

APRIL 2013

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *April 2013* newsletter covering immigration topics that are of interest to our clients.

Headlines:

- **1. KRSS Annual Spring Seminar is Tuesday, April 23, 2013** – Join us for our annual spring seminar. [Click for more information or to register.](#)
- **2. USCIS Releases New Two-Page I-9 Verification Form, Handbook for Employers** – Changes to the I-9 include new fields, reformatting, and revised instructions to both employees and employers.
- **3. H-1B Filing Starts April 1** – Companies should prepare to file H-1B petitions, and evaluate their anticipated hiring needs for H-1B professionals for the 12-month period beginning on October 1, 2013.
- **4. Effects of Sequestration: CBP Releases Info on Effects on Border, Traveler Programs; USCIS To Lose \$151 Million** – CBP warned that it anticipates “significant potential impacts to cross-border travel and trade,” which will increase as peak travel seasons occur.
- **5. Witnesses Argue in Favor of Skilled Immigration at House Hearing** – Judiciary Committee Chairman Bob Goodlatte (R-Va.) opened the hearing by noting, among other things, a study finding that each additional 100 immigrants with advanced STEM degrees is associated with an additional 262 jobs for U.S. natives.
- **6. USCIS Posts EB-5 Memorandum for Public Comment** – USCIS posted an updated memorandum on the EB-5 program, and is soliciting public comment.
- **7. Government Agency Links**
- **8. Klasko News** – Awards, upcoming and recent speaking engagements, and recent publications.

1. KRSS Annual Spring Seminar is Tuesday, April 23, 2013

Klasko, Rulon, Stock & Seltzer's annual Spring educational seminar "Immigration 2013: Change is in the Air" will be held on Tuesday, April 23, 2013 from 9:30 a.m. to 1:00 p.m. at the [Radisson Plaza-Warwick Hotel](#).

Topics will include:

- Legislation 2013
- USCIS Policies and Practices
- CBP Programs
- J-1 Waivers
- University/Hospital Roundtable
- Corporate Roundtable
- Employment Eligibility Verification
- Traveling Issues
- Prevailing Wage Issues
- And much more!



We invite professionals involved in employment-based immigration to attend! There is no cost for this program. [Click for more information and to register.](#)

Complimentary breakfast and lunch will be provided. We look forward to seeing you on April 23!

2. USCIS Releases New Two-Page I-9 Verification Form, Handbook for Employers

U.S. Citizenship and Immigration Services (USCIS) has released a revised Employment Eligibility Verification Form (I-9), effective March 8, 2013. All employers must complete an I-9 for each employee hired in the United States.

Changes to the I-9 include new fields, reformatting, and revised instructions to both employees and employers. Optional fields have been added for employee e-mail addresses and telephone numbers, as well as foreign passport information if applicable.

Employers should begin using the newly revised Form I-9 (Rev. 03/08/13)N for all new hires and reverifications.

Employers may continue to use previously accepted revisions [(Rev.02/02/09)N and (Rev. 08/07/09)Y] until May 7, 2013. After May 7, 2013, employers must only use the I-9 version with the revision date of (Rev. 03/08/13)N. The revision date of the I-9 is printed on the lower left corner of the form.

USCIS noted that employers should not complete a new I-9 for current employees if a properly completed I-9 is already on file.

USCIS said it is updating, and will release shortly, a new handbook for employers containing guidance for completing the I-9.

USCIS is holding numerous upcoming webinars on the I-9 form. For the full list, click [here](#).

The Department of Homeland Security has published a notice in the Federal Register about the revised I-9. The USCIS announcement is available [here](#). The Federal Register notice is available [here](#).

USCIS has also released a new M274 Handbook for Employers. It has a revision date of 3-8-13 and is available at <http://www.uscis.gov/files/form/m-274.pdf>.

3. H-1B Filing Starts April 1

Klasko Law reminds clients that H-1B filing starts April 1, 2013.

Companies should prepare to file H-1B petitions, and evaluate their anticipated hiring needs for H-1B professionals (specifically, those requiring initial H-1B visas) for the 12-month period beginning on October 1, 2013. That is the date on which new H-1B visas become available under the annual cap. Employers can file H-1B petitions no earlier than six months in advance of the anticipated start date, so April 1, 2013, signals the start of what has become an annual race to get petitions filed as early as possible to ensure acceptance before the cap of 85,000 visas is reached. The 85,000 cap includes the basic cap of 65,000, plus an additional 20,000 H-1B visas available to foreign nationals who have earned an advanced degree (master's or higher) from a U.S. university.

