

## APRIL 2007

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *April 2007* newsletter covering immigration topics that are of interest to our clients.

### Headlines:

- **1. H-1B Cap Reached on First Day** – The H-1B cap for fiscal year 2008 was reached on the first day filing was permitted, April 2, 2007; a random lottery is underway.
- **2. Reform Bills Introduced in House and Senate** – Bipartisan reform legislation is introduced in both chambers.
- **3. USCIS Reminds Applicants of New Filing Procedures Effective April 2** – Effective April 2, 2007, all Forms I-129 and I-539 are to be filed directly with the California Service Center or the Vermont Service Center, whichever is applicable.
- **4. USCIS Announces Extension of Filing Time for “O” and “P” Workers** – Employers may now file “O” and “P” nonimmigrant petitions up to one year in advance.
- **5. H-2B Cap Reached** – USCIS has received a sufficient number of petitions to reach the H-2B cap for the final six months of fiscal year 2007.
- **6. USCIS Announces Extension Stickers for Certain Honduran, Nicaraguan, Salvadoran TPS Registrants** – Certain Hondurans, Nicaraguans, and Salvadorans will have the opportunity to have an extension sticker affixed to their EAD while USCIS completes their TPS application.
- **7. New Guidance Issued on National Interest Waivers and Adjustment Applications for Physicians in Underserved Areas** – Among other things, physicians with an approved NIW petition will no longer be restricted to a specific time period in which to fulfill the medical service requirement.
- **8. New GAO Report Outlines US-VISIT Challenges** – DHS continues to face longstanding US-VISIT management challenges and future uncertainties.
- **9. Report Finds Immigrants Driving Globalization** – A new report on the future of small business finds that immigrant entrepreneurs will drive a new wave of globalization.
- **10. Resources on the Web** – Web sites provide information on the latest legislative and prosecutorial developments.
- **11. Government Agency Links**
- **12. Klasko News** - Speaking Engagements, Recent Publications, Trivia, and more.

## 1. H-1B Rush Begins and Ends

April 2, 2007, marked the start and end of the annual H-1B rush. U.S. Citizenship and Immigration Services (USCIS) announced on April 3 that it had received more than enough H-1B petitions to fill the annual quota on the very first filing day of the year. USCIS reported on April 12 that it conducted the computer-generated random selection process to determine which H-1B petitions, subject to the congressionally mandated H-1B cap for fiscal year 2008 (FY 2008), would continue to final processing. The 123,480 cap-subject petitions received on April 2 and 3 were labeled with unique numerical identifiers and selected randomly by computer. The chosen numerical identifiers were then transmitted to the appropriate service center for further processing. Applicants who submitted properly filed petitions that are accepted for adjudication will receive a receipt notice. All petitions not chosen will be returned with the fee(s) to the petitioner or their authorized representative. The total process is expected to take approximately four weeks from the selection date.

USCIS received on April 2 and 3 a total of approximately 12,989 cases requesting an exemption from the FY 2008 H-1B cap because they were filed on behalf of aliens holding a Master's degree or higher from a U.S. institution. Accordingly, the cap of 20,000 on these exempt cases remains open and USCIS continues to monitor these filings.

For the cases initially filed for premium processing, the 15-day premium processing period began on April 12, the day petitions were selected through the random selection process.

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## 2. Reform Bills Introduced in Both Chambers of Congress

Bipartisan legislation introduced in the House of Representatives on March 22, 2007, would lift the H-1B cap from the current 65,000 to 115,000, with market-based automatic increases up to 180,000. The "Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007" (H.R. 1645) also would eliminate visa limits on foreign workers with advanced U.S. degrees in science, technology, engineering, or math (STEM). Certain "extraordinary ability" workers in science and business would find it easier to obtain permanent residence ("green cards") under the legislation.

The new legislation also would establish an H-2C temporary visa, valid for three years and renewable for another three. Under the H-2C visa, employers would be required to attempt to hire U.S. workers first and would be barred from hiring new immigrant workers in areas with high unemployment rates for workers with no education beyond high school. The H-2C visa program would have an initial cap of 400,000, adjusted yearly based on market fluctuations, and would include labor rights and protections, such as visa portability and competitive wage protections.

