

APRIL 2008

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *April 2008* newsletter covering immigration topics that are of interest to our clients.

Headlines:

- **1. FY 2009 H-1B Cap Reached and "Selection" Process Completed** – USCIS declared that as of April 7, 2008 the H-1B cap had been reached for both the 65,000 regular H-1B petitions and the 20,000 Master's or higher degree petitions and that the computer generated random selection process had been conducted on April 14, 2008.
- **2. DHS Makes Important Changes to Post-Graduation Work Authorization for International Students** – ICE issued an interim final rule on April 6, 2008 extending the period of OPT from 12 to 29 months for certain F-1 nonimmigrant students and providing "cap gap" relief for other F-1 nonimmigrants.
- **3. DHS Issues "No-Match" Supplemental Proposed Rule** – DHS seems determined to press ahead with the implementation of its proposed Rule despite concerns raised by a federal district court judge about the potential negative impact.
- **4. USCIS Issues Guidance on H-1B Specialty Occupation Licensure Requirements** – USCIS issued guidance on H-1B petitions for specialty occupations when a required professional license cannot be obtained because of state licensing requirements mandating possession of a valid immigration document.
- **5. Biometrics Required for Re-Entry Permits and Refugee Travel Documents** – The revised I-131 instructions now require applicants for re-entry permits and refugee travel documents to provide biometrics at ASCs.
- **6. PERM Data Released** – More than 85,100 PERM cases were certified during FY 2007.
- **7. WHTI-Compliant Document to Be Required for Land, Sea Travel Into the U.S.** – Effective June 1, 2009, travelers will be required to present a passport or other approved secure document denoting citizenship and identity for all land and sea travel into the U.S.
- **8. DHS Proposes Biometric Airport and Seaport Exit Procedures**
- **9. DHS Collecting Complete Set of Fingerprints at JFK Airport** – JFK is the tenth port-of-entry to begin collecting 10 fingerprints from international visitors.
- **10. New Medical Exam Form, I-693, Will Go Into Effect May 1, 2008**
- **11. Hard Times Expected at Toronto Consulate** – The consulate expects a severe staffing shortage this summer.

- **12. State Crackdowns; Other Enforcement Busts** – More states involved in immigration enforcement; DOL and ICE company raids.
- **13. New Publications and Items of Interest**
- **14. Klasko News** – Upcoming and recent speaking engagements, publications, and more.
- **15. Government Agency Links**

1. FY 2009 H-1B Cap Reached and “Selection” Process Completed

U.S. Citizenship and Immigration Services (USCIS) announced that as of April 7, 2008, it had received approximately 163,000 H-1B petitions, more than enough to use up both the entire cap of 58,200 visa numbers, plus approximately 6,100 “recaptured” numbers from this year’s Chile/ Singapore H-1B1 cap and to use up the exemption cap of 20,000 visa numbers for employees with a Master’s or higher degree from a U.S. college or university.

On April 14, 2008, USCIS conducted two random selections, first on petitions qualifying for the 20,000 “master’s or higher degree” (advanced degree) exemption, and second on the remaining advance degree petitions together with the general H-1B pool of petitions, for the 65,000 cap. Petitioners whose properly filed petitions were selected for full adjudication should receive a receipt notice dated no later than June 2, 2008. USCIS will return unselected petitions with the fee(s) to petitioners or their authorized representatives and duplicate filings will be returned without the fee. The total adjudication process is expected to take approximately eight to ten weeks. For cases selected through the random selection process and initially filed for premium processing, the 15-day premium processing period began April 14, 2008, the day of the random selection process.

USCIS has “wait-listed” some H-1B petitions, meaning they may possibly replace petitions chosen to receive an FY-2009 cap number, but that subsequently are denied, withdrawn, or otherwise found ineligible. USCIS will retain these petitions until a decision is made whether they will replace a previously selected petition. USCIS will send a letter to the wait list petitioners to inform them of their status. With respect to each of these wait-listed petitions, USCIS will either issue a receipt notice or return the petition with fees within six to eight weeks.

