IMMIGRATION and THE HORSERACING INDUSTRY

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RECENT IMMIGRATION CHANGES AFFECTING HORSEMEN

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Consideration of Deferred Action for Childhood Arrivals (DACA)

USCIS will begin to accept requests for consideration of expanded DACA on February 18, 2015.

DACA entitles an individual to deferred action for three years with eligibility for work authorization and permission to travel abroad in certain circumstances.

As of February 18, 2015 an Individual Qualifies for DACA if:

1. Came to the United States before reaching your 16th birthday;
2. Continuously resided in the United States since January 1, 2010 up to the present time;
3. Have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or "be in school" on the date that you submit your deferred action application. Be In School means:
    a. a public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or homeschool program that meets state requirements;
    b. an education, literacy, or career-training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment, and where you are working toward such placement; or
    c. an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent state-authorized exam.

1. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

A misdemeanor is a crime for which the maximum term of imprisonment is one year or less but more than five days. A single "significant misdemeanor" will make you ineligible for DACA. DHS considers the following to be "significant misdemeanors":

- An offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; driving under the influence (these offenses are considered "significant misdemeanors" regardless of the length of the sentence that is imposed).
- For offenses not listed above, a "significant misdemeanor" is one for which you were sentenced to more than 90 days in custody. This does not include a suspended sentence.

Consideration of Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA)

USCIS will begin to accept requests for consideration of DAPA in Mid-May 2015.

DAPA entitles an individual to deferred action for three years with eligibility for work authorization and permission to travel abroad in certain circumstances.

As of Mid-May, 2015 an Individual who Qualifies may apply for DAPA if they are:

- The parent of a U.S. citizen or lawful permanent resident.
- Have continuously lived in the U.S. since January 1, 2010.
- Have been present in the U.S. on November 20, 2014, and currently present in the U.S. until filing for DAPA.
- Not in lawful immigration status on November 20, 2014.

To meet this requirement, (1) they must have entered the U.S. without papers, or, if entered lawfully, their lawful immigration status had expired before November 20, 2014; and

(2 are not holding lawful immigration status at the time of application for DAPA.

- Have not been convicted of certain criminal offenses, including any felonies and some misdemeanors.

Expansion Of Provisional Waivers Of Unlawful Presence

Currently, only spouses and minor children of U.S. citizens are allowed to apply to obtain a provisional waiver if a visa is available

- Expands the provisional waiver program announced in 2013 by allowing:

a. the spouses of lawful permanent residents;
b. sons and daughters of lawful permanent residents;
c. and the sons and daughters of U.S. citizens to get a waiver if a visa is available.

- Clarifies the meaning of the “extreme hardship” standard that must be met to obtain a waiver.

Beginning March 4, 2013, certain immigrant visa applicants were allowed to apply for provisional unlawful presence waivers before they left the United States.

The provisional unlawful presence waiver process allows individuals, who only need a waiver of inadmissibility for unlawful presence, to apply for a waiver in the United States and before they depart for their immigrant visa interviews at a U.S. embassy or consulate abroad.

The new process was designed to shorten the time U.S. citizens are separated from their immediate relatives while those family members are obtaining immigrant visas to become lawful permanent residents of the United States.

Under previous law, immediate relatives of U.S. citizens who were not eligible to adjust status in the United States had to travel abroad and obtain an immigrant visa.

Individuals who accrued more than 180 days of unlawful presence while in the United States had to obtain a waiver of inadmissibility to overcome the three and ten year unlawful presence bars before they could return to the United States.

Immediate relatives of U.S. citizens who are eligible for the expanded provisional unlawful presence waiver choose to apply for a waiver using the existing process by filing a Form I-601, Application for Waiver of Grounds of Inadmissibility.

