RECENT SECOND CIRCUIT CASE REQUIRES NOTICE OF REVOCATION OF I-140 TO PARTIES THAT ARE AFFECTED:

In a breakthrough decision issued at the end of 2015, the U.S. Court of Appeals for the Second Circuit, which sits in New York City, ruled that U.S. Citizenship and Immigration Services (USCIS) must provide notice of its intent to revoke an immigrant visa petition to those who *actually* will be affected by the revocation. In the context of an employment-based visa petition, this includes providing notice to the employee who moved to a new job or the new employer. This decision is an important step toward ensuring a fair process for employers and employees, and it is crucial that USCIS implement the decision nationwide.

In the particular case at issue, *Mantena v. Johnson*, the employee had submitted an adjustment of status application based on an approved visa petition. She subsequently moved to a new job with a different employer, as permitted under the immigration laws. USCIS decided to revoke the underlying visa petition approval, but it sent notice of its intent to do so only to the original employer, who may not have received it and by that time had no interest in the employee. Neither the employee nor her new employer learned of the revocation until much later, when USCIS denied her adjustment application because the visa petition had been revoked. USCIS refused the employees attempts to reopen the visa revocation decision.

The employee filed a lawsuit, challenging the government's failure to give the notice. The lower court dismissed the case, and the employee appealed. The appeals court reversed. Its decision emphasized that this case illustrates the importance of notifying affected parties of material changes in their proceedings and of giving them an opportunity to respond" particularly in immigration proceedings where there is a multi-step administrative process.

The court specifically rejected USCIS argument that, under the regulations, a beneficiary is not entitled to notice and is not considered an affected party in a visa petition proceeding. Instead, the court determined that these regulations, which pre-date the statutory porting provision, must be read to require notice to the real parties in interest. The court sent the case back to the lower court to determine which affected party "the beneficiary who ported or the new employer" is entitled to notice.

Because this case was resolved by the Second Circuit Court of Appeals, the decision is binding only in the Second Circuit, which includes New York, Connecticut and Vermont. But there is no reason for USCIS to limit the decisions implementation. Far too often, the immigration agencies apply overly technical rules that lack common sense and that fail to provide a fair process to those trying to navigate a highly complicated system. Now, a court has given USCIS a road map for a rational approach to one aspect of its decision making process. One can hope USCIS follows it.

For information about I-140 portability or the impact of the aforementioned case on your immigration status, please feel free to contact any of the immigration law attorneys and/or professionals at the Nachman Phulwani Zimovcak (NPZ) Law Group by e-mail at info@visaserve.com or by phone at 201-670-0006 (x107). We are immigration and nationality law professionals in NY, NJ, IN, and OH and we would be more than happy to assist you and

your HR staff with regard to immigration and nationality law compliance either in the U.S. or internationally.