2. DHS Makes Important Changes to Post-Graduation Work Authorization for International Students

ICE’s April 6, 2008 interim final rule contains important changes to practical training for all F-1 students who have H-1B petitions filed on their behalf, as well as a new 29-month period of practical training available to F-1 students with a degree in designated science, technology, engineering, or mathematics fields who are employed by businesses enrolled in the E-Verify program. The rule also imposes new reporting and employment requirements for maintenance of status by F-1 students during the period of Optional Practical Training. The first change made by the rule is protection for all F-1 students granted optional training last year, if they are the beneficiary of an H-1B petition selected in this year’s H-1B “lottery.” This new regulation is meant to prevent what is known as the “cap gap”: the lapse in work authorization and, eventually, lawful status caused when a student’s grant of Optional Practical Training ends prior to October 1 of the following fiscal year. The “cap gap”

means that even F-1s whose petitions are selected for the following year's H-1Bs may have to stop working, and their employers may have to do without them, for a number of months until the effective date of the H-1B petition (October 1) is reached. The new rule addresses the "cap gap" by providing that the period of a student's F-1 status, and the duration of the work authorization granted by OPT, are extended by operation of law. The extension of employment authorization is granted to F-1 students where the following conditions are met:

- The student is the beneficiary of an H-1B petition filed before the end of the student's lawful F-1 status;
- The H-1B petition requests a change of status with an effective date of October 1 of the following fiscal year;
- The F-1 student has not violated the terms and conditions of that status; and
- The H-1B petition is not rejected, denied or revoked.

Employers should note that this extension is automatic (by operation of regulation) when the conditions are met, so that no new Employment Authorization Document is required for I-9 purposes. Similarly, this extension applies to all F-1s selected to receive an H-1B for the following fiscal year, whether the F-1 works in a science, technology, engineering or mathematics field or not. The extension of status also covers the student's spouse and children in F-2 status.

For this year's H-1B filings, the new rule was promulgated after the petitions were filed, and no duplicate petitions will be accepted. Therefore, if the H-1B petition only requested consular processing because the employer assumed that the student would not be able to maintain a nonimmigrant status until October 1, the new rule appeared not to apply to that student. However, USCIS announced on April 18, 2008 that it will allow petitioners of F-1 students whose H-1B petitions were randomly selected to receive an H-1B visa number for FY2009 following the closure of the filing period, to now request a change of status on behalf of qualified beneficiaries, if such requests are received within 30 days of the issuance of the receipt notice. To request a change of status in lieu of consular notification, petitioners (or authorized representatives) are advised to send an e-mail with the request to the USCIS service center where their petition is pending within 30 days of the issuance of the receipt notice. Special email addresses for each service center have been established specifically for this purpose and are listed below. USCIS instructs to e-mail their requests for change of status in lieu of consular notification upon receipt of the notice so it has the request before completing H-1B petition adjudication. The requests should include the receipt number and both the petitioner's and beneficiary's name, date of birth, I-94 (Arrival/Departure Record) number, and Student and Exchange Visitor Information System (SEVIS) number. Petitioners are asked not to contact the service center about requesting a change of status until after receiving the receipt notice.

E-mail addresses for requesting change of status are:

- Vermont Service Center
 - Premium Processing cases: VSCPPCAPGAP.Vscppcapgap@dhs.gov
 - Non-Premium cases: VSCNONPPCAPGAP.Vsnonppcapgap@dhs.gov
- California Service Center
 - Premium Processing cases: CSC.ppcapgap@dhs.gov
 - Non-Premium cases: CSC.nonppcapgap@dhs.gov

In the case of an F-1 student who is the beneficiary of a selected 2009 H-1B petition who has a pending request to change to a status other than H-1B but now wants to file under the process outlined above, he or she should withdraw the previously filed change in accordance with established regulations.

The second significant change made by the rule is to establish, for the first time, a requirement that foreign students maintain employment as a condition of maintaining F-1 status during the period of Optional Practical Training. Previously, the regulations had not explicitly required students to maintain employment during the period of OPT as a condition of maintaining F-1 status. The new rule provides a limited period of unemployment that will not violate the student's status, but also provides that failure to maintain employment for longer than provided in the rule is considered a violation of status. The rule also imposes a new reporting requirement on students and their schools, requiring students to report their employer and employment status to their schools during the OPT period, and requiring schools to maintain their students' SEVIS records and update ICE regarding their students through the SEVIS system.

The new rule provides that a student may not aggregate more than 90 days of unemployment during the initial 12-month period of OPT. If the student is eligible for the new OPT extension, the student may not aggregate more than 120 days of unemployment during the whole 29-month period of OPT. Because the new rule looks at unemployment in the aggregate, a student with any period of unemployment will need to be careful to avoid a future period of unemployment that would cause his or her total unemployment to exceed 90 (or 120) days. The new rule also provides enhanced reporting requirements for all F-1 students in OPT status. All students must report any change of address to their DSO, and any interruption in their employment. A student granted a 17-month extension, described below, must also report any change in employer or in the employer's address, and must make a "validation report" every six months to his or her DSO regarding his or her current employment status. Finally, the new rule changes the period within which a student may apply for OPT, returning to the pre-SEVIS rule that a student may apply for OPT within 90 days before completion of their course of study, or within 60 days after completion of studies.