The H-1B cap for fiscal year 2013 was reached in June 2012. The pace of hiring this year means that the demand for new H-1B workers could result in the new cap being reached in early April. As in past years, some foreign nationals are not subject to the H-1B cap, including individuals who already have been counted toward the cap in a previous year and have not been outside the United States subsequently for one year or more. Also, certain employers, such as universities, government-funded research organizations, and some nonprofit entities are exempt from the H-1B cap. All other employers should be aware of the H-1B cap.

4. Effects of Sequestration: CBP Releases Info on Effects on Border, Traveler Programs; USCIS to Lose \$151 Million

U.S. Customs and Border Protection (CBP) has released information about the effects of "sequestration" (mandated federal budget cuts under the Budget Control Act of 2011) on traveler and border programs. CBP stands to lose \$512 million in fiscal year (FY) 2013 funds, according to the Office of Management and Budget (OMB). CBP warned that it anticipates "significant potential impacts to cross-border travel and trade," which will increase as peak travel seasons occur. The agency noted that, among other things, it will lose "up to several thousand" CBP officers at ports of entry in addition to undergoing "significant cuts" to operating budgets and programs.

CBP said that security will remain the highest priority. The agency noted that all trusted traveler and trader programs, including Global Entry, SENTRI, NEXUS, C-TPAT, and FAST, will be "maintained and emphasized."

CBP said it anticipates the following effects, among others, at ports of entry:

- Increased wait times for personal vehicles and pedestrians at land border ports of entry, with the potential of doubling of peak wait times up to several hours or more at the largest ports, leading to potential gridlock during peak travel seasons;
- Increased wait times at major international airports of up to 50 percent or more, with peak wait times of up to 3-4 hours or more at some gateway airports;
- Reduced flexibility to maintain or extend operating hours or respond to requests for new services.

CBP noted that the cuts are taking place against a backdrop of significant growth in international travel and trade. According to CBP, international air travel has increased by 12 percent over the past three years and is expected to increase an additional 5 percent this year. Also, land border passenger traffic is increasing on both the northern and southern borders.

CBP has launched a Web page to provide information and updates on the effects of sequestration on its operations, available at http://www.cbp.gov/xp/cgov/newsroom/advisories/info_seq_cbpops/.

Meanwhile, the Office of Management and Budget released a document showing FY 2013 cuts to all federal government branches and agencies resulting from sequestration. Among other things, it shows that U.S. Citizenship and Immigration Services, which is primarily funded from fee-based services, stands to lose \$151 million. U.S. Immigration and Customs Enforcement also released several thousand lower-risk detainees in anticipation of budget cuts.

A list of the Department of Homeland Security's cuts begin on page 27 of the OMB publication, "OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013." See page 7 of the OMB publication for a paragraph explaining what the numbers mean. The OMB publication is available [here](#).

5. Witnesses Argue in Favor of Skilled Immigration at House Hearing

Skilled immigration was the topic of a hearing held on March 5, 2013, by the House of Representatives Subcommittee on Immigration and Border Security. Judiciary Committee Chairman Bob Goodlatte (R-Va.) opened the hearing. Witnesses included Bruce Morrison, Chairman, Morrison Public Affairs Group (testifying on behalf of IEEE-USA [a unit of the Institute of Electrical and Electronics Engineers, Inc.]); Dean Garfield, President and CEO, Information Technology Industry Council; Deepak Kamra, General Partner, Canaan Partner; and Benjamin Johnson, Executive Director, American Immigration Council.

Rep. Goodlatte noted, among other things, that foreign-born inventors have received 76 percent of patents awarded to top U.S. patent-producing universities in cutting-edge fields like semiconductor device manufacturing, information technology, digital communications, pharmaceuticals, and optics. He cited a study finding by the American Enterprise Institute and the Partnership for a New American Economy that each additional 100 immigrants with advanced STEM (science, technology, engineering, and mathematics) degrees is associated with an additional 262 jobs for U.S. natives. The study also found, he noted, that immigrants with advanced degrees pay over \$22,000 per year in taxes on average but their families receive less than \$2,300 in government benefits.

