

AUGUST 2008

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

Headlines:

- **1. New "Exit Tax" for U.S. Citizens and Long-Term Permanent Residents** – The Heroes Earnings Assistance and Relief Tax Act (HEART Act) enacted by Congress on June 17, 2008 imposes a new "exit tax" on U.S. citizens who expatriate and long-term permanent residents who lose their permanent resident status (voluntarily or otherwise).
- **2. EB-2 Numbers for India, China Advance in September; Employment Third Preference Category are Unavailable** – The EB-2 visa category for India and China will advance in September an additional two months from June 1, 2006 to August 1, 2006.
- **3. State Dept. Releases Annual Student and Exchange Visitor Update** – The cable asks posts to have a clear procedure in place for expediting F, M, and J appointments.
- **4. USCIS Proposes Changes to Improve the H-2B Temporary Non-Agricultural Worker Program** USCIS announced on August 15, 2008 a series of proposed rule changes to streamline procedures for hiring workers under the H-2B program.
- **5. USCIS Adds Vaccines to Requirements for Permanent Residents** – USCIS revised the list of vaccines required for applicants seeking permanent resident status.
- **6. USCIS Updates Cap Info for H-1B Workers for FY 2009** – USCIS has added 5,800, the projected number of unused H-1B1 Chile/Singapore visas, to the FY 2009 H-1B cap. However, this does not necessarily mean that more H-1B visa cases can be filed for FY 2009.
- **7. USCIS Extends Validity of EADs for Refugees** – USCIS is extending the validity of initial work authorization documents for refugees to two years after arrival in the U.S.
- **8. USCIS Revises Biometric Instructions for Reentry Permits and Refugee Travel Documents** – Applicants for re-entry permits and refugee travel documents must provide biometrics (e.g., fingerprints and photographs) at a USCIS Application Support Center.
- **9. USCIS Continues Suspension of Premium Processing for Religious Workers** – USCIS said it cannot reasonably ensure a level of processing service within 15 calendar days.
- **10. Update on Current State of Affairs of PIMS and a Heads-Up to Visa Applicants on What to Expect in the Coming Months** – The Petition Information Management Service (PIMS) program is the primary source of evidence to be used by a Consular Officer in determining petition approval.

- **11. DHS Extends the Designation of Sudan for Temporary Protected Status from November 2, 2008 Through May 2, 2010** – The Secretary of DHS has determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Sudan for TPS continue to be met.
- **12. New Publications and Items of Interest**
- **13. Government Agency Links**
- **14. Klasko News** – New attorneys, upcoming and recent speaking engagements, new appointments, publications, and much more.

1. New “Exit Tax” for U.S. Citizens and Long-Term Permanent Residents

On June 17, 2008, the Heroes Earnings Assistance and Relief Tax Act (HEART Act) was enacted by Congress. This law imposes a new “exit tax” on U.S. citizens who expatriate and long-term permanent residents who lose their permanent resident status (voluntarily or otherwise). Under the new law, a covered expatriate is subject to a capital gains tax on the net unrealized gain on his or her worldwide property as if the property was sold for fair market value on the day before the expatriation date. A transfer tax also is imposed on all gifts and bequests from a covered expatriate to any U.S. person during the life of or upon the death of the expatriate.

A “covered expatriate” is a U.S. citizen who gives up U.S. citizenship or a long-term permanent resident who loses his or her permanent resident status. A long-term permanent resident is any LPR who had permanent resident status in at least eight out of the fifteen taxable years preceding the expatriation or termination of residency. A long-term permanent resident may also be treated as expatriating when he or she elects to be treated as a U.S. non-resident alien (despite LPR status) under an income tax treaty with another country.

In order to be subject to the new exit tax, the “covered expatriate” must:

1. Have a net worth of \$2 million or more on the date of expatriation;
2. Have an average annual net income tax liability for the five preceding years ending before the date of expatriation that exceeds \$139,000; or
3. Fails to certify under penalties of perjury that he or she has complied with all U.S. federal tax obligations for the preceding five years or fails to submit evidence of compliance.

