

Fox Rothschild Podcast

Featuring Immigration Chair Robert Whitehill in Pittsburgh

We are talking today with Robert Whitehill on Fox Rothschild Podcast. Bob is a partner who chairs the firm's Immigration Department, and he is frequently published on immigration topics. He recently set down his New Year's Eve musings in a post on Fox Rothschild's Immigration Update blog. Bob, good afternoon.

Robert Whitehill: Good afternoon. Thank you.

Question: *Bob, as you look back at last year, what stands out for you in regard to U.S. employers and alien workers in the area of immigration?*

Robert Whitehill: Last year, and so far this year, immigration headlines tracked the enthusiasm of possible repair of our immigration system with comprehensive immigration reform and have tracked the disappointment of Congressional failure to pass any meaningful reform. Chances are that the new year will see another run up the mountain of immigration reform, but with success limited to repairing only a part of the antiquated system we have.

Question: *Bob, could you give our listeners an update on the status of the limited quantity H-1B visa system?*

Robert Whitehill: There wasn't much good news for H-1B seekers last year. Many employers and their potential employees felt like fools around April first. The fiscal year H-1B caps were well exceeded by the number of applications that were filed, so there was a lottery to decide who would win and who would lose. The odds were about 50-50. Tens of thousands of applications were "returned to sender." The employers lost needed employees, and the employees lost the opportunity to work in the United States.

Some firms were able to provide alternative employment opportunities, but others, particularly small and start-up businesses, just lost needed talent. After the supply of H-1B visas was exhausted, employers, employees and their immigration attorneys worked to find ways to capture the otherwise lost talent and to prepare for April Fool's Day this year. If Congress could fix the fiasco which is the H-1B cap, I believe that U.S. business and in turn our nation's economy would be better off.

Question: *Bob, what are you seeing in regard to the Defense of Marriage Act?*

Robert Whitehill: When the U.S. Supreme Court struck down the Defense of Marriage Act, the U.S. Citizenship and Immigration Service responded immediately. The agency opened the door to same sex married couples to receive the same immigration benefits as opposite sex couples. Same sex married families have been and will continue to take advantage of family reunification

that is a benefit of our immigration system. The definition of “marriage” may present legal issues, but some U.S. families will be better off in the new year than they were before the Supreme Court’s decision.

***Question:** Bob, what are some of the other issues that stand out for you?*

Robert Whitehill: One of those issues is that many immigrant families were separated by removal last year. New records have been set by this administration. More than 400,000 immigrants were deported this past fiscal year. Many deportees are parents of U.S. citizen children and have U.S. citizen spouses. A majority of the removals were of individuals apprehended at the border, but those apprehended in the United States have their cases heard before an immigration judge. They are entitled to due process of law.

The immigration court system is overwhelmed with more cases than the number of immigration judges can handle. Let me quote from Judge Dana Marks, who is President of the National Association of Immigration Judges: “The volume is just overwhelming and because of the responsibility that the judges have—you have people’s lives in your hands—you have this tremendous pressure to do the right thing, with the same pressure to work as quickly as possible. And it becomes extremely grueling.” Maybe there will be more immigration judges in 2014 and maybe U.S. ICE will be more inclined to exercise its prosecutorial discretion more generously—especially to people who have U.S. citizen families and no significant criminal convictions.

***Question:** Bob, what are some of the other highlights that you observed last year?*

Robert Whitehill: There are many of them; let me just list a few. E-Verify has been upgraded and its memorandum of understanding has changed. The I-9 form has been amended. Priority dates have advanced or retrogressed, some in unexpected ways. Beneficiaries of Deferred Action for Childhood Arrivals, or DACA, continue to receive deferred action benefits, while temporary protected status (TPS) continues to provide benefits for Syrians and others in the United States. Of a more technical nature, E-2 spouses are no longer required to obtain employment authorization to remain in status. Pennsylvania now accepts Appalachian Regional Commission J-1 waivers for foreign physicians. And I could go on and on. Some of these advances are very technical, but I’ll spare you that.

***Question:** Bob, are you optimistic that more of these immigration issues will be resolved effectively in the coming year?*

Robert Whitehill: Doing what I do, I’ve got to be optimistic. Last year there were many, many other developments in immigration law. Undoubtedly this year there will be many, many more. It’s my hope that the U.S. will be better off for the vast majority of those changes. So let me wish you and our listeners cheers, and a good 2014.



Narrator: Well, thank you Bob, and cheers. Listeners, to confidentially discuss immigration challenges facing your organization in the new year, please contact Bob Whitehill at 412-394-5595 or at rwhitehill – that’s R-W-H-I-T-E-H-I-L-L – at foxrothschild.com.

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