

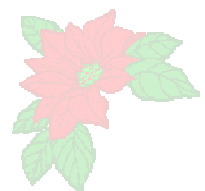
**DECEMBER 2006**



The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *December 2006* newsletter covering immigration topics that are of interest to our clients.

## Headlines:

- **1. A Message from our Chairman**
- **2. State Dept., DHS Announce New Passport Requirement for Air Travelers** - As of January 23, 2007, citizens of the U.S., Canada, Mexico, and Bermuda traveling to the U.S. by air from any part of the Western Hemisphere will be required to present a passport or other accepted document.
- **3. USCIS Expands Premium Processing to EB-1 Category** - Expedited service may now be requested for EB-1 extraordinary ability cases.
- **4. Labor Dept. Inadvertently Withdraws Labor Certification Cases, Corrects Error** - The Office of Foreign Labor Certification is identifying the affected cases and reinstating them.
- **5. SEVP Implements Five-Year Maximum Program Duration for J Professors and Research Scholars** - The new SEVIS release contains the changes necessary to raise from three to five years the maximum duration of participation for J professors and research scholars, among other effects.
- **6. 'Schedule A' Immigrant Visa Numbers Used Up** - The 50,000 visa numbers provided for Schedule A workers have become "Unavailable."
- **7. USCIS Announces Case Processing Target Times** - The agency issued recent guidance to the field outlining case processing timeframes.
- **8. USCIS Revamps Web Site, Moves Many Pages** - Readers may want to update their bookmarks.
- **9. Many Venture Capital-Backed Start-Ups Founded by Immigrants, Study Finds** - A key lesson of the study is the importance of an open legal immigration system.
- **10. Uptick in Foreign Student Enrollments Reported** - The overall decline in foreign student enrollments appears to have slowed.
- **11. U.S. 'World's Worst' for Entry Hassles, Survey Finds** - But foreign travelers like it here once they get past the initial obstacles.
- **12. USCIS Launches Pilot Test for New Naturalization Exam** - The agency wants to deemphasize the rote memorization of facts.
- **13. Klasko News** - Klasko named "Most Highly Regarded," On the Airwaves, Trivia, and much more.
- **14. Government Agency Links**



## 1. A Message from our Chairman

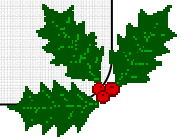
As we approach the end of this year, I want to thank you for giving us the opportunity to serve you. We are truly blessed – we love what we do and we have clients with whom we enjoy working.

We appreciate very much the trust you have placed in us this past year and I hope we have met and exceeded your expectations. Please let us know if this is not the case as it is of the utmost importance to us that we have completely satisfied clients.

On behalf of all of us here at *Klasko, Rulon, Stock & Seltzer LLP*, I wish you a very happy holiday season and a terrific 2007!

*Ron Klasko*

*Happy Holidays*



## 2. State Dept., DHS Announce New Passport Requirement for Air Travelers

The Departments of State and Homeland Security announced that as of January 23, 2007, citizens of the U.S., Canada, Mexico, and Bermuda traveling to the U.S. by air from any part of the Western Hemisphere must present a passport or other accepted document (such as a Merchant Mariner Document or a NEXUS Air card at designated sites). Permanent residents (green card holders) will continue to be able to use their Alien Registration Card (Form I-551) or other valid evidence of permanent resident status to apply for entry to the U.S. Children who are U.S. citizens will need a passport even if their parents are green card holders.

In the second phase of the Western Hemisphere Travel Initiative, targeted for implementation on January 1, 2008, U.S. citizens traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, and Bermuda by land or sea may be required to present a valid U.S. passport or other document.

The notice announcing the new travel document requirements is posted at <http://www.state.gov/r/pa/prs/ps/2006/76752.htm>. A FAQ (frequently asked questions) page is available at [http://www.travel.state.gov/travel/cbpmc/cbpmc\\_2225.html](http://www.travel.state.gov/travel/cbpmc/cbpmc_2225.html). The full text of the final rule is posted at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-9402.pdf>.

### 3. USCIS Expands Premium Processing to EB-1 Category

U.S. Citizenship and Immigration Services (USCIS) announced that starting on November 13, 2006, premium processing service may now be requested for EB-1 extraordinary ability cases. Premium processing allows U.S. businesses to pay a \$1,000 fee in exchange for 15-calendar-day processing of their case.