Rep. Goodlatte lamented that despite the "outstanding track record of immigrants in founding some of our most successful companies," the United States only selects less than one percent of immigrants on the basis of

entrepreneurial talents. By contrast, he noted, Australia, the United Kingdom, and Canada each select over 60 percent of immigrants on the basis of skills and education. He recommended an approach similar to a House bill that did not pass the Senate last year. That bill would have redirected approximately 50,000 green cards from the diversity visa lottery toward foreign students graduating from U.S. universities with advanced degrees in STEM fields.

He recommended that in the new Congress, all aspects of high-skilled immigration policy should be reviewed with an eye toward improving temporary visa programs for skilled workers, such as those on H-1B and L visas; improving the E-2 temporary visa program for entrepreneurs; offering green cards to aspiring entrepreneurs "that don't demand that they themselves be rich but that instead rely on the judgment of the venture capitalists who have funded them;" reducing backlogs for second- and third-preference employment-based green cards; and seeking to help the United States retain more foreign graduates of U.S. universities.

Mr. Morrison noted that the Immigration Act of 1990 nearly tripled employment-based green cards from 54,000 to 140,000 per year, and set a permanent cap of 65,000 H-1B visas per year. He said this was to encourage employers hiring foreigners for permanent jobs to use legal permanent residence visas, putting them on a path toward citizenship. He argued in favor of providing more green cards for skilled workers and a more direct way for employers to sponsor new hires for green cards as soon as they are hired. He noted that 20 percent of IEEE-USA members are immigrants, and student chapters with a mix of native-born and foreign student members abound. He said there is a consensus among IEEE-USA membership that they do not want to be part of a system that uses temporary visas "to advantage or disadvantage some employees over others." With green cards, he said, "you do not have to write endless rules regarding portability and prevailing wages. The job market sorts all this out."

Mr. Garfield said the United States is creating technology jobs faster than we can fill them. He noted that other than a modest permanent change in 2004, the private sector has access to roughly the same number of H-1B visas as it did in 1990. He said the United States is likely to run out of the annual allotment of 65,000 H-1B visas "within weeks" of April 1, "leaving no new hiring options for FY 2014 and forcing businesses to move jobs elsewhere even when they may not want to." Mr. Garfield said his organization recommends reform that helps to fill skilled job openings while accelerating new jobs and new knowledge-driven businesses; supplementing the U.S. workforce with skilled immigration reform; and using skilled immigration reform to maximize work in the United States that could be performed elsewhere.

Mr. Kamra argued in favor of a "StartUp Visa" category. He said the H-1B visa is not a workable solution for starting a company in the United States, since entrepreneurs need to devote themselves full-time to building a new company. He recommended including criteria such as requiring entrepreneur visa candidates to receive legitimate funding and to prove subsequent job creation or company growth. Among other things, he recommended that the required first round of funding for any StartUp Visa recipient not be too high, and that ongoing monitoring of the entrepreneur's progress and milestones account for the high-risk nature of such companies.

Mr. Johnson noted that the talent we seek often comes to the United States not only through employment-based channels but also through family reunification, the admission of refugees and asylees, and even within the population of unauthorized workers. He suggested that the quest for talent is not an isolated enterprise but part of systematic immigration reform. He lamented the reductive "buzz words and myths" that fail to acknowledge the "nuanced and complex role immigration plays in American economic growth, business development, and global competitiveness" and pitting native-born workers against their foreign-born colleagues. He argued in favor of creating a "revamped and revitalized immigration system."

Mr. Johnson recommended reforms that provide job portability, labor protections and economic opportunities for both workers and their families. He said the current system is inflexible and outdated, and argued in favor of a “nimble and efficient system” that responds in real time to the needs of the market by giving employers the ability to fill positions quickly with workers who are protected from exploitation.

The witness statements are available at http://judiciary.house.gov/hearings/113th/hear_03052013.html.

6. USCIS Posts EB-5 Memorandum for Public Comment

On February 14, 2013, U.S. Citizenship and Immigration Services posted an updated memorandum on the EB-5 program, and is soliciting public comment. The updated memo makes various technical changes. Among other things, it clarifies that a material change after filing of an I-526 through admission as a conditional resident requires a new I-526, and that any approved I-526 will be revoked if such a change occurs. The memo also notes that if an immigrant investor is guaranteed the return of a portion of his or her investment, or is guaranteed a rate of return on a portion of his or her investment, then that portion of the capital is not at risk. If the investor is guaranteed the right to eventual ownership or use of a particular asset, then the value of the guaranteed ownership or use of such asset will be subtracted from the total amount of the investor’s capital contribution in determining how much money was truly placed at risk. The memo notes that nothing precludes an investor from receiving a return on his or her capital during or after the conditional residence period, so long as the return was not previously guaranteed to the investor and so long as the funds are not a return of the investor’s principal.