One of the major policy issues presented by the H-1B cap is the unavailability of visas for individuals who graduate from US universities and colleges with degrees in Science, Technology, Engineering and Mathematics ("STEM") fields. These individuals are forced by the cap to seek employment in other countries rather than benefiting US companies. The new rule provides for a new extension of OPT for an additional 17 months for F-1 students in these fields, so long as their employer signs up for an electronic employment eligibility verification system known as "E-Verify." The new rule is meant to help close the gap for those students, and give them at least two chances to be selected in the H-1B cap "lottery" during their OPT period. In order to be eligible for a 17-month extension of OPT, the following conditions must be met:

- The student must be participating in a 12-month period of approved post-completion OPT at the time the extension is requested;
- The student must have successfully completed a degree in science, technology, engineering, or mathematics (STEM) included in the DHS STEM Designated Degree Program List from a college or university certified by the U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (note that as of the time of this newsletter, that list had not yet been published, but will be available at <http://www/ice.gov/sevis>);
- The student must be working for a U.S. employer in a job directly related to the student's major area of study;
- The student's employer must agree to report the termination or departure of the F-1 student to the student's DSO;
- The student must be working for, or have accepted an offer of employment with, an employer enrolled in U.S. Citizenship and Immigration Services' E-Verify program; and
- The student must maintain F-1 status.

Procedurally, the students eligible for this extension will need to contact their schools for an updated I-20, report their employment status, and then send an updated I-20 to USCIS with an I-765 Application for Employment Authorization and the applicable fee. Unlike most applicants for an extension of employment authorization, the new rule provides that the student's employment authorization is extended by regulation during the time that the request for a STEM extension of OPT is pending.

Students otherwise eligible for this extension should be aware that the deciding whether or not to participate in E-Verify is a significant decision for employers, who may opt not to assume the obligations of E-Verify (since they cover the whole workforce, not just the students in OPT status).

Because so few employers participate in the USCIS's voluntary "E-Verify" program, the new rule conditions the availability of OPT extension on the employer's willingness to participate in the E-Verify program for all of its employees. E-Verify is a voluntary program under which employers commit to use an electronic database to check whether the name and social security number presented by new hires match the records in the Social Security database, and whether any immigration documents presented by the employee match information contained in the Department of Homeland Security's database.

Deciding whether or not to participate in E-Verify, particularly for an employer who hires any significant number of employees, is complicated. The system provides certain advantages, but requires a significant investment in training of human resources staff and may expose the company to increased risk of discrimination charges or government audits if not implemented correctly. Further information on participation in E-Verify is available for employers from the Firm's attorneys.

3. DHS Issues "No-Match" Supplemental Proposed Rule

On March 26, 2008, the Department of Homeland Security (DHS) issued a supplemental proposed rule on procedures for employers who receive a "no-match letter" from the Social Security Administration (SSA) or a "notice of suspect document" from DHS casting doubt on the employment eligibility of the employer's workers. The previous final rule, which was published on August 15, 2007, was preliminarily enjoined by the U.S. District Court for the Northern District of California on October 10, 2007. DHS issued the new supplemental proposed rule to clarify certain aspects of the August 2007 final rule and to respond to three findings underlying the District Court's injunction. However, the supplemental proposed rule, among other things, repromulgates without change the August 2007 final rule despite concerns about its potential negative impact. The *New York Times* warned in a March 27, 2008, editorial that DHS's proposed rule, if implemented, will "throw thousands of law-abiding American workers and companies off a cliff in perilous economic times," noting that the SSA's Inspector General estimated that about 17.8 million of the agency's 435 million records contain errors that could lead to a no-match letter, and that 70 percent of those 17.8 million records belong to native-born Americans.

DHS's supplemental proposed rule addresses three findings of the district court, which questioned whether DHS had: (1) supplied a reasoned analysis to justify what the court viewed as a change in DHS's position: that a no-match letter may be sufficient, by itself, to put an employer on notice, and, thus, impart constructive knowledge, that employees referenced in the letter might not be work-authorized; (2) exceeded its authority (and encroached on the authority of the Department of Justice (DOJ)) by interpreting the antidiscrimination provisions of the Immigration Reform and Control Act of 1986; and (3) violated the Regulatory Flexibility Act by not conducting analysis of the rule's impact on small businesses.

DHS noted that although the mere receipt of an SSA no-match letter may not obligate employers to repeat the full I-9 employment verification process, employers “cannot turn a blind eye to SSA no-match letters and should perform reasonable due diligence.” The supplemental proposed rule emphasizes the idea of eliminating ambiguity and confusion regarding an employer’s responsibilities upon receipt of a no-match letter, acknowledging that previous guidance was in the form of case-by-case responses to individual queries from employers and others, resulting in a lack of uniformity and multiple interpretations by employers.

