

**DECEMBER 2007**



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

**Headlines:**

- **1. A Message From Our Chairman**
- **2. SSA Says No-Match Letters Will Not Be Sent this Year; DHS Will Revise Rule** - In response to a preliminary injunction, SSA will not send out no-match letters this year to employers.
- **3. Update on New Form I-9** - Use of the revised the I-9 Employment Eligibility Verification Form will be required beginning December 26.
- **4. E-Verify/Basic Pilot Findings Released** - The accuracy of USCIS's database used for verification has "improved substantially" since the start of the Basic Pilot program, but further improvements are needed.
- **5. Nonimmigrant Visa Delays Caused by Electronic Verification Requirement** - The change from switching to PIMS has resulted in delays between interview and visa issuance at many posts.
- **6. USCIS Releases List of EB-5 Regional Centers** - USCIS released a list of active approved EB-5 regional centers as of October 2007.
- **7. DHS to Begin Requiring 10 Fingerprints at Ports-of-Entry** - DHS will require 10 fingerprints, instead of just two, from international visitors who fly into certain ports-of-entry.
- **8. DHS Converting Checks Into Electronic Transfers for I-765** - DHS is now converting funds from checks into electronic funds transfers for EAD applications; receipt numbers from cancelled checks will no longer be available.
- **9. Department of State Issues Record Number of Student Visas** - DOS announced that it has issued a record number of visas to students coming to study in the U.S.
- **10. Target and Whole Foods Market Charged with Discriminating Against Immigrant Workers** - The charges allege that the companies illegally fired and suspended two immigrant workers who had presented clear evidence of their authorization to work in the U.S.
- **11. Department of State Issues Final Passport Rule** - The final rule reorganizes, restructures, and updates passport regulations.
- **12. China, India Second Preference Cut-Off Dates Retrogress; Other Projections** - The China-mainland born and India employment-based second preference cut-off dates both will retrogress in December; DOS also made other projections.

- **13. Japan Begins Fingerprinting, Photographing Foreign Visitors** - Those refusing to comply will be denied admission into Japan and will be returned to their port of origin.
- **14. Klasko News** – Recent speaking engagements and new appointments.
- **15. Government Agency Links**

## 1. A Message From Our Chairman

The holiday season is the perfect time to reflect on how we are truly blessed. My partners and I give thanks for our loyal clients with whom we have had the privilege to work for so many years. We pledge to continue to do our utmost in the new year to continue to merit your trust. We are also privileged to have a bright, committed and hard working staff who are devoted to the highest standard of client service.

As the year closes, we are excited with the additions of our new partner, Elise Fialkowski, and our new counsel, Ted Murphy. We also look forward to the return of Rich Rulon, who I am pleased to report is recovering well from knee surgery.

On behalf of all of us here at **Klasko, Rulon, Stock & Seltzer, LLP**, I wish all of our friends and clients a very happy holiday season and a terrific 2008!

*Ren Klasko*

*Happy Holidays*



## 2. SSA Says No-Match Letters Will Not Be Sent this Year; DHS Will Revise Rule

A Social Security Administration (SSA) spokesperson reportedly has stated that the SSA will not send out no-match letters this year to employers, in response to an October 10, 2007, preliminary injunction from the U.S. District Court for the Northern District of California that enjoined and restrained the Department of Homeland Security (DHS) and the SSA from implementing the final rule, "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter." The preliminary injunction did not preclude the SSA from sending out its traditional no-match letters without the final rule language. According to sources, SSA is unlikely to send out no-match letters until spring 2008 at the earliest, when DHS plans to revise the rule. SSA said it did not have sufficient time to revise the no-match letter in 2007. SSA sends no-match letters, which detail discrepancies between SSA data and information sent in by employers, to approximately 138,000 employers each year concerning as many as nine million employees.