The date of expatriation will normally be the date the individual swears or affirms his or her oath of renunciation in front of a consular officer or files Form I-407 terminating lawful permanent residence status. There are limited exceptions to this tax for dual citizens from birth and persons who expatriate before reaching the age of 18½. If an individual expatriated before June 17, 2008, he or she is subject to the old expatriation tax laws. A copy of the law can be found at <http://www.opencongress.org/bill/110-h6081/text>.

2. EB-2 Numbers for India, China Advance in September; Employment Third Preference Category Are Unavailable

The Department of State's Visa Bulletin for September notes that the employment-based second preference (EB-2) visa category for India and China will advance to August 1, 2006, a jump of two months. As a result of the demand for visa numbers, the employment third preference "Other Worker" category is "Unavailable" and will remain so for the remainder of FY 2008. However, an employment third preference cut-off date should be reestablished on October 1, 2008, the beginning of the new fiscal year. This cut-off date is expected to be January 1, 2003.

The Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_4310.html.

3. State Dept. Releases Annual Student and Exchange Visitor Update

The Department of State's Bureau of Consular Affairs has released the annual update of its student and exchange visitor (F, M, and J visas) issues. The cable asks posts to have a clear procedure in place for expediting F, M, and J appointments, with first-time applicants being given the highest priority. The cable also discusses summer work and travel issues, clarifies some information on Form DS-2019, and reminds posts about required annotations and the end of requirements to put DS-2019 forms in sealed envelopes. The cable also notes the changes in J-1 sponsor sanctions procedures.

The cable is available at http://travel.state.gov/visa/laws/telegrams/telegrams_4202.html.

4. USCIS Proposes Changes to Improve the H-2B Temporary Non-Agricultural Worker Program

USCIS announced on August 15, 2008 a series of proposed rule changes that will streamline procedures for hiring workers under the H-2B program. The H-2B nonimmigrant temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural temporary jobs for which U.S. workers are not available. The proposed rule will:

- Reduce from six months to three months the time H-2B workers must wait outside the United States before they are eligible to re-obtain status under the H or L classification;
- Require employer attestations on the scope of the H-2B employment and the use of recruiters to locate H-2B workers;
- Crack down on employers and recruiters who impose fees on prospective H-2B workers in connection with or as a condition of an offer of H-2B employment;
- Require an approved temporary labor certification in connection with all H-2B petitions;
- Preclude, with limited exception, the change of the employment start date after the grant of the temporary labor certification;

- Require employers to notify DHS when H-2B workers fail to show up for work, are terminated, or abscond from the worksite;
- Change the definition of “temporary employment” to provide that a job is of a temporary nature when the worker will end in the near, definable future and to eliminate the requirement that employers show “extraordinary circumstances” to be eligible to hire H-2B workers where a one-time need for the workers is longer than one year but shorter than three years;
- Prohibit the approval of H-2B petitions for nationals of countries that are determined to be consistently refusing or unreasonably delaying repatriation of their nationals; and
- Establish a land-border exit system pilot program, which requires H-2B workers admitted through a port of entry participating in the pilot H-program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

The proposed rule is available for review on the USCIS website and the USCIS will accept public comments 30 days following publication of the proposed rule in the *Federal Register*.

5. USCIS Adds Vaccines to Requirements for Permanent Residents

U.S. Citizenship and Immigration Services (USCIS) announced on July 24, 2008, a revised list of vaccines required for applicants seeking permanent resident status. This revision follows guidance from the Centers for Disease Control and Prevention (CDC).

CDC’s revised *Technical Instructions to Civil Surgeons for Vaccination Requirements* require the following age-appropriate additional vaccinations to adjust status to legal permanent resident:

- Rotavirus
- Hepatitis A
- Meningococcal
- Human papillomavirus
- Zoster

The requirements for these new vaccines went into effect on July 1, 2008; however, CDC approved a 30-day grace period for any medical exam conducted before August 1, 2008. Starting on that date, the new vaccinations, if appropriate, must be administered for USCIS to approve the applicant for adjustment of status.

USCIS has revised the Report of Medical Examination and Vaccination Record (Form I-693) to include these new vaccination requirements. The June 5, 2008 edition of the I-693 must be used for any medical examination completed on or after August 1, 2008.