DHS reiterated that the August 2007 final rule specifies actions that can be taken by an employer that the agency will consider to be a reasonable response to receiving an SSA no-match letter or DHS letter, which “will eliminate the possibility that either letter can be used as any part of an allegation that an employer had *constructive knowledge* that it was employing an alien not authorized to work in the United States.”

In light of the District Court’s concerns about DHS’s possible encroachment upon the authority of DOJ, in the March 2008 supplemental proposed rule, DHS rescinds the statements in the preamble of the August 2007 final rule describing employers’ obligations under antidiscrimination law and discussing the potential for antidiscrimination liability faced by employers that follow the “safe-harbor” procedures set forth in the August 2007 rule. Employers seeking information regarding their antidiscrimination obligations in following the safe harbor procedures in the August 2007 final rule, as modified by the March 2008 supplemental rule, should review new guidance from the DOJ’s Office of Special Counsel for Immigration-Related Unfair Employment Practices at <http://www.usdoj.gov/crt/osc/index.html>. Employers also may seek advice on a case-by-case basis through OSC’s toll-free employer hotline at 1-800-255-8155. DOJ’s public guidance on employers’ antidiscrimination obligations will be published in a *Federal Register* notice when DHS promulgates the March 2008 supplemental proposed rule as a final rule.

DHS is proposing to further clarify two aspects of the August 2007 final rule. First, the rule instructs employers seeking safe harbor that they must “promptly” notify an affected employee after the employer has completed its internal records checks and has been unable to resolve the mismatch. After reviewing the history of the rulemaking, DHS believes that this obligation for prompt notice ordinarily would be satisfied if the employer contacts the employee within five business days after the employer has completed its internal records review.

DHS also said that the August 2007 final rule, as published and as supplemented, does not apply to any workers hired before November 6, 1986 (pursuant to IRCA) that may be listed in an SSA no-match letter.

DHS has filed an appeal to have the preliminary injunction discussed above dissolved; the agency is continuing with this simultaneous rulemaking in the meantime.

The supplemental proposed rule is available at <http://edocket.access.gpo.gov/2008/pdf/E8-6168.pdf>. A press release is available at http://www.dhs.gov/xnews/releases/pr_1206124972832.shtm.

4. USCIS Issues Guidance on H-1B Specialty Occupation Licensure Requirements

U.S. Citizenship and Immigration Services (USCIS) sent guidance to the field on March 21, 2008, updating the *Adjudicator’s Field Manual* on accepting and adjudicating H-1B petitions for specialty occupations when a required professional license cannot be obtained because of state licensing requirements mandating possession of a valid immigration document, such as an approved H-1B petition, as evidence of employment authorization before the license can be issued. USCIS noted that this situation creates a “Catch-22” adjudicative difficulty for the agency because approval of the H-1B petition may be contingent on the beneficiary’s possession of the

required license. USCIS stated that in such situations, it will allow the temporary approval of the petition provided all other requirements are met. Such an approval will not constitute authorization for the beneficiary to practice his or her profession without the required license but should be considered "merely a means to facilitate the State or local licensing authority's issuance of such a license."

USCIS instructed adjudicators to approve an H-1B petition for a one-year validity period if a state or local license to engage in the profession is required and the appropriate licensing authority will not grant the license absent evidence that the beneficiary has been granted H-1B status. As a condition to approving such a petition, USCIS stated, the beneficiary must demonstrate that he or she has filed the licensing application in accordance with state or local rules and procedures. Further, adjudicators should verify that the beneficiary is fully qualified to receive the license--meaning that all educational, training, experience, and other substantive requirements must be met at the time of filing of the petition. Where appropriate, USCIS noted, the adjudicator may issue a request for evidence.

Any petition that requests an extension of stay on behalf of a beneficiary who has been granted H-1B status under this provisional measure must show that the beneficiary has obtained the requisite license. If he or she has not obtained the license at the time the petition and extension are filed, the petition will be denied.

The memorandum is available at http://www.uscis.gov/files/pressrelease/AFM_Update_Chap31_21Mar08.pdf.

5. Biometrics Required for Re-Entry Permits and Refugee Travel Documents

U.S. Citizenship and Immigration Services (USCIS) issued revised instructions, effective March 5, 2008, for the Application for Travel Document (Form I-131). The revised instructions require applicants for re-entry permits and refugee travel documents to provide biometrics (e.g., fingerprints, photographs) at USCIS Application Support Centers (ASCs). USCIS will notify applicants of their appointments at designated ASCs after submission of the I-131 application.