Eligibility Requirements

To be eligible for the expanded provisional unlawful presence waiver applicant must fulfill ALL of the following conditions:

1. Be 17 years of age or older.
2. Be an immediate relative of a U.S. citizen or spouse or son or daughter of Lawful U.S. Permanent Resident permanent resident.
   An immediate relative is an individual who is the spouse, child (unmarried and under 21), or parent of a U.S. citizen.
3. Have an approved Form I-130, Petition for Alien Relative;
4. Have a pending immigrant visa case with DOS for the approved immediate relative petition and have paid the DOS immigrant visa processing fee (IV Fee).
5. Be physically present in the United States to file your application for a provisional unlawful presence waiver and provide biometrics.

Be able to demonstrate that refusal of your admission to the United States will cause extreme hardship to your U.S. citizen spouse or parent or USLPR spouse, son or daughter.

There is no clear definition of "extreme hardship" codified in the law, and the courts have struggled to find how difficult of a hardship would truly be considered to be an "extreme hardship." This has led to very inconsistent adjudications by USCIS. One officer may believe one said of circumstances might not meet the standard, while another officer firmly believes that extreme hardship is established.

Here is a quote from BIA (Board of Immigration Appeals) rejecting appeal of a waiver:

"U.S. court decisions have repeatedly held **that the common results of deportation or exclusion are insufficient to prove extreme hardship.**

A 1996 Court ruled that **emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.**

The Court held further that **the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.** The AAO recognizes that the applicant's spouse and/or children would likely endure hardship as a result of separation from the applicant.

On November 20, 2014, related to the President's executive order on administrative immigration reforms, Homeland Security Secretary Jeh Johnson issued a memorandum directing USCIS to issue guidance on the definition of "extreme hardship."

I-9 SECTION ONE

- Section 1 must be completed by the **employee**. The employee attests that they are eligible to work in the United States and fall into one of four employment eligible classifications.
- 1. U.S. CITIZEN
- 2. NON-CITIZEN NATIONAL OF U.S.
- 3. LAWFUL PERMANET REISDENT
- 4. NON-U.S. CITIZEN/NON-LPR TAEMPORARILY AUTHORIZED TO WORK

I-9 Section Two

- Section II is completed by the **EMPLOYER.**
- Section II is completed only after the employer has **personally examined documents** specifically listed on the I-9 material, *which establishes an individual's eligibility to work in the United States.*
- *In examining documents, the employer m*ust determine the information identifies the employee who is presenting the documents.
- The documents must be original and **REASONABLY APPEAR TO BE GENUINE.**
- The employer's examination should also confirm the documents offered by the employee to support their eligibility to work in the United States have not expired.

Unlawful Discrimination

- The anti-discrimination provision of the Act, as amended, prohibits four types of unlawful conduct:

(1) citizenship or immigration status discrimination;

(2) national origin discrimination;

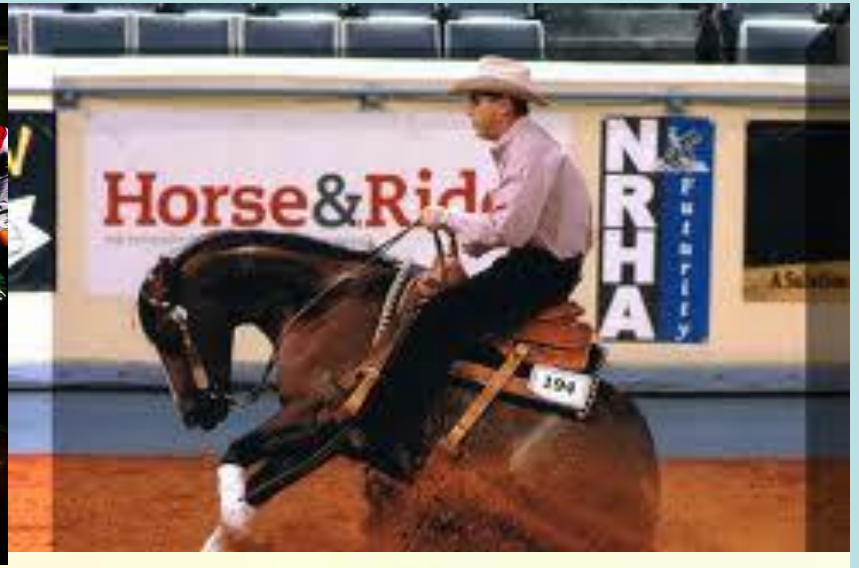
(3) unfair documentary practices during the Form I-9 process (document abuse);

(4) retaliation.