Since 2001, premium processing service has been available for several nonimmigrant worker classifications, including E treaty traders and investors, H-1B specialty occupation workers, H-2B temporary workers performing non-agricultural services, H-3 trainees, L intracompany transferees, O aliens of extraordinary ability and those performing essential support services, P performers and athletes and those performing essential support services, Q international cultural exchange visitors, R religious workers, and NAFTA professionals from Canada and Mexico. Form I-129 petitions for those nonimmigrant worker classifications will continue to be eligible for premium processing service unless the filing period has closed (for example, when the annual numerical cap for a specific visa classification has been reached).

Also, earlier this year, USCIS began accepting premium processing service requests for petitions involving five other immigrant visa categories: EB-1 outstanding professors and researchers, EB-2 members of professions with advanced degrees or exceptional ability not seeking a national interest waiver, EB-3 professionals, EB-3 skilled workers, and EB-3 workers other than skilled workers and professionals. The notice announcing the expansion is posted at [http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease\\_08No06.pdf](http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease_08No06.pdf).

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### 4. Labor Dept. Inadvertently Withdraws Labor Certification Cases, Corrects Error

The Department of Labor's Office of Foreign Labor Certification (OFLC) reported on November 15, 2006, that because of a "technical issue," a number of traditional and reduction-in-recruitment (RIR) labor certification cases were identified inadvertently as pending PERM re-file applications and were thus withdrawn from backlog processing. OFLC stated that it was identifying the affected cases and reinstating them to the "appropriate processing status in proper order."

In other cases, however, withdrawal was appropriate and those cases will not be reinstated. Such cases include PERM re-filings where the use of the earlier traditional or RIR priority date was requested and, therefore, the earlier case was withdrawn.

Affected employers and their attorneys will not be receiving an additional notice of reinstatement but are invited to verify that their case has been reinstated by using the Public Disclosure System (PDS). Users can access the PDS at <http://pds.pbls.doleta.gov/> or by clicking on the "Check Backlog Case Status" link on DOL's Backlog Centers' Web page (<http://www.foreignlaborcert.doleta.gov/times.cfm>). Once the PDS Web page is open, users should enter the 10-digit case number, which begins with a "D" if the case is located in the Dallas BEC or "P" if the case is in the Philadelphia BEC. (Some cases may have had case numbers starting with "T" before data entry was completed at a BEC. All such cases have since been converted and now begin with either "D" or "P," which should be used for case status checks on the PDS.) After entering the case number, the search results show the current case status. Case status definitions are provided at the bottom of the PDS Web page. A FAQ about the PDS is available at [http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog\\_faqs\\_09-11-06\\_pds.pdf](http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_pds.pdf).



Because verification will be available online, OFLC asks employers and attorneys not to contact the BECs regarding the status of such cases. The appropriate BEC will notify the employer or attorney if additional documentation is needed. OFLC's notice is posted at <http://www.foreignlaborcert.doleta.gov/> (scroll down to "What's New").

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## 5. SEVP Implements Five-Year Maximum Program Duration for J Professors and Research Scholars

The Student and Exchange Visitor Program (SEVP) Office has announced that SEVIS 5.4, implemented on November 17, 2006, contains the changes necessary to raise from three to five years the maximum duration of participation for J professors and research scholars, based on a regulation that was published in May 2005. SEVP noted that only exchange visitors administratively classified in a G-7 program will be able to submit a request for an extension beyond the maximum duration of participation of five years. The countdown of the five-year maximum duration begins with the program's start date and ends five years later, provided that the sponsor does not end or terminate the exchange visitor's SEVIS record. There is also a new two-year bar on repeat participation in the J professor and research scholar categories for those who complete program participation.

G-7 participants are those under the direct sponsorship of a federally funded national research and development center or a U.S. federal laboratory. These sponsors will be identified in SEVIS as G-7 to differentiate them from other J-1 sponsors. The Department of State directly contacts those sponsors eligible for G-7 classification; no request is necessary on the part of existing sponsors. SEVP also noted that there has been ongoing discussion about incorporating the J-1 skills list into SEVIS but no decision has been made.