USCIS’ notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=902252b10f45b110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

The CDC’s revised *Technical Instructions to Civil Surgeons for Vaccination Requirements* are available at

<http://www.cdc.gov/ncidod/dq/civil.htm>. USCIS has posted a list of frequently asked questions about the revised vaccination requirements at <http://www.uscis.gov>.

6. USCIS Updates Cap Info for H-1B Workers for FY 2009

USCIS recently noted that 6,800 visas are set aside during the fiscal year for the H-1B1 program under legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused numbers in this pool can be made available for H-1B use with start dates beginning on October 1, 2008, the start of FY 2009. USCIS has added 5,800, the projected number of unused H-1B1 Chile/Singapore visas, to the FY 2009 H-1B cap.

The addition of these unused H-1B1 visa numbers does not necessarily mean that more H-1B visa cases can be filed for FY 2009. In the past, USCIS has taken unused Chile/Singapore H-1B numbers into account in their estimates based on prior usage and has not adjusted the allocation once the final count became available.

This and related updates are available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=138b6138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=91919c7755cb9010VgnVCM10000045f3d6a1RCRD>.

7. USCIS Extends Validity of EADs for Refugees

USCIS recently announced that it is extending the validity of initial Employment Authorization Documents (EADs) for refugees to two years after arrival in the United States. Previous policy required renewal of the EAD after one year, except in certain adjustment cases that were expected to remain pending for more than one year.

USCIS said the new policy will reduce the financial burden on refugees by eliminating the need for many refugees to apply for renewal of work authorization documents before they are able to adjust status to permanent residence. There is no fee for the initial application for a refugee EAD, but applicants incur a \$340 fee for renewals.

USCIS estimated that a refugee would request, at minimum, one EAD renewal before adjustment of status if the EAD validity period were not extended to two years.

The notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f8ef93de9b21b110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

8. USCIS Revises Biometric Instructions for Reentry Permits and Refugee Travel Documents

USCIS has issued revised instructions for Form I-131, Application for Travel Document. The instructions include changes that require applicants for re-entry permits and refugee travel documents to provide biometrics (e.g., fingerprints and photographs) at a USCIS Application Support Center (ASC) for background and security checks and to meet requirements for secure travel and entry documents containing biometric identifiers.

The new instructions for the I-131 require that applicants for re-entry permits and refugee travel documents who are ages 14 through 79 provide biometrics before departing from the U.S. Applicants are strongly encouraged to apply, whenever possible, well in advance of their anticipated travel dates to allow time to attend their ASC appointments and to receive their travel documents. Shortly after filing an I-131 for a refugee travel document or a re-entry permit, USCIS will mail the applicant his or her receipt and an ASC scheduling notice. Certain overseas USCIS offices may, in their discretion, accept and adjudicate an I-131 filed for a refugee travel document (but not a re-entry permit), where the applicant has failed to apply while in the U.S. Applicants for refugee travel documents should not count on the overseas offices necessarily agreeing to accept and adjudicate an I-131 in all cases, however, particularly where it is evident to the agency that the individual could have applied while in the U.S. and attended his or her biometrics appointment.

If applicants require expedited processing, the instructions provide specific information for submitting pre-paid express mailers with the I-131 for USCIS to send the applicant his or her receipt and ASC appointment notice, as well as the completed re-entry permit or refugee travel document, if approved. A request for expedited processing should contain the applicant's reasons for such processing so that USCIS may determine whether the applicant qualifies for expedited processing.

The notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9c1161ccd20b110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

9. USCIS Continues Suspension of Premium Processing for Religious Workers

USCIS announced that the suspension of premium processing service for religious worker (R-1) nonimmigrant visa petitions will continue at least until January 7, 2009. A previous six-month suspension was announced on January 4, 2008.

The Premium Processing Service provides faster processing of certain employment-based petitions and guarantees a 15-calendar day processing time. Because of the complexities of adjudicating R-1 nonimmigrant visa petitions, USCIS said it cannot reasonably ensure a level of processing service within 15 calendar days. In the future, the agency said it may reconsider this decision if it is able to properly process these cases within 15 calendar days of receipt. USCIS may prescribe additional conditions of availability on the Premium Processing Service for religious worker petitions.

