

## JULY 2010

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *July 2010* newsletter covering immigration topics that are of interest to our clients.

### Headlines:

- **1. U.S. Files Lawsuit Against Arizona Immigration Law** – The Department of Justice has filed a complaint and requested a preliminary injunction to enjoin enforcement of the law, arguing that the law is unconstitutional and will cause irreparable harm.
- **2. Department of State Publishes Consular Fee Interim Rule, Reopens Comment Period** – The Department received 1,797 comments in response to the proposed rule and has reopened the comment period for an additional 60 days, until August 27, 2010.
- **3. Decisions Not to Hire Persons Based on Need for Visa Sponsorship or Employer Submission OK, Justice Dep't Says** – Only certain classes of individuals are protected from citizenship status discrimination under the law, including U.S. citizens, U.S. nationals, temporary residents, recent lawful permanent residents, refugees, and asylees.
- **4. U.S. Embassies, Consulates in China Temporarily Open on Saturdays** – Growth in 2010 has been dramatic, with China's 2010 visa load up 28 percent over the same period last year.
- **5. U.S. Expands Appointment Scheduling for Nonimmigrant Visa Applicants in China** – Nonimmigrant visa applicants may now schedule interview appointments at any U.S. Consular Section in China, regardless of the province or city where they live.
- **6. USCIS Issues Guidance to Employers on Documentation of Work Authorization for TPS Beneficiaries** – The guidance notes, among other things, that if an employee presents a TPS-related EAD that is expired for completion of the I-9 verification process, the employer must accept it if it remains unexpired based on an auto-extension of the EAD by DHS.
- **7. USCIS Extends TPS Designation for El Salvador** – El Salvador's TPS designation has been extended through March 9, 2012.
- **8. Government Agency Links**
- **9. New Publications and Items of Interest**
- **10. Klasko News** – Award, recent speaking engagements, recent publications and more.

## 1. U.S. Files Lawsuit Against Arizona Immigration Law

The Department of Justice [challenged](#) the state of Arizona's recently passed immigration law, S.B. 1070, in federal court on July 6, 2010. The Department has requested a preliminary injunction to enjoin enforcement of the law, arguing that the law's operation will cause irreparable harm.

In a brief filed in the District of Arizona, the Department said S.B. 1070 unconstitutionally interferes with the federal government's authority to set and enforce immigration policy, explaining that "the Constitution and federal law do not permit the development of a patchwork of state and local immigration policies throughout the country." Having enacted its own immigration policy that conflicts with federal immigration law, Arizona "crossed a constitutional line."

The Department also argued that S.B. 1070 will place significant burdens on federal agencies, diverting their resources from high-priority targets. In addition, the Department expressed concerns that the law would result in the harassment and detention of foreign visitors and legal immigrants, as well as U.S. citizens, who cannot readily prove their lawful status.

In declarations filed with the brief, Arizona law enforcement officials, including the Chiefs of Police of Phoenix and Tucson, said that S.B. 1070 will hamper their ability to police their communities effectively. The chiefs said that victims of or witnesses to crimes would be less likely to contact or cooperate with law enforcement officials and that implementation of the law would require them to reassign officers from critical areas such as violent crimes, property crimes, and home invasions.

The Department said it filed the suit after extensive consultation with Arizona officials, law enforcement officers and groups, and civil rights advocates. The suit was filed on behalf of the Departments of Justice, Homeland Security, and State, which share responsibilities in administering federal immigration laws.

"Arizonans are understandably frustrated with illegal immigration, and the federal government has a responsibility to comprehensively address those concerns," Attorney General Eric Holder commented. "But diverting federal resources away from dangerous aliens such as terrorism suspects and aliens with criminal records will impact the entire country's safety. Setting immigration policy and enforcing immigration laws is a national responsibility. Seeking to address the issue through a patchwork of state laws will only create more problems than it solves."

Department of Homeland Security Secretary Janet Napolitano said that when she was governor of Arizona, with the strong support of state and local law enforcement, she vetoed several similar pieces of legislation "because they would have diverted critical law enforcement resources from the most serious threats to public safety and undermined the vital trust between local jurisdictions and the communities they serve. We are actively working with members of Congress from both parties to comprehensively reform our immigration system at the federal level." While this effort progresses, she said, the Department of Homeland Security "will continue to enforce the laws on the books by enhancing border security and removing criminal aliens from this country."

## 2. Department of State Publishes Consular Fee Interim Rule, Reopens Comment Period

In response to a previously published proposed rule and related supplementary notice, the Department of State received 1,797 comments and has reopened the comment period for an additional 60 days, until August 27, 2010. The [interim final rule](#) takes effect on July 13, 2010. Nonimmigrant visa fees, including fees for Machine-Readable Visas (MRVs) and Border Crossing Cards (BCCs), have been modified under a separate rule published in May 2010, and those modified fees are also reflected in the Schedule of Fees in the interim rule.