A related technical conference call report is posted at [http://www.ice.gov/doclib/sevis/pdf/tech\\_con\\_call\\_qa\\_20061025.pdf](http://www.ice.gov/doclib/sevis/pdf/tech_con_call_qa_20061025.pdf). The May 2005 regulation is posted at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-10020.htm>. Additional information on changes in SEVIS 5.4 is posted at [http://www.ice.gov/doclib/sevis/pdf/sevis\\_release\\_5\\_4\\_conference\\_slides.pdf](http://www.ice.gov/doclib/sevis/pdf/sevis_release_5_4_conference_slides.pdf). An implementation notice is posted at [http://www.nafsa.org/\\_/Document/\\_/anticipated\\_sevis\\_release\\_2.pdf](http://www.nafsa.org/_/Document/_/anticipated_sevis_release_2.pdf). Details about the changes, including information about how the five-year period is calculated and who is subject to the two-year bar, is posted at [http://www.nafsa.org/regulatory\\_information.sec/get\\_sevis\\_information/nafsa\\_sevis\\_resources/information\\_on\\_sevis](http://www.nafsa.org/regulatory_information.sec/get_sevis_information/nafsa_sevis_resources/information_on_sevis).

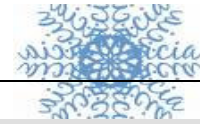
The Department of State initially announced that the effective date would be November 4, 2006 (see <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-18409.pdf>), but implementation of SEVIS 5.4, which was necessary for the rule's implementation, was delayed until November 17, 2006.

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## 6. 'Schedule A' Immigrant Visa Numbers Used Up

The Department of State's Visa Office announced in the latest Visa Bulletin that the 50,000 immigrant visa numbers provided for Schedule A workers have become "Unavailable" for December. The Schedule A worker category is shown in the December cut-off date table but will be removed from future listings.

Schedule A, Group I includes physical therapists and nurses. Schedule A, Group II includes aliens of exceptional ability in the sciences and arts (except performing arts). The Visa Bulletin for December 2006 is posted at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3086.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3086.html).



## 7. USCIS Announces Case Processing Target Times

U.S. Citizenship and Immigration Services (USCIS) issued recent guidance to the field outlining case processing timeframes:

Rescheduling interviews: USCIS said interviews should be rescheduled at the individual's request only when there are "compelling extenuating circumstances beyond the individual's control," and that the rescheduled interview should occur within 11 weeks of the initially scheduled interview.

Requests for Evidence (RFEs): USCIS noted that an RFE is a "single opportunity" for an individual to provide the requested information and an extension of the standard timeframe cannot be provided. On an application where the applicant could receive interim benefits, USCIS's objective is to pre-screen the employment authorization document (EAD) and/or advance parole application, the underlying application, and any pending underlying petition within 10 days of filing to identify whether there is any missing initial evidence or required additional evidence. USCIS noted that finding such missing initial evidence or required additional evidence early affects the timing for eligibility for interim benefits (such as advance parole or work authorization).

When a case is missing initial evidence, the RFE stops the 90-day processing clock on the associated EAD and/or advance parole application. The clock starts over when USCIS receives a timely response to a request for required initial evidence. An RFE for additional evidence, however, only suspends the processing clock, which resumes, when USCIS receives a timely response, at the point where it had stopped.

When necessary evidence or information is identified at the interview and USCIS decides that a short-term (generally one to two weeks and no more than a month) opportunity to submit the materials is appropriate, it may be done as an extension of the interview. When more time is warranted, USCIS stated, it should be done as an RFE. USCIS's memorandum, which includes additional timeframes, is posted at <http://www.uscis.gov/files/pressrelease/casemgmt.pdf>.


## 8. USCIS Revamps Web Site, Moves Many Pages

U.S. Citizenship and Immigration Services (USCIS) has replaced its Web site with a redesigned Web portal at the same Internet address (<http://www.uscis.gov>). Many USCIS Web pages that users have bookmarked have moved as a result of the redesign. USCIS's Web portal is one of the most heavily trafficked Web sites in the federal government, serving an average of 135,000 visitors daily.

A fact sheet that lists the most frequently requested USCIS Web pages and their new addresses are posted at [http://www.uscis.gov/files/pressrelease/WebFactSheet\\_110106.pdf](http://www.uscis.gov/files/pressrelease/WebFactSheet_110106.pdf). The revised Web site has many flaws, so not all pages on the prior Web site are available yet at the revamped site.



## 9. Many Venture Capital-Backed Start-Ups Founded by Immigrants, Study Finds



A new study published by the National Venture Capital Association analyzes the positive impact immigrant entrepreneurs and professionals have on the U.S. economy and job creation by starting and working for leading-edge companies in the U.S. Among other things, the study finds that of its 342 survey respondents, 47 percent of the founders of venture capital-backed private companies were immigrants. Almost two-thirds of these founders have started or intend to start more companies in the U.S. Most public and private venture-backed companies founded by immigrants were headquartered in California, and the top industry sectors for private immigrant-founded venture-backed companies were software, semiconductors, and biotechnology. The most common place of birth for the founders of both public and private venture-backed companies was India.