Additionally, H.R. 1645 would create a new guest worker program under a conditional nonimmigrant visa for eligible undocumented workers and their spouses and children in the U.S., valid for six years. Such workers, if they qualify, would have the opportunity to apply for permanent residence and eventual "earned citizenship," but would have to wait at the back of the line for green cards and pay a hefty fine. Among other things, to gain earned citizenship, a worker in most cases would need to meet a "legal reentry" requirement, whereby the worker would "reboot" his or her status by leaving the U.S. and returning.

Also, the new legislation calls for an electronic work authorization verification system for employers. The bill incorporates the DREAM Act of 2007 and the AgJOBS Act of 2007. Passage of the House bill remains uncertain. An overview of the STRIVE Act from Rep. Flake's office is available at <http://flake.house.gov/UploadedFiles/STRIVE%20Overview.pdf>. The full text of the lengthy bill is available at <http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.1645.IH>.

Compete America, a coalition of corporations, educators, research institutions, and trade associations, endorsed key provisions of the House bill, including updating the employment-based green card cap and exempting key categories of professionals; creating exemptions from employment-based immigrant visa and H-1B caps for foreign students receiving an advanced degree from a U.S. university, as well as for foreign professionals who have earned advanced STEM degrees at foreign universities; updating the cap on H-1B degree holders who have a job offer to transition directly from student visa to green card. Compete America's statement is available at [http://www.competeamerica.org/news/alliance\\_pr/20070322\\_strive.html](http://www.competeamerica.org/news/alliance_pr/20070322_strive.html).

The Senate also is coming up with its version of immigration reform. Senators Kennedy and Specter are reportedly drafting immigration reform legislation along the lines of the bill passed by the Senate Judiciary Committee last spring. Senator Cornyn (R-TX) introduced on April 10, 2007, the Securing Knowledge, Innovation and Leadership (SKIL) Act of 2007 (S. 1083), which reportedly will propose reforms to address the restrictive H-1B visa cap and alleviate the employment-based green card backlogs. In addition to the SKIL Act, on April 11, 2007, Senator Hagel (R-NE) introduced legislation to temporarily increase the number of visas issued to highly skilled workers (S. 1092). Unlike the broader provisions of the SKIL Act, S. 1092 focuses more narrowly on providing immediate relief from the current H-1B crisis.

A Senate vote on immigration reform may take place in June. Senate Majority Leader Reid (D-Nev) reportedly stated that the Senate immigration debate may be slated for the last two weeks of May. Hearings are expected in the House shortly. If legislation does not pass by the end of 2007, many expect that it will be difficult to move it forward in the 2008 presidential election year.

On March 7, 2007, at a hearing before the Senate Committee on Health, Education, Labor and Pensions, Microsoft Corporation Chairman Bill Gates recommended an increase in the H-1B cap and streamlining the green card process for highly skilled workers. He lamented the current state of the U.S.'s "obsolete immigration system," recommended changes in STEM education in the U.S., and expressed concerns about the dissuasion of foreign students from studying in the U.S. due to the immigration system and new security measures. "Unfortunately, America's immigration policies are driving away the world's best and brightest precisely when we need them most," he said. Mr. Gates predicted that if current trends continue, a significant percentage of all scientists and engineers in the world will be working outside of the U.S. by 2010. Mr. Gates' testimony is available at [http://help.senate.gov/Hearings/2007\\_03\\_07/Gates.pdf](http://help.senate.gov/Hearings/2007_03_07/Gates.pdf).

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### 3. USCIS Reminds Applicants of New Filing Procedures Effective April 2

USCIS has issued a reminder to applicants that, effective Monday, April 2, 2007, all Forms I-129 (Petition for a Nonimmigrant Worker) and I-539 (Application to Change/Extend Nonimmigrant Status) are to be filed directly with the California Service Center or the Vermont Service Center, whichever is applicable. USCIS released two separate filing charts for the forms to assist applicants in determining the direct filing location for their petition or application. Applicants are responsible for filing the forms with the correct service center and should verify

that they are using the correct filing address by referring to the instructions on the relevant form. According to USCIS, the center where an applicant files a petition will generate the receipt notice and adjudicate the case.

