
- no license required if license-eligible,
- some jobs allowed without bachelor's degree, and

-eligibility even if subject to J-1 foreign residency requirement,

Employers, review your international employees' full citizenship history before committing to a specific immigration approach or rejecting a job candidate. When scheduling a consultation via <http://www.grasmick.com/consult.htm> please give me a heads-up if these citizenships are in the mix.

2. 3-YEAR TN NOT AUTOMATIC

I ask my readers to temper euphoria over the new three-year TN period, with this: unless you show what the person is going to do each of the years, immigration may not give the full three years.

Part of my service is to attach evidence showing a three-year need. Our applications convince the inspector that the continuing and changing aspects of the job description jibe with the employer's three-year business plan. (This is a good example of "business immigration law" skills.)

Two groups of people must be especially concerned:

-Internal Management Consultants. Immigration feels that consulting for a company only requires a sort stint. One Port Director told me that a request for anything greater than eight months is suspect!

-Smaller companies find it harder to justify an outside consultant for the full three years.

3. CUSTOMARY OPPORTUNITIES FOR CANADIANS THRIVE

A spectacular switch in comparative Canadian/American long-term unemployment rates produces dramatic reversals of "push-pull" migration forces. For the first time in the 30-year history of my practice, Canadians are going home en masse. See this fascinating comparative chart from The Economist:

http://www.economist.com/blogs/freeexchange/2010/02/canadian_unemployment

Nevertheless, there will always be cross-border labor mismatches, advantageous to Canadian businesses and job seekers. This is because the countries have different unemployment levels in key sectors. Immigration helps balance these differences. (In fact, this kind of immigration is *crucial* for economic growth.)

Examples include makers of innovative products, like advanced medical devices and wind turbines. These businesses are growing quickly and looking to hire. In a survey last year of 779 industrial companies, 32 percent of companies reported "moderate to serious" skills shortages. Sixty-three percent of life science companies and 45 percent of energy firms cited such shortages.

Also, look at the six fastest growing jobs in the U.S.: nurses, veterinarians, network systems and data analysts, software engineers, bio medical engineers, accountants and auditors. All are on the TN list. (See "Grasmick's TN List" at <http://www.grasmick.com/tnlist.htm>) Most easily qualify for the H-1B, with open quota availability now. The article "Fastest Growing Jobs in America, is at

http://money.cnn.com/galleries/2010/pf/1009/gallery.jobs_future.fortune/index.html

A word about two of the in-demand professions; in my opinion, all network systems/data analysts, or software engineers should read this before going to the border: "CHAPTER 10: IT PROFESSIONS" at page 174, in "Grasmick's TN Handbook for Canadians." (EBook is instantly down loadable from <http://www.grasmick.com/handbook.htm> .)

If you know people in these sectors and in-demand professions, spread the word. Consider sending personalized Border Report subscription invitations to:

- Canadian employees in these sectors
- HR and legal immigration specialists in your company
- potential employers, even if setting the stage for future offers.

It is simple. Cut and paste this text into your e-mail or social network page, customizing, as you like:

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Have you heard of Grasmick's Border Report? It is the preeminent news source about securing business and job opportunities via Canada to U.S. immigration. You can get a free subscription. Send a message to jgrasmick-subscribe@yahoogroups.com

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I thank you. (Your associates will thank you.)

4. INTERNS RUN AFOULD OF LAW

"If you're a for-profit employer or you want to pursue an internship with a for-profit employer, there aren't going to be many circumstances where you can have an internship not be fully paid and still be in compliance with the law," said Nancy J. Leppink, the acting director of the labor department's wage and hour division.

Ms. Leppink said many employers failed to pay even though their internships did not comply with the six federal legal criteria that must be satisfied for internships to be unpaid:

<http://wdr.doleta.gov/directives/attach/TEGL/TEGL12-09acc.pdf>

(This warning does not even contemplate the *immigration* rules, which are even more restrictive.)

Among those criteria are that the

- internship should be similar to the training given in an academic institution,

-intern does not displace regular paid workers and

-employer "derives no immediate advantage" from the intern's activities. In other words, it's largely a benevolent contribution to the intern. (See <http://www.nytimes.com/2010/04/03/business/03intern.html> "The Unpaid Intern-Legal or Not?" for the full release.)

Subcontracting a paid intern does not magically change things. With the U.S. government and state officials aggressively pursuing employers who do not correctly classify employees and independent contractors, the issue of "who is legitimately an independent contractor" takes on renewed significance. Properly classifying individuals as independent contractors is not easy. It involves a myriad of tests and rules. If the person is not a U.S. citizen, add another layer of special immigration I-9 subcontractor rules.

Student interns and other volunteers are not exempt from scrutiny. As more employers use volunteers and unpaid interns, few employers are aware that federal and state laws restrict an employer's ability to retain such individuals without paying them minimum wage. (Remember, the involuntary servitude section of the Fourteenth Amendment of our Constitution bars slavery!)

Something about volunteers is very important to the immigration authorities: even if the offer is legal, they will be very suspicious. You must be very careful to convince immigration that you will not pay the volunteer in any indirect way, e.g.: "retroactive" pay increases, remuneration masked as expenses, paid in Canada for U.S. services, stock options, etc.

I can help you with the immigration part of the following situations.

Independent Contractor Issues--Risks and Liabilities of Misclassifying Individuals as Independent Contractors:

-Questions the government agencies ask during an audit

-"Red flags" the government looks for?

-Key tests and factors in determining independent contractor status.

-Elements included in an independent contractor agreement?

Volunteer/Unpaid Intern Issues:

-What are the risks of utilizing volunteers and unpaid interns who may not be eligible for unpaid status? Both employer and employee can be at risk.

-Will immigration let you pay expenses?

-Are the rules different for "non-profit" organizations versus "for-profit" businesses?

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I offer this privately circulated e-mail to:

- my clients;
- U.S. employers hiring Canadians;

- Canadians working or conducting business in the U.S.; and
- professionals, such as lawyers and accountants, serving these people.

This "required reading" for my clients reveals in plain English what is happening at the border now. It does not just repeat the law. The information is simple and easy to follow, with plain text, minimal markup and no pictures.

Here you will find stories not reported in the media. Of course, it is not legal advice; I only become your lawyer once you retain me in writing:
<http://www.grasmick.com/hireus.htm>

For questions or comments or to share border experiences, write me at jgrasmick@grasmick.com . Kindly put "Border Report" in the subject line so I can prioritize your message.

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