A key lesson of the study is the importance of an open legal immigration system. Although nearly all the immigrant founders of private companies would still start their companies in the U.S. if given the choice today, more than two-thirds of immigrant entrepreneurs agreed that U.S. immigration policy has made it more difficult than in the past to start a business in the U.S.

Nearly two-thirds of company respondents who use H-1B visas said that current U.S. immigration laws affecting skilled professionals harm American competitiveness, and one-third of privately held venture-backed companies said the lack of H-1B visas had influenced their firm's decision to place more personnel abroad. The study, "American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness," is posted at [http://www.nvca.org/pdf/AmericanMade\\_study.pdf](http://www.nvca.org/pdf/AmericanMade_study.pdf).

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## 10. Uptick in Foreign Student Enrollments Reported

NAFSA: Association of International Educators announced on November 13, 2006, that although overall foreign student enrollments at U.S. higher education institutions are down by more than 20,000 from the all-time high of the 2002 academic year, 52 percent of institutions surveyed reported an increase in foreign student enrollments this year as compared to last. Among responding institutions with the largest foreign enrollments, 73 percent reported an increase this year. NAFSA CEO and Executive Director Marlene Johnson said, "While the latest numbers are cause for optimism that the troubling declines of the last several years may be headed toward a recovery, the United States has a lot of work to do to restore its competitiveness for international students and scholars."

NAFSA also estimated that foreign students and their families spent \$13.49 billion in the U.S. during the 2005-2006 academic year, including tuition and fees as well as living expenses. For details on foreign student spending, see [http://www.nafsa.org/public\\_policy.sec/international\\_education\\_1/the\\_economic\\_benefits](http://www.nafsa.org/public_policy.sec/international_education_1/the_economic_benefits).

NAFSA's announcement about the survey results is posted at [http://www.nafsa.org/press\\_releases.sec/press\\_releases.pg/06enrollsurveyrel](http://www.nafsa.org/press_releases.sec/press_releases.pg/06enrollsurveyrel). The full survey report and analysis conducted by a variety of higher education associations are available at <http://opendoors.iienetwork.org/page/Fall2006Survey/>.

## 11. U.S. 'World's Worst' for Entry Hassles, Survey Finds

The Discover America Partnership, a travel industry initiative, has released the results of a survey finding that foreign travelers, by a two-to-one margin, named the U.S. as the "world's worst" for obtaining a visa and entering the country. On the positive side, a majority had an "extremely favorable" experience in the U.S. once they got past the initial hurdles.

Of 2,011 travelers interviewed outside the U.S., 36 percent said they did not want to come to the U.S. because of fears of detention or delay. A full 40 percent said they tried but failed to obtain a visa within the previous two years. More information and links, including the survey findings and audio of a related conference call, are posted at <http://www.poweroftravel.org/release-11-20-06.aspx>.

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## 12. USCIS Launches Pilot Test for New Naturalization Exam

U.S. Citizenship and Immigration Services (USCIS) announced on November 30, 2006, the release of 144 questions and answers for a pilot test intended to help the agency revise the naturalization exam. USCIS will administer the pilot exam in early 2007 to about 5,000 volunteer citizenship applicants in 10 U.S. cities. USCIS Director Emilio Gonzalez explained that the agency wants to deemphasize the rote memorization of facts. The pilot test includes new questions that focus on the concepts of democracy and the rights and responsibilities of citizenship. To draft the new exam questions, USCIS worked with a variety of stakeholders, including history and government scholars, immigrant advocacy groups, citizenship instructors, district adjudications officers, and English as a second language experts.

USCIS plans to work out any problems that are revealed by the pilot test and refine the exam before it is fully implemented nationwide in 2008. When finalized, the exam will have 100 questions but the range of acceptable answers will increase. USCIS also will soon release a new "civics-based vocabulary" to help applicants study for the reading and writing portions of the test.

The announcement is available at <http://www.uscis.gov/files/pressrelease/NatzTestQs113006.pdf>. A fact sheet is posted at <http://www.uscis.gov/files/pressrelease/FactSheetNatzTest113006.pdf>. To view the actual pilot exam questions, see

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=dcf5e1df53b2f010VgnVCM1000000ecd190aRCRD>.