The new instructions for the I-131 require that applicants for re-entry permits and refugee travel documents who are between ages 14 and 79 provide biometrics before departing from the United States. Applicants for re-entry permits and refugee travel documents who are in the United States must pay an \$80 biometrics fee or submit a fee waiver request with sufficient documentation. The \$305 I-131 application fee cannot be waived. The I-131 instructions also provide guidance for certain persons applying for refugee travel documents (not re-entry permits) who are abroad at the time of filing, on visiting a U.S. Embassy or consulate for fingerprinting.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=9c7c6a41c cf78110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

The I-131 instructions are available at <http://www.uscis.gov/files/form/I-131instr.pdf> and the form is at <http://www.uscis.gov/files/form/I-131.pdf>.

6. PERM Data Released

The Employment and Training Administration's Office of Foreign Labor Certification (OFLC) recently released FY 2007 data covering cases processed under the Permanent Labor Certification Program. Selected statistics include:

- More than 85,100 PERM cases were certified during FY 2007.
- Foreign workers representing 176 countries were certified for permanent work in the United States.
- Nearly 6 out of 10 PERM cases were certified for small employers (defined as fewer than 250 workers).
- Top states: California (20,222), New York (8,843), New Jersey (6,594), Texas (6,534), Florida (5,128).
- Top countries: India (24,573), China (6,846), Mexico (6,442), South Korea (5,159), Canada (4,837).
- Top employers: Microsoft Corporation; Cognizant Technologies; Oracle USA, Incorporated; Intel Corporation; Ernst & Young, LLP; Motorola Incorporated.

The PERM data is available at

http://www.foreignlaborcert.doleta.gov/pdf/PERM_Data_FY07_Announcement.pdf.

7. WHTI-Compliant Document to Be Required for Land, Sea Travel Into the U.S.

Effective June 1, 2009, travelers will be required to present a passport or other approved secure document denoting citizenship and identity for all land and sea travel into the United States, the Departments of Homeland Security (DHS) and State (DOS) announced. The final rule for the land and sea portion of the Western Hemisphere Travel Initiative (WHTI), announced March 27, 2008, will apply to previously exempt travelers, including citizens of the United States, Canada, and Bermuda.

DHS said it is releasing the WHTI land and sea final rule more than a year in advance of its implementation to give the public ample notice and time to obtain the WHTI-compliant documents they will need to enter or re-enter the United States on or after June 1, 2009. The agency noted that many cross-border travelers already have WHTI-compliant documents, such as a passport or a Trusted Traveler Card (NEXUS, SENTRI, and FAST), or a Washington state enhanced driver's license (EDL). DOS is already accepting applications for new passport cards and additional states, and Canadian provinces will be issuing EDLs in the next several months, all of which DHS said are options specifically designed for land and sea border use.

Beginning June 1, 2009, DHS will institute special provisions that allow school or other organized groups of children ages 18 and under who are U.S. or Canadian citizens to enter the United States with proof of citizenship alone.

Information on specific documentation requirements is available for U.S. citizens at

http://www.cbp.gov/xp/cgov/travel/vacation/ready_set_go/ and for non-U.S. citizens at

http://www.cbp.gov/xp/cgov/travel/id_visa/. The full text of the final rule is available at

http://www.dhs.gov/xlibrary/assets/whti_landseafinalrule.pdf. Questions and answers on the WHTI final rule are available at http://www.dhs.gov/xnews/releases/pr_1206635771151.shtm.

8. DHS Proposes Biometric Airport and Seaport Exit Procedures

DHS announced on April 22, 2008 a notice of proposed rulemaking that will establish biometric exit procedures at all U.S. air and sea ports of departure. The majority of non-U.S. citizens are already required to submit digital fingerprints and a digital photograph for admission into the country. The US-VISIT Exit proposal would require non-U.S. citizens who provide biometric identifiers for admission to also provide digital fingerprints when departing the country from any air or sea ports of departure.

The proposed rule would require commercial air carriers and cruise line owners and operators to collect and transmit international visitors' biometric information to DHS within 24 hours of leaving the United States. Carriers are already required to transmit biographic information to DHS for all passengers prior to their departure from the United States. The proposed rule does not designate a specific location within the port of departure for biometric collection and does not apply to small carriers or vessel owners and operators, or to general aviation.

DHS intends to implement air and sea biometric exit procedures by January 2009. If the exit program has not been implemented by June 30, 2009, DHS may not be able to extend Visa Waiver Program privileges to new countries.

The notice of proposed rulemaking will be published in the Federal Register and will provide the general public an opportunity to submit written comments electronically or by mail. Once published, comments may be submitted via:

- **Federal Rulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided.
- **Mail:** Written comments may be submitted to: US-VISIT, Attn: Air Exit NPRM, Department of Homeland Security, 1616 N. Fort Myer Drive, 18th Floor, Arlington, VA 22209.