I-9 AUDIT

1. **Requires three days' advance notice in writing** – Even if the audit is part of a DOL drop in inspection.
2. **Always request 3 days notice** before showing anyone the I-9s, whether the request comes from ICE, DOL, or OSC (Office of the Special Counsel for Immigration-Related Unfair Employment Practices).
3. **Never back date an I-9 to the date of hire!**
4. Don't allow documents to be removed from your property **without making copies,** and don't turn over more documents than the law requires.
5. Nothing in the law requires **you to give ICE original I-9 forms or to make photocopies of I-9 forms**.

VISAS FOR ATHLETES



Eligibility Criteria

- P-1 visa applies to internationally recognized athletes of international renown – such as horse jockeys/ horse riders. In the case of athletes, a P-1 visa lasts up to **five years** with the option of extending it for another five years.

Required evidence includes **two** of the following:

- Evidence of the applicant's participation in a previous season in a **major US sport**.
- Participation in the sport at an **international level**.
- A statement form the **sport's governing body**, or from a **member of the sports media or expert**, relating to the international renown of the candidate.
- Evidence of **awards or merits** in the sport at a significant level.
- Evidence of **ranking** in the sport if applicable.

P-1S FOR SUPPORT PERSONNEL

- A P-1 Visa Holder may bring **ESSENTIAL SUPPORT PERSONNEL** who have demonstrated the following:
  - An **advisory opinion** from a relevant labour organisation;
  - A statement describing the support personnel's **PRIOR essentiality, critical skills and experience with the principal P-1 holder**;
  - **Contract** or **summary of the terms of the oral agreement** between the P-1 and P-1S Essential Support Personnel.

P-1S

- Each P-1 Horse Jockey can obtain up to 5 P-1S Support Personnel (Professional Jockey/ Rider Support)

Dependents

- P-1 Athletes and P-1S Support Personnel Professionals may request admission for their **spouses and children** in **P-4 status**.
- Dependents may enter upon showing proof of immediate relation and admissibility to principal.
- Dependents **may not engage in employment**
- Dependents **may attend school or colleg**

THE H-2B PROCESS

- The H-2b is a temporary visa generally for non-professional workers. There are 66,000 H-2B visas issued per year for the entire United States. The quota has been reached the past three years.
- **TIMELINE – *START EARLY!* You may file as early as 120 days prior to need!!- It will take every bit of the 120 days to get your people here.**

STEP ONE:

- **ESTABLISH TEMPORARY NEED**
- The Immigration and Nationality Act (INA) provides for a temporary visa to be issued to meet the need of an American employer in one of four temporary circumstances:
  - Seasonal
    Peakload
    Intermittent
    One-time occurrence

- For the Horse Racing Industry the predominant business cycle is **peak load** – meaning that the business has a year round operation, but for 10 months or less during the year the need for supplemental labor peaks.
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  For practical purposes, Immigration has ruled that any need lasting longer than **ten continuous months** is not temporary and therefore does not qualify for approval under the temporary H-2b visa.

- Peakload Need. The petitioner must establish that (1) it permanently employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand, and (2) the temporary additions to staff will not become a part of the petitioner's regular operation;
- Must have a year round staff of permanent hires and at least two months of the year when the employer does not need any temporary workers.
- Each petition relates only to the specific location and occupation.

EVIDENCE REQUIRED TO ESTABLISH TEMPORARY NEED

- An employer must show that its need is not year round. The employer must establish its temporary need through a letter explaining its **temporary need, a meet schedule and a data chart that gives at least the prior twelve (12) month's staffing, payroll and hours billed data divided into temporary and permanent workers**. Each petition relates only to the specific location and occupation.