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## 13. Klasko News

### Klasko Named "Most Highly Regarded" Immigration Lawyer in the World

KRSS staff congratulates our managing partner, **H. Ronald Klasko**, on being selected by his peers as "the most highly-regarded" immigration lawyer in the world, according to *The International Who's Who of Corporate Immigration Lawyers 2007*. This publication noted Ron's "great mind" and gave him plaudits for being "an excellent speaker."

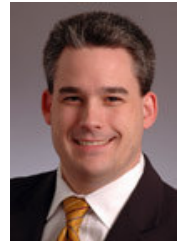
Hearty congratulations also go to partner, **William A. Stock**, on being nominated by his peers as one of the world's leading practitioners in the field of immigration law.

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### **On the Airwaves**

**Bill Stock** was recently embroiled in the thick of controversy when he was interviewed by the CBC (Canadian Broadcasting Corporation) radio on a case relating to religious indifference. The story at a glance:

*An old order Amish man filed a lawsuit against USCIS for requiring him to have a photograph taken as part of the "green card" process. The old order Amish believes that photographs violate the Bible's prohibition of "graven images."*



Bill was called to explain to the hostile Canadian audience why U.S. immigration law requires a photograph without religious exemptions. To find out more about Bill's reasoning, write to him at [wstock@klaskolaw.com](mailto:wstock@klaskolaw.com).

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### **Recent Speaking Engagements**

Klasko lawyers spoke at these events this month and last. For information about any of these programs, please contact the lawyer listed.

#### ***In Philadelphia:***



**H. Ronald Klasko** was a featured speaker at *Advising the International Executive*, a program sponsored by the Pennsylvania Bar Institute (PBI) in Philadelphia on December 12<sup>th</sup> from 12:00 - 4:15pm. Ron's discussion included alternative visa categories for hiring and transferring executives, options for spouses, processes for obtaining permanent resident status, among others. Representatives from Asher and Co., Deutsche Bank and McCarter and English spoke on other key issues affecting international executives including investment decisions and estate, income, and employment tax matters.

If you would like additional information or are interested in having Ron come to your office and brief you and your staff on what was covered, please call or e-mail Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

#### ***In New York***

**William A. Stock** and **Suzanne B. Seltzer** both presented at the 9<sup>th</sup> Annual American Immigration Lawyers Association (AILA) NY Chapter Symposium on December 13<sup>th</sup>. Suzanne led a discussion on basic issues relating to representing doctors, nurses, and affiliated healthcare workers. Bill's talk primarily addressed the Department of Labor (DOL) Backlog Elimination Center (BEC) and PERM.



## On the Lecture Circuit

H. Ronald Klasko continues to be a highly requested lecturer. He recently addressed post-doctoral fellows at New York University on November 29<sup>th</sup> and at the University of Pennsylvania on November 30<sup>th</sup>. Topics of discussion included J-1 waivers, O-1's, moving out of academia and into industry, and permanent residency issues, just to name a few. For additional information, e-mail Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

Suzanne B. Seltzer, head of the NY office, also lectured at New York University on *immigration options for researchers and scholars* on the 29<sup>th</sup> of November. She followed up on the 30<sup>th</sup> with a talk on options to remain and work in the U.S. to candidates for Bachelor's and Master's Degrees. To request presentation materials from either of the discussions, write to Suzanne at [sseltzer@klaskolaw.com](mailto:sseltzer@klaskolaw.com).

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## Klasko Trivia

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

That Klasko chairman H. Ronald Klasko is one of only two recipients of the American Immigration Lawyers Association Founders Award, bestowed upon the individual who has had the most positive impact on immigration law.

That founding partner Richard R. Rulon served as President of the Board of Commissioners for Upper Dublin Township in Montgomery County, Pennsylvania for 16 years.

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## **14. 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)

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*\*The Academy of Business Immigration Lawyers (ABIL) is the think tank of premier immigration counsel. ABIL provides to human resource professionals, corporate counsel, in-house immigration managers, and other immigration decision makers access to a coalition of U.S. business immigration attorneys who have a demonstrated history of client service and a dedication to providing the best and most effective solutions to your immigration concerns. Each of ABIL's Founding Fellows is committed to the highest standards of professionalism, to maintaining the most up-to-date knowledge in the field of U.S. immigration law, and to providing the kind of accessibility you expect from the best in the field.*

**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 © 2006 Academy of Business Immigration Lawyers and Klasko, Rulon, Stock and Seltzer, LLP. All rights reserved.*