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#### 4. USCIS Announces Extension of Filing Time for "O" and "P" Workers

USCIS is giving employers and agents more time to bring foreign workers with extraordinary abilities to the United States. The "O" nonimmigrant visa provides admission to persons with extraordinary ability in the arts, sciences, education, business, or athletics, or those persons with extraordinary achievement in motion picture or television production. The "P" nonimmigrant visa provides admission to persons who are internationally recognized as athletes or entertainers, and those who perform as artists or entertainers in culturally unique programs. Petitioners can now file "O" and "P" nonimmigrant petitions under normal processing procedures up to one year before a scheduled event, competition, or performance. Before the change, employers and agents were allowed only to file petitions six months in advance of their events. The short filing period often meant that case processing was not completed until on or after the date the individual was needed. The final rule, effective May 16, 2007, does not revise any other requirements related to the Form I-129 (Petition for a Nonimmigrant Worker) or the evidentiary standards that establish eligibility for the "O" or "P" nonimmigrant classifications.

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#### 5. H-2B Cap Reached

USCIS announced on March 23, 2007, that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the final six months of fiscal year 2007. March 16, 2007, is the "final receipt date" for new H-2B worker petitions requesting employment start dates before October 1, 2007. The final receipt date is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of FY 2007. USCIS will reject petitions for new H-2B workers seeking employment start dates before October 1, 2007, that arrived after March 16, 2007.

Petitions for both current and returning H-2B workers do not count toward the congressionally mandated biannual H-2B cap, USCIS noted. To qualify as a returning worker, the worker must have counted against the H-2B numerical cap between October 1, 2003, and September 30, 2006. USCIS said it would reject petitions received after the final receipt date that contain a combination of returning workers and workers subject to the H-2B cap. Petitioning employers will receive partial approvals for those who qualify as returning workers if otherwise approvable.

USCIS will continue to process petitions filed to:

- Extend the stay of a current H-2B worker in the U.S.;
- Change the terms of employment for current H-2B workers and extend their stay;
- Allow current H-2B workers to change or add employers and extend their stay; or
- Request eligible H-2B "returning workers."

## 6. USCIS Announces Extension Stickers for Certain Honduran, Nicaraguan, and Salvadoran TPS Re-Registrants

USCIS announced on March 9, 2007, that certain Hondurans, Nicaraguans, and Salvadorans eligible for temporary protected status (TPS) re-registration, who have an application pending with USCIS and are awaiting an employment authorization document (EAD), will receive a letter giving them the opportunity to have an extension sticker affixed to their EAD while USCIS completes their TPS application. USCIS will mail eligible TPS re-registrants a letter instructing them to proceed to a USCIS Application Support Center (ASC) to receive the short-duration extension sticker. Those who receive the sticker while USCIS continues processing their applications will receive an extension valid through June 2007 for I-9 employment authorization verification purposes. USCIS began mailing letters giving eligible re-registrants the opportunity to appear at an ASC to receive the extension sticker beginning on March 5, 2007. One can verify an applicant's continuing status and employment authorization by using the case receipt number to check USCIS Case Status Online at <https://egov.immigration.gov/cris/jsps/index.jsp>, or by calling the USCIS National Customer Service Center at 1-800-375-5283.

## 7. New Guidance Issued on National Interest Waivers and Adjustment Applications for Physicians in Underserved Areas

USCIS has established interim procedures for adjudicating national interest waiver (NIW) immigrant petitions and related adjustment of status applications filed on behalf of physicians practicing in medically underserved areas or at facilities operated by the Department of Veterans Affairs (VA), in light of the U.S. Court of Appeals for the Ninth Circuit's decision in *Schneider v. Chertoff*. Among other things, physicians with an approved NIW petition will no longer be restricted to a specific time period in which to fulfill the medical service requirement.

USCIS said it is implementing the *Schneider* decision nationwide not only to ensure immediate compliance with the decision in cases within the jurisdiction of the Ninth Circuit, but also to ensure consistent adjudication of all NIW physician cases nationwide. The interim guidance will be followed by amended regulations to give regulatory effect to the *Schneider* decision.

In addition, although not mandated by *Schneider*, USCIS is expanding the fields of medical specialty that may qualify physicians for NIWs by accepting petitions on behalf of physicians who provide "specialty care." USCIS said it will adjudicate and approve NIW petitions for physicians who work in geographic areas that are designated by the Secretary of Health and Human Services as having a shortage of medical specialists for the Physicians Scarcity Area (PSA) program.

Moreover, the Conrad State 30 Program, established to address the shortage of qualified physicians in medically underserved areas, has been extended until June 1, 2008.