Submissions must include the agency name and docket number DHS-2008-0039. The text of the proposed rule is available at www.dhs.gov. According to DHS, following the 60-day public comment period and review, a final rule will be published outlining the new requirements and their effective date.

9. DHS Collecting Complete Set of Fingerprints at JFK Airport

The Department of Homeland Security (DHS) announced on March 25, 2008, that it has begun collecting additional fingerprints from international visitors arriving at New York's John F. Kennedy International Airport (JFK). The change is part of DHS's upgrade from two- to ten-fingerprint collection to enhance security and facilitate legitimate travel.

On an average day at JFK, DHS noted, almost 14,400 international visitors complete biometric procedures. Visitors from Mexico, the United Kingdom, Germany, Italy, France, and Japan comprise the largest numbers of international visitors arriving at JFK.

JFK is the tenth port of entry to begin collecting ten fingerprints from international visitors. Washington Dulles International Airport began ten-fingerprint collection on November 29, 2007. Hartsfield-Jackson Atlanta International Airport, Boston Logan International Airport, Chicago O'Hare International Airport, George Bush Houston Intercontinental Airport, San Francisco International Airport, Miami International Airport, Orlando International Airport, and Detroit Metropolitan Wayne County Airport have also begun ten-fingerprint collection.

Under the US-VISIT program, the agency is evaluating ten-fingerprint collection at these airports. It will use the results to inform the deployment of the technology to the remaining air, sea, and land border ports-of-entry that will transition to collecting ten fingerprints by December 2008. The DHS announcement is available at http://www.dhs.gov/xnews/releases/pr_1206470846443.shtm.

10. New Medical Exam Form, I-693, Will Go Into Effect May 1, 2008

USCIS Service Center Operations announced that the new Medical Exam Form, I-693, will go into effect May 1, 2008, in conjunction with CDC's exam changes. The previous form edition will be accepted as long as the civil surgeon/health department's signature is dated before May 1, 2008. An additional grace period of 30 days is currently under review which would expand the date the old form would be accepted until June 1st, 2008. After that time if any old editions of the Form I-693 are submitted to USCIS, the Agency would send a request for evidence to the applicant for the correct version of the I-693.

11. Hard Times Expected at Toronto Consulate

Jeffrey S. Tunis, the Consular Chief for the U.S. Consulate in Toronto, issued a memorandum on March 5, 2008, stating that the consulate expects a severe staffing shortage this summer and noting that the facility is "solidly booked" with respect to nonimmigrant visa appointments. The consulate is taking steps to reduce its workload, including not accepting any unsolicited telephone calls. The consulate's Web site is at <http://toronto.usconsulate.gov/content/index.asp>.

12. State Crackdowns; Other Enforcement Busts

State and local authorities in several locations continued efforts to crack down on undocumented immigration. In Rhode Island, Governor Don Carcieri signed an executive order directing state police to enter into an agreement with federal immigration authorities to permit access by the police to immigration databases. Such access would give them the ability to check the immigration status of criminals, victims, witnesses, and those supplying the police with confidential tips, according to state police Major Steven O'Donnell. The prison system is expected to negotiate a similar agreement. The executive order also requires businesses and state agencies to verify the status of employees.

As of March 3, 2008, Prince William County in Virginia requires police officers to inquire about immigration status during arrests or traffic stops whenever there is probable cause to suspect that an immigration violation has occurred. The Board of County Supervisors resolution also requires verification of immigration

status by county staff before certain public services can be provided. The crackdown is expected to cost the county millions of dollars in enforcement costs and to affect tax revenues. The county has proposed a 28 percent property tax increase to make up for budget shortfalls.

In New York, senior executives of large corporations, small and midsize companies, and investment banks have expressed concerns that harsh immigration policies are threatening New York City's ability to compete with foreign cities because the people chosen for high level jobs cannot gain admission to the United States. Some officials reportedly said that they have shifted dozens of jobs to other financial capitals because of the difficulty in obtaining visas for foreign workers. Kathryn S. Wylde, president of the Partnership for New York City, said, "New York's ability to compete with London, which has much more open immigration, or with the emerging financial capitals in Asia and the Middle East, depends on mobility of talent, both in terms of new and current employees." She noted that opposing business immigration is "a 20th-century, pre-globalization mentality that thinks somehow American companies and jobs can grow if we cut ourselves off from foreign talent."