The USCIS notice is available at

<http://www.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=788bc1cacd70b110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

10. Update on Current State of Affairs of PIMS and a Heads-Up to Visa Applicants on What to Expect in the Coming Month

The Petition Information Management System (PIMS) program is the primary source of evidence to be used by Consular Officers in determining petition approval. The Consular Officer must confirm petition approval with a positive PIMS records check. PIMS is a separate report within the Consolidated Consular Database (CCD), set up by DOS to provide posts with official, inter-agency, notification of H, L, O, P, and Q classification petition approvals, as well as additional information that DOS may choose to add about a petition, the petitioner, and the beneficiary. DOS created PIMS to end consular posts' reliance on paper USCIS approval notices supplied by visa applicants, which were subject to fabrication and alternation, and to enhance fraud detection. Data is entered into PIMS primarily by the DOS' Kentucky Consular Center (KCC). The PIMS Petition Report is supposed to contain a record of all petitioners recorded by KCC as having approved petitions since 2004. Unfortunately, not all petitions approved by USCIS were "recorded by KCC." According to DOS, among those not recorded by KCC were I-129 petitions where the requested action was a change of status or extension of stay, and amended petitions.

In the case of petitions where a USCIS service center sent KCC a duplicate copy of the petition and exhibits supplied by the petitioner, the PIMS record should include a full scanned copy of all documentation sent to KCC by a USCIS service center. The results of other checks, including fraud, criminal background, and immigration history and status (including SEVIS), may also be included in the PIMS report. A post must confirm a petition approval in PIMS before issuing a visa based on that approval. Where no petition record is found in PIMS, DOS instructs posts to notify the KCC by e-mail and request verification.

When PIMS was implemented in November 2007, DOS incorrectly had assumed that USCIS service centers forwarded ALL petition approvals to the KCC, including approvals on petition amendments, petition extensions, and petitions where a change of status was requested. That was not the case – USCIS service centers only sent KCC petitions where consular notification was indicated in box 5a of Part 2 of the I-129 form.

On March 21, 2008, USCIS and DOS agreed to a process where USCIS service centers would also forward to KCC for entry into PIMS approved petitions requesting extension of stay, change of status, or petition amendment, IF the petitioner submits an originally signed duplicate petition, with all attachments and exhibits, in addition to its original application. Thus, petitioner should include an originally signed duplicate petition along with a separate cover sheet for the duplicate petition on which the petitioner should write in big bold letters "**Duplicate original – Please forward approval to KCC for entry in PIMS.**"

While the process described above has provided a solution for extension, change of status, and amended petitions filed from late March 2008 onwards, extension, change of status or amended petitions that were approved prior to late March 2008, or for which no duplicate original was filed, including petitions requesting consular notification where no duplicate original was filed, have not, as a matter of course, been sent to the KCC for scanning and entry into PIMS. Accordingly, those petition approvals may not be in PIMS at the time a visa applicant makes an appointment for his or her consular interview. As a result, visa applicants have been experiencing delays at consulates while petition verification (described below) is conducted by e-mail with the KCC.

DOS apparently has instructed all posts to implement procedures by which PIMS is checked for H, L, O, P, and Q visas before interview. Many posts have used their interview scheduling procedures to gather the petition receipt number before the visa interview. As resources are available, posts are using the information to check

PIMS before the interview, and at least begin steps to increase the chances that the verification of petition approval will be available through the Consolidated Consular Database (CCD) at the time of interview.

When a post cannot verify petition approval through PIMS, DOS cable instructs the post to take specific action. If a petition is not in PIMS at the time of a consular interview (or in advance of the interview if the post checks), the consular officer is required to e-mail KCC, which in turn will research the approval in USCIS' CLAIMS3 electronic case system and, if able to confirm approval, will make the details available through the CCD. According to DOS, these actions should be accomplished within two working days. However, given the potential for delay in the verification process, applicants should be made aware of the possibility of a range of procedural delays in visa approval and/or issuance. The chances of such a delay are increased if a visa applicant's extension, change of status, or amended petition was approved prior to late March 2008, or regardless of petition filing date, if the petitioner did not file a duplicate original with USCIS.