The *Schneider* guidance is available at <http://www.uscis.gov/files/pressrelease/SchneiderIntrm012307.pdf>. The Conrad State 30 announcement is available at <http://www.uscis.gov/files/pressrelease/ConradExtnsn012907.pdf>.

## 8. New GAO Report Outlines US-VISIT Challenges

The U.S. Government Accountability Office (GAO) has issued a report analyzing challenges that continue to face the US-VISIT program. It noted that US-VISIT has improved the Department of Homeland Security's (DHS's) ability to process visitors and verify identities upon entry, but found that management controls in place to identify and evaluate computer and other operational problems at land ports of entry were insufficient and inconsistently administered. In addition, the GAO noted that a biometric exit capability is not yet available. It said that DHS continues to face longstanding US-VISIT management challenges and future uncertainties.

The GAO recommended that critical acquisition management processes be established and followed to ensure that program capabilities and expected mission outcomes are delivered on time and within budget. Such processes include, the GAO said, effective project planning, requirements management, contract tracking and oversight, test management, and financial management. Until these issues are addressed, the risk of US-VISIT continuing to fall short of expectations is increased, the GAO concluded. The report, "Homeland Security: US-VISIT Faces Operational, Technological, and Management Challenges" (GAO-07-632T), is available at <http://www.gao.gov/new.items/d07632t.pdf>.

## 9. Report Finds Immigrants Driving Globalization

A new report on the future of small business, authored by the Institute for the Future, finds that immigrant entrepreneurs will drive a new wave of globalization, and that U.S. immigration policy and the outcome of the current immigration debates will affect how this segment performs over the next decade.

The "Intuit Future of Small Business Report" is available at <http://www.intuit.com/futureofsmallbusiness/> (see pages 8 and 9 for information on immigrant entrepreneurs).

## 10. Resources on the Web

Roll Call and GalleryWatch have launched *CongressNow!*, an online source of legislative news. The newsletter for *CongressNow!* will appear in mid-afternoon, five days per week, and will feature news, analysis, and information on committee markups. Breaking news will be posted to [CongressNow.com](http://CongressNow.com) throughout the day and sent via e-mail alerts. These features are available by subscription at <http://www.congressnow.com/subscribe>. See [http://www.gallerywatch.com/CN\\_release\\_031907.pdf](http://www.gallerywatch.com/CN_release_031907.pdf) for more information.

GovTrack provides a hyperlinked version of the *Congressional Record* for the current session, at <http://www.govtrack.us/congress/recordindex.xpd>. Custom "monitors" of subject areas to track, such as bills in Congress, may be set up at <http://www.govtrack.us/users/aboutmonitors.xpd>.

## 11. 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 and case status online:

<https://egov.immigration.gov/cris/jsps/index.jsp>

Department of Labor processing times and information on backlogs:

<http://www.ows.doleta.gov/foreign/times.asp>

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)

## 12. Klasko News

### William A. Stock Receives Highest Rating

Klasko Partner **William A. Stock** has received an "AV" peer rating from LexisNexis Martindale-Hubbell - "the authoritative resource for the legal profession worldwide." According to Martindale, "an AV rating is a significant accomplishment - a testament to the fact that a lawyer's peers rank him/her at the highest level of professional excellence." Congratulations Bill!



### Upcoming Speaking Engagements

Klasko partner **William Stock** will address the Society for Human Resources Management (SHRM) State Legislative Conference in Harrisburg, PA, on April 25. Bill will update conference attendees on the prospects for comprehensive immigration reform legislation at the federal level. He also will address several proposed laws being considered by the Pennsylvania legislature that would add state-level regulation of employers' hiring practices to the current federal laws on hiring, and add state criminal sanctions on the employment of persons who are not legally authorized to work in the United States. For more information on this lecture topic, write to Bill at [wstock@klaskolaw.com](mailto:wstock@klaskolaw.com).