The memo also notes that in the case of a troubled business, job preservation is allowed in addition to, or in lieu of, job creation. In a troubled business, 10 jobs must be preserved, created, or some combination of the two. For example, an investment in a troubled business that creates four qualifying jobs and preserves all six pre-investment jobs would satisfy the statutory and regulatory requirements. “Troubled business” is defined in the memo, which quotes the regulations.

[ANNOUNCEMENT](#)

[DRAFT MEMO](#)

7. Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

[USCIS Service Center processing times online](#)

[Department of Labor processing times and information on backlogs](#)

[Department of State Visa Bulletin](#)

[Visa application wait times for any post](#)

8. Klasko News

News and Noteworthy



[H. Ronald Klasko](#) (Ron), [William A. Stock](#) (Bill) and [Suzanne Seltzer](#) have been selected by their peers for inclusion in the 2013 edition of *The Best Lawyers in America*. Selection to *Best Lawyers*® is based on an exhaustive and rigorous peer-review survey comprising more than 3.9 million confidential evaluations by the top attorneys in the country. Because no fee or purchase is allowed, inclusion in *Best Lawyers* is considered a singular honor. Congratulations Ron, Bill and Suzanne on being chosen by your fellow attorneys for inclusion in *The Best Lawyers in America*.

Upcoming Speaking Engagements

- Ron will be speaking to MBA students at the Wharton Business School on Tuesday, April 2, 2013.
- Bill will conduct an I-9 training webinar on April 4 for all of a client's human resources staff. Visit our [Worksite Compliance](#) website for more information on I-9 compliance or contact Bill to schedule a training session at wstock@klaskolaw.com.
- Ron will serve as a panelist on "Using EB-5 to Fund Your Real Estate Development," a webinar on April 9, in collaboration with the American College of Real Estate Lawyers.
- Ron will speak at Abington Memorial Hospital on April 18.

Recent Speaking Engagements



Bill was at Pennsylvania State University's Hershey Medical School on March 19 and at PSU College Park (Main Campus) on March 20 speaking to students and scholars on those campuses. Bill discussed H-1B visas, the H-1B quota, options for dealing with the H-1B quota, quota-exempt employment, strategies to enhance chances of getting H-1B, other visa options, and permanent residence status, among other topics. To review the PowerPoint for Hershey Medical, see the [event webpage](#) or click [here](#) for College Park presentation.



Ron was a featured speaker at the "Invest in America 2013 (Shanghai) Summit and Exhibition" in Shanghai, China from March 15-18, 2013. For more information on this event, click [here](#). To see photos from the exhibition, click [here](#).

Bill spoke at the AILA Midwest Regional Conference in Chicago on March 15 on “Ensuring Employer Compliance in Nonimmigrant Programs.” The panel discussion included current trends in immigration enforcement and auditing of employers sponsoring H-1B, L-1 and permanent residence for their employees, and the steps employers can take to ensure they and their workers remain in compliance.

Suzanne served as a speaker for the NAFSA sponsored webinar titled “Navigating the Nuances of Prevailing Wage Determinations” on March 13, 2013. This webinar offered strategies to address the challenges inherent in the current PWD process including ways scholar advisers, human resources professionals, and legal counsel can work together to improve the likelihood prevailing wage determinations are accurate and consistent. For more information on prevailing wage determinations, write to Suzanne at sseltzer@klaskolaw.com.



Suzanne presented “Post Student Years: Immigration Options” at Columbia University on March 1, 2013. Suzanne discussed non-immigrant status, H-1B requirements, H-1B alternatives, and permanent residency among other topics. To view the event webpage, which includes the PowerPoint and relevant articles, click [here](#).

Recent Publications

[Jacob D. Cherry](#) published “Immigration for Entrepreneurs: Perspectives, Challenges and Solutions” in the March 20, 2013 issue of *The Legal Intelligencer*. In the article, Jacob discusses recent government initiatives, as well as pending legislative and executive proposals, concerning foreign nationals who seek to start entrepreneurial ventures in the United States. Jacob also discusses the existing immigration options, and best practices, available for startup businesses. For a copy of this article, write to Jacob at jcherry@klaskolaw.com.

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