Since an application cannot be approved without positive approval confirmation in the CCD, the original I-797 A or B approval notice should not be required anymore at the time of the visa application interview. However, an original approval notice still may be required by CBP when applying for admission at a port-of-entry. If a post is waiting for PIMS notification to issue a visa, an applicant may not be directly informed that there is a delay related to PIMS, but rather, the applicant may be advised that the visa application is undergoing further "administrative processing," the language used by DOS when a visa is pending a security check (such as a "Condor," "Donkey," or "Mantis," etc.), or another phrase may be used. Thus, visa applicants seeking H, L, O, P, and Q visas may wish to ask at the visa interview whether the approval has been verified in PIMS. This will not do anything to speed visa issuance, but it may help to clarify why the applicant is waiting.

11. DHS Extends the Designation of Sudan for Temporary Protected Status from November 2, 2008 through May 2, 2010

The Secretary of DHS has determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Sudan for TPS continue to be met. An ongoing armed conflict and extraordinary and temporary conditions in Sudan prevent aliens who are nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) from returning in safety. The Secretary also finds that it is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. On the basis of these findings and determinations, the Secretary concludes that the designation of Sudan for TPS should be extended for an additional 18-month period. There are approximately 500 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who are eligible for TPS under this extended designation.

What actions should qualifying aliens take pursuant to this notice?

To maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who was granted TPS and who has not had TPS withdrawn must re-register for TPS during the 60-day re-registration period from August 14, 2008 until October 14, 2008. An automatic six-month EAD extension from November 3, 2008 to May 2, 2009 is available to an individual who is a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) and who has applied for and received an EAD under the designation of Sudan for TPS and has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of November 2, 2008. These EADs must also bear the notation "A-12" or "C-19" on the face of the card under "Category." To

re-register, aliens must follow the filing procedures set forth in this Notice. An addendum to this Notice provides instructions on this extension, including filing and eligibility requirements for TPS and EADs. Information concerning the extension of the designation of Sudan for TPS also will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at <http://www.uscis.gov>.

12. New Publications and Items of Interest

GAO: Improve Passport Operations. In 2007, following the implementation of new document requirements for travelers entering the U.S. from within the Western Hemisphere, the Department of State received a record number of passport applications. In June 2009 further document requirements are scheduled to go into effect and will likely lead to another surge in passport demand. In a report released in July 2008, the Government Accountability Office (GAO) examined (1) the extent to which the Department was prepared for the surge in passport demand and how its readiness affected passport operations, (2) the Department's actions to increase passport production capacity in response to the surge, and (3) the Department's readiness for near-term surges in demand and its strategy to improve passport operations.

The GAO noted that the Department was unprepared for the record number of passport applications it received in 2007, leading to significant delays. Reported wait times reached 10 to 12 weeks in the summer of 2007, more than double the normal wait, with hundreds of thousands of passports taking significantly longer. The Department had difficulty tracking individual applications and failed to effectively measure or communicate to applicants the total expected wait times, prompting many to re-apply and further straining processing capacity.

The Department took a number of emergency measures and accelerated other planned efforts to increase its passport production capacity in 2007. As a result of these efforts and the normal seasonal decline in passport applications, the GAO noted, wait times returned to normal by October 2007. According to Department estimates, these emergency measures cost \$42.8 million. Although the Department has taken steps to improve its ability to respond to near-term surges in passport demand, the GAO found that the Department lacks a comprehensive strategy to improve long-term passport operations. The GAO noted that the Department previously identified several deficiencies that limited the efficiency and effectiveness of passport operations, such as reliance on a paper-based work flow and ineffective communications. The Department identified a framework to guide its modernization efforts, but the GAO concluded that it does not have a comprehensive plan to prioritize and synchronize improvements to its passport operations. A comprehensive strategy for making these improvements would better equip the Department to handle a significantly higher workload in the future, the GAO said.

The report, "State Department: Comprehensive Strategy Needed to Improve Passport Operations" (GAO-08-891), is available at <http://www.gao.gov/new.items/d08891.pdf>.

USCIS Ombudsman 2008 Recommendations. The ombudsman for U.S. Citizenship and Immigration Services has released a chart of 2008 recommendations and activity, available at http://www.dhs.gov/xlibrary/assets/cisomb_recommendations_to_uscis_status_chart.pdf.