Among other fee changes:

- The Department is increasing the application fee for a passport book for an adult (age 16 and older) from \$55 to \$70, and increasing the passport book security surcharge from \$20 to \$40. The application fee for a passport book for a minor (under age 16) will remain at \$40.
- Instead of a single fee for processing an immigrant visa, the Department has created fees depending on the category of visa. The application fee for an employment-based visa processed on the basis of an I-140 petition will be \$720. The application fee for a family-based visa (immediate relative and preference) processed on the basis of an I-130, I-600, or I-800 petition will be \$330. Other immigrant visa applications (including for diversity visa applicants) will have a fee of \$305.
- The Department is increasing the immigrant visa security surcharge, which all applicants except those statutorily exempted must pay, from \$45 to \$74.

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## 3. Decisions Not to Hire Persons Based on Need for Visa Sponsorship or Employer Submission OK, Justice Dep't Says

Katherine A. Baldwin, Deputy Special Counsel for the Department of Justice's Civil Rights Division, noted in a recent letter that, in general, decisions not to hire individuals based solely on their need for visa sponsorship or their need for a written employer submission to U.S. Citizenship and Immigration Services, either currently or in the future, would not be actionable under the antidiscrimination provisions of U.S. immigration law. She noted that only certain classes of individuals are protected from citizenship status discrimination under the law, including U.S. citizens, U.S. nationals, temporary residents, recent lawful permanent residents, refugees, and asylees.

The letter, sent on June 29, 2010, to Angelo Paparelli, partner in the Business Immigration Group of Seyfarth Shaw LLP, is available at:

<http://www.nationofimmigrators.com/wp-content/uploads/2010/07/OSC%20Reply%20on%20Proper%20Question%20on%20Job%20Application.pdf>.

#### 4. U.S. Embassies, Consulates in China Temporarily Open on Saturdays

On June 18, 2010, the Department of State [announced](#) that the U.S. Embassy in Beijing, along with four U.S. consulates general across China, is opening on Saturdays “over the next few weeks” to accommodate thousands of Chinese travelers seeking visas to visit the U.S.

Trade, commerce, people-to-people exchanges, and tourism between China and the U.S. have grown dramatically over the past few years, the Department noted. In 2009, U.S. consulates in China issued more than 487,000 visas to Chinese travelers. Sixty-six percent were for business and tourism. Growth in 2010 has been even more dramatic, with China's 2010 visa load up 28 percent over the same period last year.

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#### 5. U.S. Expands Appointment Scheduling for Nonimmigrant Visa Applicants in China

Nonimmigrant visa applicants may now schedule interview appointments at any U.S. Consular Section in China, regardless of the province or city where they live. Consular Sections are located at the U.S. Embassy in Beijing and U.S. Consulates General in Chengdu, Guangzhou, Shanghai, and Shenyang. The U.S. Embassy in Beijing [noted](#) that although the basic application process is the same, specific times and application procedures at each visa issuing office may vary. Before applying for a visa, applicants should check each post's Web site for procedures specific to that post. In 2009, the U.S. Embassy in Beijing noted, almost half a million people received nonimmigrant visas in China.

Information about making an appointment is available at:  
[http://beijing.usembassy-china.org.cn/niv\\_appointment.html](http://beijing.usembassy-china.org.cn/niv_appointment.html).

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#### 6. USCIS Issues Guidance to Employers on Documentation of Work Authorization for TPS Beneficiaries

U.S. Citizenship and Immigration Services (USCIS) recently issued [guidance](#) on the documentation employers may accept and that temporary protected status (TPS) beneficiaries may present as evidence of employment eligibility.

The guidance notes that the expiration date on the card is usually the end of the TPS period for which the bearer last registered. When the Department of Homeland Security (DHS) extends a specific TPS country designation, it sometimes issues a Federal Register notice containing a temporary blanket automatic extension of expiring employment authorization documents (EADs) for TPS beneficiaries from that country to allow time for USCIS to issue new EADs with updated validity dates. The USCIS Web site and the Federal Register notice will describe this EAD automatic extension and will note the date when the auto-extension ends. The extension is typically for six months, but the time period may vary.

If an employee presents a TPS-related EAD that is expired for completion of the Form I-9 employment authorization verification process, the employer must accept it if it remains unexpired based on an

auto-extension of the EAD by DHS as announced in a notice published in the *Federal Register*. The card must reasonably appear to be genuine and to relate to the employee presenting it to be acceptable.

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## 7. USCIS Extends TPS Designation for El Salvador

U.S. Citizenship and Immigration Services (USCIS) [has extended](#) the designation of El Salvador for temporary protected status (TPS) for 18 months, from its current expiration date of September 9, 2010, through March 9, 2012.

The notice also sets forth procedures necessary for nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) with USCIS. Re-registration is limited to persons who previously registered for TPS under the designation of El Salvador and whose applications have been granted or remain pending. Certain nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

New EADs with a March 9, 2012, expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, USCIS said it recognizes the possibility that all re-registrants may not receive new EADs until after their current EADs expire on September 9, 2010. Accordingly, the notice automatically extends the validity of EADs issued under the TPS designation of El Salvador for six months, through March 9, 2011, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

The extension of the TPS designation is effective September 10, 2010, and will remain in effect through March 9, 2012. The 60-day re-registration period begins July 9, 2010, and will remain in effect until September 7, 2010.