**H. Ronald Klasko** is speaking at the Pennsylvania Bar Institute Annual Employment Law Institute conference on "Employer Best Practices to Avoid Immigration Violations" in Philadelphia today, April 19. Ron also will participate and present at several American Immigration Lawyers Association (AILA) symposia next week in Washington, D.C., and New York. The AILA New York Chapter conference will be held on April 23; Ron's topic of discussion will be "PERM 101." This talk focuses on instructing other immigration lawyers on the nuances of the Department of Labor's PERM labor certification program for employer sponsorship of foreign national employers for permanent resident status. Ron also will present at numerous other speaking engagements in the coming weeks. If you would like more information on any of these talks or to find out how to arrange an on-site program at your organization, write to Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

Klasko partners **H. Ronald Klasko**, **William A. Stock**, and **Suzanne B. Seltzer** will speak at the **NAFSA: Association of International Educators Annual Conference** in **Minneapolis, MN**, from May 27 - June 1. Klasko partners will present several conference sessions to include: "H-1B Update"; "Policies and Procedures for Addressing Complicated H-1B Issues"; "Advising Foreign Nationals on International Travel"; and "Is Special Handling Really So Special?" For more information on this conference, e-mail Ron, Bill, or Suzanne or visit the NAFSA Annual Conference and Expo webpage at [http://www.nafsa.org/annual\\_conference](http://www.nafsa.org/annual_conference) to view the complete conference schedule and brochure.



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## **Recent Speaking Engagements**



**Suzanne B. Seltzer** spoke at Columbia University on April 13, on "Post-Student Years – Immigration Options." Suzanne discussed H-1B visas, alternatives to the H-1B, permanent resident status, and travel issues and solutions. For more information on these topics or to request a copy of the presentation materials, write to Suzanne at [sseltzer@klaskolaw.com](mailto:sseltzer@klaskolaw.com).

Klasko chairman **H. Ronald Klasko** spoke at the AILA Texas Chapter 2007 Spring CLE Conference held in Las Vegas, NV, April 12-13. Ron lectured at two separate sessions. He first spoke on "Myths of Extraordinary, Outstanding and Merely Exceptional," which dealt with common misunderstandings about obtaining O-1 visas and EB-1 and National Interest Waiver-based permanent residence. Ron's later presentation, "Federal Court Litigation to Remedy Agency Delays," was developed in connection with his newly released article (see **Recent Publications** below). To request a copy of either presentation, e-mail Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

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## **Recent Publications**

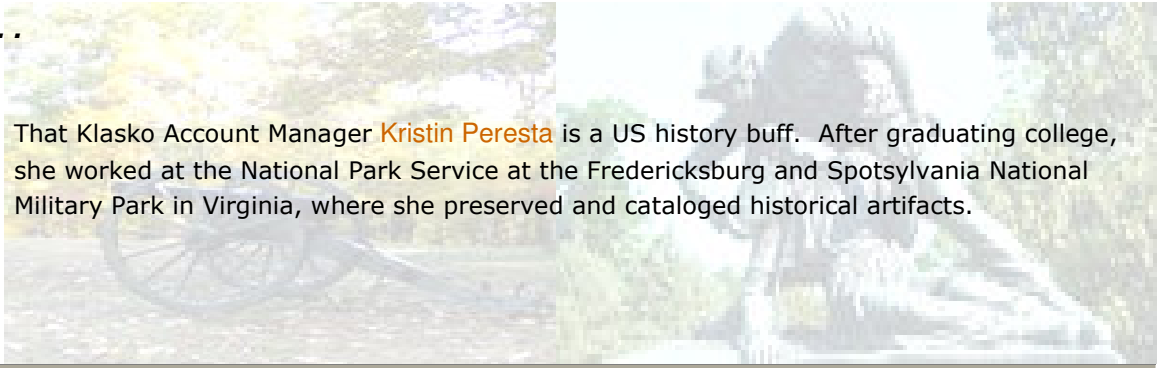
**H. Ronald Klasko** and **Geoffrey Forney**'s latest article, "Federal Court Litigation to Remedy Agency Delays," was published at the AILA Texas Chapter 2007 Spring CLE Conference. This article addresses mandamus and other federal court remedies for adjustment of status and naturalization cases delayed while awaiting security clearances. To request a copy of this publication, write to Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com) or Geoffrey at [gforney@klaskolaw.com](mailto:gforney@klaskolaw.com).

## **Klasko Trivia**

### **Did You Know. . .**



That Klasko Account Manager **Kristin Peresta** is a US history buff. After graduating college, she worked at the National Park Service at the Fredericksburg and Spotsylvania National Military Park in Virginia, where she preserved and cataloged historical artifacts.



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