Article: Emphasis on Border Control Ineffective. Philip Kretsedemas, co-editor of *Keeping Out the Other: A Critical Introduction to Immigration Today* and professor of sociology at the University of Massachusetts, has written "What's Different About the Immigration Problem We Face Today – And What Can Be Done About It."

The article notes that the debate about undocumented migration still “seems to be lodged in a paradigm that is organized around border control. Although this emphasis not entirely misplaced, it also tends to produce distorted explanations of undocumented migration and ineffective strategies for controlling undocumented migration.” The article is available at <http://hnn.us/articles/49469.html>.

13. 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

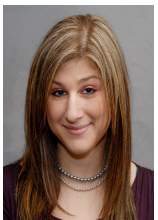
14. Klasko News

Leading Lawyers Join Firm

Klasko, Rulon, Stock & Seltzer, LLP, is pleased to announce that **Alan Seagrave**, formerly the Senior Counsel for the Immigration Law practice at Foley & Lardner LLP, and **Kate Kalmykov**, a former Associate with Greenberg Traurig, LLP, have joined the Firm.



Alan Seagrave, a Senior Associate in the Firm's Philadelphia office, focuses his practice on counseling employers on structuring operations in compliance with current immigration regulations and advising clients on the preparation and filing of all types of visa petitions, including extraordinary ability, multinational transferee, advanced degree and professional worker immigrant petitions as well as H-1B, L-1, E-1 and E-2 nonimmigrant petitions. Alan also served as Special Immigration Counsel at Buchanan Ingersoll & Rooney PC in both Miami and Philadelphia. Alan attended Nova Southeastern University Shepard Broad Law Center (J.D., *summa cum laude*, 2001). He is also a graduate of LaSalle University (M.A., 1996) and Clark University (B.A., 1976). Alan is fluent in Spanish and has been certified as a Spanish-English court interpreter by the Administrative Office of the U.S. Courts.



Kate Kalmykov, an Associate in the Firm's New York City office, focuses her practice on business immigration. She represents clients in a wide-range of employment based immigrant and non-immigrant visa matters including professionals, managers and executives, artists and entertainers, treaty investors, persons of extraordinary ability and immigrant investors. She has advised employers in the service, healthcare, pharmaceutical and technology sector regarding U.S. immigration options for personnel. Kate has extensive experience working with various human resources departments on employment verification and worksite enforcement matters including I-9 and H-1B audits. Kate has handled numerous family and naturalization based matters and has

successfully resolved security name check delays for adjustment of status and naturalization applicants through the filing of mandamus actions in federal district court. Kate received her J.D. from the American University and is admitted to practice in New York and New Jersey. A member of the American Immigration Lawyers Association, Kate is a member of the Corporate Practice and CLE committees of its New York Chapter.

Upcoming Speaking Engagements



Elise Fialkowski will be participating at Temple University's International Graduate Student orientation on Thursday, August 28, 2008. Elise will discuss the importance of compliance with immigration regulations that govern international students as well as the key role that the office of international students plays in assisting students to maintain status in this age of SEVIS and increased enforcement. Contact Elise for additional information on this talk via e-mail at efialkowski@klaskolaw.com.

Elise will be presenting at LaSalle University on September 9. She will discuss immigration options for students and scholars as well as recent developments impacting students including, for example, new optional practical training rules and regulations.

Elise will also serve as a panelist at PBI's Immigration Law Forum 2008 program on September 26. She will discuss hot topics in immigration including increased criminal enforcement by ICE against employers, their executives, human resource personnel and managers, ICE raids, E-Verify and new and proposed rules requiring its use.



Bill Stock will present "Businesses on Thin I.C.E.: Immigration Targets Small Employers for Aggressive Immigration Enforcement" on Wednesday, September 10, 2008 in King of Prussia, PA, a program sponsored by the Midatlantic Employers' Association. Bill will introduce employers to some methods and best practices they can use to protect themselves from immigration enforcement, as well as introducing the government's new tools for assisting employers to remain in compliance with immigration laws. He will also discuss the types of visas available for bringing workers into the United States to fill positions that U.S. workers are not available to fill, including seasonal and peak-load work. To register for this program, visit <http://www.meainfo.org/briefings.asp?point=display&bid=290>. For more information, contact Bill at wstock@klaskolaw.com.