- Once the temporary nature of the position is defined and established through evidence which will follow shortly, the employer begins the **"labor certification" process.**

Designated Occupation: GROOM
Payroll Reporting Period: Calendar Year 2007

Month	Permanent Employment			Temporary Employment			[redacted]
	Total Workers	Total Hours Worked	Total Earnings Received	Total Workers	Total Hours Worked	Total Earnings Received	
January	2	320	$3,200.00	0	0	0	
February	2	320	$3,200.00	0	0	0	
March	2	320	$3,200.00	6	960	$9,600.00	
April	2	320	$3,200.00	6	960	$9,600.00	
May	2	320	$3,200.00	6	960	$9,600.00	
June	2	320	$3,200.00	6	960	$9,600.00	
July	2	320	$3,200.00	6	960	$9,600.00	
August	2	320	$3,200.00	6	960	$9,600.00	
September	2	320	$3,200.00	6	960	$9,600.00	
October	2	320	$3,200.00	6	960	$9,600.00	
November	2	320	$3,200.00	6	960	$9,600.00	
December	2	320	$3,200.00	0	0	0	

I certify that the information contained on this monthly payroll report is accurate and based upon the individual payroll records maintained by (Employer's Name) for Calendar Year(s) 2005 and 2006.

_____
John Smith, General Manager
Employer's Name

STEP 2:

LABOR CERTIFICATION

- Once the temporary nature of the position is defined and established through evidence which will follow shortly, the employer begins the "labor certification" process.
- Labor Certification is a term of art that refers to a procedure in which the employer works with the Department of Labor to determine whether there **are available American(s) to fill the particular position at need.**

- **NO AMERICANS ARE AVAILABLE** It is important to always remember that the H-2b visa is only an available option if no Americans are available or willing to fill the particular temporary position.

  RECRUITMENT CAMPAIGN: To establish that no American(s) are available to fill the position, the Department of Labor in the state where the employee shall work will supervise **a recruitment campaign** conducted by the employer advertising the open position(s) and will return the results of the recruitment to the DOL.

- **ADVERTISING:** Generally an employer must advertise under supervision of the state for **three (3) consecutive days** in the publication of record for the metropolitan area closest to the work location. The state DOL will refer any eligible Americans to the petitioner to interview for the job.

- **MULTIPLE EMPLOYERS - In circumstances where there are multiple employers who have identical dates and locations of need the employers can jointly advertise and conduct one unified recruitment campaign. This joint campaign allows the multiple employers to save money and time by not being required to duplicate each others efforts at advertising and interviewing the same people.**

- **ONLY EMPLOYER MAY FILE -** The USDOL takes the position that only the employer may file for an employee. Since employment is established by the entity that pays the employee and declares the employee its W-2 some HBPA's have successfully created payroll entities that acts as the employer for the Association.

STEP 3

- **USCIS I-129 PETITION** - Upon completion of a ten-day recruitment period, the state DOL will certify the procedure and ship it to USDOL for final certification. Once USDOL issues the **"labor certification,"** the employer can petition the USCIS for approval of the requested number of visas.
- **QUOTA** – There are **66,000 new H-2B** visas granted per fiscal year. If the quota is reached prior to the USCIS receiving the I-129 filed by the employer USCIS will reject the petition.
- **RETURNING WORKER** - an employer may still petition for a worker who has held H-2B status anytime in the last **three (3) years.**
- **MULTIPLE EMPLOYERS** – A **single H-2B petition** may be filed by multiple employers if the position descriptions, dates and locations of employment are identical.
- **CONSULATE** - Finally, the approved visas will be cabled to the designated US Consulate for issuance to the international workers who have been named by the US employer. **It is important that you have a knowledgeable representative in the consulate city to help your employees work their way through the confusing procedure.**

ANY QUESTIONS?

THANK YOU!