Additionally, five managers of the pallet management division of IFCO Systems North America were recently indicted on felony charges of conspiracy to harbor, encourage and induce, and transport illegal aliens. The evidence included e-mails between middle managers and their superiors. Seven middle managers had pleaded guilty to charges a year ago and promised to cooperate in the investigation. In 2006, raids were conducted on 52 IFCO workshops, which revealed problems with the Social Security numbers of half of the company's 5,800 employees. The news release announcing the indictments is available at <http://www.ice.gov/pi/news/newsreleases/articles/080228albany.htm>.

13. New Publications and Items of Interest

Multilingual resources on entry/exit procedures. US-VISIT biometric entry procedures are currently in place at 116 airports, 15 seaports, and the secondary inspection areas of 154 land ports of entry. Multilingual videos and brochures on the US-VISIT Program's entry and exit procedures are available in English, Spanish, Portuguese, Chinese, Korean, Arabic, French, German, Hebrew, Japanese, Polish, Russian, Ukrainian, Vietnamese, and Tagalog. Links to these videos and brochures are available at http://www.dhs.gov/xtrvlsec/programs/editorial_0435.shtm. A list of the current ports-of-entry under US-VISIT is available at http://www.dhs.gov/xtrvlsec/programs/editorial_0685.shtm.

Social Security Trustees report. The 2008 Report of the Social Security Trustees notes that last year, there was an estimated overall 75-year deficit of 1.95 percent of taxable payroll; this year, the shortfall is down to 1.70 percent. This translates into a benefit to the Social Security system of about \$13 billion per year, according to the *Political Animal* blog on the CBS News Web site. The main reason for the adjustment was an improvement in the methodology used to estimate taxes and benefits received from "other immigration," which is undocumented immigration.

The report is available at <http://www.ssa.gov/OACT/TR/TR08/trTOC.html>. An appendix showing figures related to estimates of net immigration is at http://www.ssa.gov/OACT/TR/TR08/VI_LR_sensitivity.html#92900. The article on *Political Animal* is available at <http://www.cbsnews.com/stories/2008/03/25/politics/animal/main3968207.shtml>.

Immigration Fact Sheets. The American Immigration Law Foundation's Immigration Policy Center has launched *Immigration OnPoint*, an online compilation of fact sheets on immigration. *OnPoint* documents "aim to confront

myths and provide timely and accurate information on a range of immigration-related topics." Materials will be added and updated on a regular basis. For more information, see <http://www.immigrationpolicy.org/onpoint>.

14. Klasko News

Annual Spring Seminar – Materials Available

At our Annual Spring Seminar entitled "Immigration Challenges: Quotas, Delays, and Enforcement" earlier this month in Philadelphia, Klasko attorneys discussed legislative updates, latest developments on the labor certification process, immigration consequences of criminal activities, ways of dealing with government adjudication delays, E-Verify and workplace enforcement concerns, among other hot immigration topics.

If you were not able to join us, all the contents of the complimentary seminar resource handbook which includes PowerPoint presentations, relevant articles and an updated extended immigration glossary is now available at www.klaskolaw.com for review and download at <http://www.klaskolaw.com/events-calendar.php?action=view&id=77>.

If you would like us to present an abbreviated version of this seminar or any program at your institution or company, please contact **H. Ronald Klasko** at rklasko@klaskolaw.com.

We would love to hear from you. If you have suggestions of topics you would like to see covered in future seminars or if you would like to share suggestions on how our resource handbook can be improved, please e-mail us at seminars@klaskolaw.com.

Upcoming Speaking Engagements



H. Ronald Klasko (Ron) will be at Temple University on May 2, 2008, speaking to international students about immigration options available to them. Visit <http://astro.temple.edu/~joanw/otheremployment.html> for more information on this program. Additionally, Ron will be a moderator of the three-part seminar series on E, L and EB-5 Visas sponsored by [ILW.com](http://www.ilw.com) in the coming weeks. If you would like more information on these talks, write to Ron at rklasko@klaskolaw.com.

Suzanne B. Seltzer will be presenting at the New York State Bar Association's (NYSBA) *Immigration Law Update 2008* conference on May 13 and 14 in New York, NY. Suzanne will be speaking on "Employment-Based Immigration Basics" and will discuss non-PERM routes, PERM routes, and pitfalls and audits. For more information on this program, e-mail Suzanne at sseltzer@klaskolaw.com or visit NYSBA's conference page at <http://www.nysba.org/AM/Template.cfm?Section=Events1&Template=/Conference/ConferenceDescByRegClass.cfm&ConferenceID=2811>.