H. Ronald Klasko will participate at the Educational Commission for Foreign Medical Graduate (ECFMG) Annual Conference in Philadelphia on September 23, 2008. Ron will be serving as the attorney resource throughout the program and will be featured in the "Ask the Experts" panel.

Ron will also be addressing participants at the 22nd Annual American Immigration Lawyers Association Central Florida Chapter Immigration Law Seminar in Clearwater, FL on October 3, 2008. Ron's speech entitled "Advising the Wealthy Client", will discuss choosing between E-2 and L-1 visas and individual and regional center EB-5s. Contact Ron at rklasko@klaskolaw.com for presentation materials for either of the programs.

Recent Speaking Engagements

Ron Klasko served as a co-presenter for the Alliance of Business Immigration Lawyers (ABIL) national teleconference on EB-5s on August 14, 2008. For more information on the investor visa option, contact Ron at rklasko@klaskolaw.com.



Suzanne B. Seltzer presented on a panel session entitled "Providing Civil Remedies to Human Trafficking Victims" at the American Bar Association's Annual Meeting in New York, NY from August 7-13, 2008. Human trafficking is an international, multi-billion dollar criminal industry and can seem a daunting issue to tackle. This panel of experts discussed what human trafficking is, who its victims are, and innovative civil legal responses. The presentation was sponsored by the ABA Enterprise Fund Project on Civil Legal Remedies for Human Trafficking Victims, Center for Human Rights, Commission on Immigration, ABA Center for Pro Bono, Section of Individual Rights and Responsibilities. For more information on this program, contact Suzanne at sseltzer@klaskolaw.com.

Elise Fialkowski presented at "Employment Law Update," a seminar organized by Sterling Educational Services on August 5 in Philadelphia. Elise discussed worksite enforcement issues for employers including I-9 compliance issues, SSN mismatch letters, E-Verify (including proposed regulations requiring federal contractor participation as well as the growing body of state laws requiring E-Verify), the impact of undocumented or improperly documented employees and ICE raids.

Elise also spoke at St. Joseph's University in Philadelphia on July 29 on nonimmigrant and immigrant visas, as well as legal issues that may arise in hiring and retaining foreign national personnel. For more information on either program, contact Elise via e-mail at efialkowski@klaskolaw.com.

In the News and on the Airways



H. Ronald Klasko was profiled in the International Herald Tribune and other newspapers on his federal court victory that set an important precedent on the standards for extraordinary ability. Ron's client, a prominent religious leader named "world's top public intellectual" by *Foreign Policy* magazine, had his extraordinary ability visa petition arbitrarily and capriciously denied by US Citizenship and Immigration Service. Extraordinary ability visas are reserved for a very small percentage of immigrants who have reached the top ranks in their respective fields. Ron brought an appeal of the denial in federal district court, where he successfully showed that USCIS had improperly applied its regulations in rejecting his client's immigrant visa petition. KRSS routinely handles difficult cases demanding creative solutions that have helped thousands of our clients to advance careers in the United States by qualifying as professionals, managers, immigrants of extraordinary ability or national interest, and business investors.

INTERNATIONAL
Herald Tribune
THE GLOBAL EDITION OF THE NEW YORK TIMES

New Appointments

⌘ NACUA

Ron Klasko was recently appointed to the National Association of College and University Attorneys' (NACUA) Committee on Legal Education. For more information on NACUA, visit the organization's website at <http://www.nacua.org>.

Recent Publications

Elise Fialkowski's latest article, "The ICE-Man Cometh Again - Avoiding Criminal Immigration Charges" was published in *The Legal Intelligencer* on August 21, 2008. In this article, Elise discusses new criminal enforcement tools and strategies used by Immigration Customs and Enforcement (ICE) to pursue possible worksite violations. She also identifies factors that suggest a company may at risk for an enforcement action as well as practical strategies and solutions to minimize risk and ensure compliance. To request your copy of this publication, write to Elise at efialkowski@klaskolaw.com.

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.*