A Q&A is available at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9fc4a93adb7b9210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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## 8. 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: <https://egov.uscis.gov/cris/jsps/ptimes.jsp>
- Department of Labor processing times and information on backlogs:  
<http://www.foreignlaborcert.doleta.gov/times.cfm>
- Department of State Visa Bulletin: [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

## 9. New Publications of Interest

[USCIS Ombudsman releases annual report to Congress.](#) The U.S. Citizenship and Immigration Services' (USCIS) Ombudsman, January Contreras, recently submitted the 2010 Annual Report to Congress. Challenges identified by the Ombudsman include declining receipts and revenue; antiquated technology and case management systems; employment and family green card queues; issues with requests for evidence; and other issues. The report includes recommendations to address these and other challenges.

[Characteristics of H-1B specialty occupation workers.](#) U.S. Citizenship and Immigration Services has released "Characteristics of H-1B Specialty Occupation Workers" for fiscal year (FY) 2009. Highlights of the report include:

- The number of H-1B petitions filed decreased 15 percent from 288,764 in FY 2008 to 246,647 in FY 2009.
- The number of H-1B petitions approved decreased 22 percent from 276,252 in FY 2008 to 214,271 in FY 2009.
- Approximately 48 percent of all H-1B petitions approved in FY 2009 were for workers born in India.
- Two-thirds of H-1B petitions approved in FY 2009 were for workers between the ages of 25 and 34.
- Forty-one percent of H-1B petitions approved in FY 2009 were for workers with a bachelor's degree, 40 percent had a master's degree, 13 percent had a doctorate, and 6 percent were for workers with a professional degree.
- About 41 percent of H-1B petitions approved in FY 2009 were for workers in computer-related occupations.
- The median salary of beneficiaries of approved petitions increased to \$64,000 in FY 2009, which was \$4,000 more than in FY 2008.

[Guide to InfoPass.](#) InfoPass is a free online appointment-scheduling service of U.S. Citizenship and Immigration Services (USCIS). The agency has released a guide with tips on using the service.

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## 10. Klasko News

### Noteworthy News

[Suzanne Seltzer](#) (Suzanne) was awarded the Presidential Commendation by the American Immigration Lawyers Association (AILA) in recognition of her contributions as Chair of the Vermont Service Center Liaison Committee. Congratulations!

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### New Appointments

Suzanne was recently appointed to Chair AILA's USCIS Headquarters Liaison Committee. This Committee works with the USCIS Director and Office of Public Engagement to address issues of concern and advocate on behalf of the AILA membership. Suzanne has also become a Member of AILA's InterAgency Liaison Committee. This

Committee works on cross-agency issues involving USCIS, Department of State, Customs and Border Protection, Immigration and Customs Enforcement, Executive Office of Immigration Review to address issues that affect multiple agencies. For more information on these committees, please contact Suzanne at [sseltzer@klaskolaw.com](mailto:sseltzer@klaskolaw.com).

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## Recent Speaking Engagements

On July 15, 2010, [Elise Fialkowski](#) (Elise) was a guest speaker at Lehigh University for a program hosted by the Global Village for Future Leaders of Business and Industry. The Global Village is a cross cultural program bringing together future leaders from over forty different countries. In her presentation, Elise discussed immigration laws and regulations affecting students, scholars, employees, business people, and investors. For more information on this program, e-mail Elise at [efialkowski@klaskolaw.com](mailto:efialkowski@klaskolaw.com).



KRSS attorneys participated and spoke at several sessions at the 2010 AILA Annual Conference in Washington, DC from June 30 – July 3, 2010. Elise served as a panelist on “Doing the Math: Reading Business and Financial Documents.” Suzanne discussed “Attracting, Retaining, and Promoting Legal Support Staff and Associates” while [William Stock](#) (Bill) shared his expertise in defending clients against Department of Labor enforcement actions in a panel called “Taking the Initiative: Preparing to Defend an LCA.” Meanwhile, [H. Ronald Klasko](#) (Ron) spoke about the EB-5 visa in “EB-5: Investing in America, Creating Jobs.” For more information on any of the above presentations or for copies of materials prepared in connection with these sessions, please contact the respective speakers.

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## Recent Publications



Ron’s article “Regional Center EB-5s: Goldmine or Fools Gold” was published in the July 2010 edition of the *AILA Annual Conference Handbook*. This article addresses the advantages and potential pitfalls of regional center EB-5s. Visit the articles page on [www.eb5immigration.com](http://www.eb5immigration.com) to read this publication.

“Does the EB-5 Program Belong at USCIS?” also authored by Ron, was published in the June 22, 2010 issue of *Bender’s Immigration Bulletin*. For more information regarding the EB-5 option, please contact Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).



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