Recent Speaking Engagements

H. Ronald Klasko (Ron) was in Sunnyvale, CA on April 24 and spoke at a Bay Area Professionals in Relocation Management (BAPRM) conference. Ron, along with other founding members of the Alliance of Business Immigration Lawyers (ABIL), presented a high-level half-day seminar for corporate HR and legal in-house professionals. Ron led a panel entitled "Hot Business Immigration Topics" and offered strategies for the winners and losers in the H-1B lottery, discussed the E-Verify program and touched upon the impact of state and local laws. For more information on this conference, visit BAPRM's website at <http://www.baprm.org/>.

Additionally, Ron was a guest speaker at Thomas Jefferson University Hospital in Philadelphia on April 16. The PowerPoint presentation Ron used in his discussion with scholars and researchers is now available on at http://www.klaskolaw.com/library/files/thomas_jefferson_university_hospital_seminar_-_immigration_options_for_scholars_and_researchers.ppt. To request an on-site program at your institution, contact Ron at rklasko@klaskolaw.com.

Elise A. Fialkowski and William A. Stock (Bill) spoke at the 14th Annual Northeast Regional Employment Law Institute on April 18. The presentation covered numerous developments in worksite enforcement including criminal sanctions, state law regulation of the employment of unauthorized workers and E-Verify, the federal government's electronic employment eligibility verification program. For more information on this presentation, contact Elise or Bill at efialkowski@klaskolaw.com or wstock@klaskolaw.com.

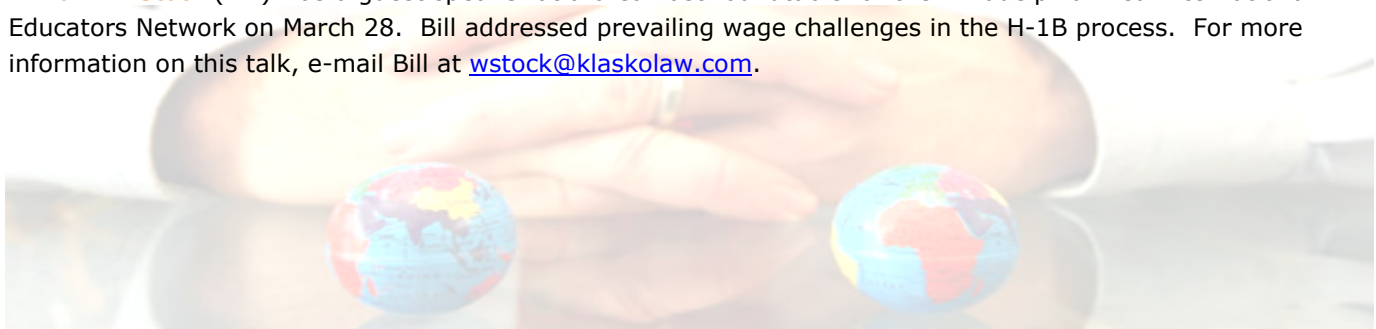


Suzanne B. Seltzer was a guest speaker at the University of Medicine and Dentistry of New Jersey (UMDNJ) on April 17. Suzanne spoke to clinicians and post-docs on current issues in H-1B visas, J-1 visas, O-1 visas, permanent residence status, and travel issues. To access the PowerPoint presentation and relevant articles for this seminar, visit the webpage for this event at <http://www.klaskolaw.com/events-calendar.php?action=view&id=90>. If you would like a similar program done at your university or hospital, contact Suzanne at sseltzer@klaskolaw.com.

Elise A. Fialkowski and Theodore J. Murphy (Ted) spoke at the Delaware Valley Chapter of the Association of Corporate Counsel ("DELVACCA") on March 27, 2008. Their presentation covered the numerous developments in the area of worksite enforcement as well as recent developments with regard to employment-based visas. If you would like more information regarding this presentation or to find out how to arrange an on-site program at your organization, write to Elise at efialkowski@klaskolaw.com.



William A. Stock (Bill) was a guest speaker at a breakfast roundtable for the Philadelphia Area International Educators Network on March 28. Bill addressed prevailing wage challenges in the H-1B process. For more information on this talk, e-mail Bill at wstock@klaskolaw.com.



Recent Publications



William A. Stock's (Bill) latest article, "Foreign Students Granted Extended Work Benefits to Limit Impact of Congressional Inaction on High-Skill Visas" was published in *The Legal Intelligencer* on April 16. In this article, Bill discusses the new Immigration and Customs Enforcement interim final rule benefiting foreign students educated in the sciences, engineering and mathematics and how visa regulations may force skilled foreign students to become U.S. exports. For more information on this topic or to request your copy of this publication, write to Bill at wstock@klaskolaw.com.

15. 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

Disclaimer/Reminder: *This newsletter does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed. Copyright © 2008 Alliance of Business Immigration Lawyers and Klasko, Rulon, Stock & Seltzer, LLP. All rights reserved.*