### 3. Update on New Form I-9

As noted in the November newsletter, U.S. Citizenship and Immigration Services (USCIS) has revised the I-9 Employment Eligibility Verification Form; its use will be required beginning December 26. Employers should begin using the amended I-9 "(Rev. 06/05/07)N" immediately for all individuals hired on or after November 7, 2007. The Department of Homeland Security (DHS) said it "recognizes that employers should be afforded a period of time to transition to the amended Form I-9." DHS, therefore, will not seek penalties against an employer for using a previous version of the I-9 during a transition period ending on December 26, 2007. After the transition period, however, employers who fail to use the revised I-9 may be subject to penalties.

New instructions for the I-9 state that the employee is not obliged to provide the Social Security Number in Section 1 of the I-9, unless he or she is employed by an employer who participates in E-Verify (formerly Basic Pilot). The section on Photocopying and Retaining Form I-9 now includes information about electronically signing and retaining I-9 forms.

Further, the Unexpired Employment Authorization Document (I-766) was added to List A of the List of Acceptable Documents; and all the employment authorization documents with photographs (I-688, I-688A, I-688B, I-766) that are in circulation are now included as one item on List A.

Employers only need to complete the new I-9 for new employees. Employers do not need to complete new forms for existing employees, but employers must use the revised I-9 when their employees require reverification.

The new I-9 form can be downloaded from the Firm's website at [http://www.klaskolaw.com/library/files/new\\_i-9\\_form.pdf](http://www.klaskolaw.com/library/files/new_i-9_form.pdf). The revised Handbook for Employers can be found at [http://www.klaskolaw.com/library/files/uscis\\_i-9\\_handbook\\_for\\_employers.pdf](http://www.klaskolaw.com/library/files/uscis_i-9_handbook_for_employers.pdf). Details about the revised I-9 are available at <http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf>. Copies of the documents that are acceptable under the new I-9 requirements may be obtained in a brochure, "Guide to Selected U.S. Travel and Identity Documents" (M-396), which may be ordered in bulk from U.S. Customs and Border Protection, National Distribution Center, P.O. Box 68912, Indianapolis, IN 46268; fax: (317) 290-3046.

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### 4. E-Verify/Basic Pilot Findings Released

Recent findings about the Web-based Basic Pilot program, now called E-Verify, have been released. Among other things, the new report notes that employers are satisfied with many aspects of the new online version of the former Basic Pilot program. Also, the accuracy of the U.S. Citizenship and Immigration Services (USCIS) database used for verification has "improved substantially" since the start of Basic Pilot. Further improvements are needed, however, the report notes, especially if the program is mandated nationally.

Most importantly, the report states, the database used for verification "is still not sufficiently up to date to meet the [Illegal Immigration Reform and Immigrant Responsibility Act of 1996] requirement for accurate verification, especially for naturalized citizens." The report notes that USCIS and the Social Security Administration accommodate this problem by providing for a manual review of these cases, which is "time-consuming and can result in discrimination against work-authorized foreign-born persons during the period that the verification is ongoing, if employers do not follow procedures designed to protect employee rights."

E-Verify allows employers to get automated confirmation of a newly hired employee's work authorization after an Employment Eligibility Verification (Form I-9) has been completed. Employers who sign up to participate complete the I-9 process as usual, but then enter and submit I-9 information through a Web-based computer program to the Social Security Administration (SSA) database. If the SSA does not have sufficient information to confirm work authorization status, queries are sent to U.S. Citizenship and Immigration Services (USCIS) for confirmation. If more information is required to complete the confirmation process, the employer is asked to have the employee contact the SSA or USCIS to provide the needed information.

The report, including recommendations, is available at <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>. Related materials are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=89abf90517e15110VgnVCM1000004718190aRCRD>.



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## 5. Nonimmigrant Visa Delays Caused by Electronic Verification Requirement

According to a Department of State cable (No. 155679) sent to the field on November 13, 2007, consular posts are now able to access the details of approved nonimmigrant visa petitions in a new report called "PIMS" (Petition Information Management Service). The Kentucky Consular Center (KCC) has therefore ceased e-mailing scanned copies of approved petitions to posts, relying instead on the electronic PIMS record created by the KCC to be the primary source of evidence used in determining petition approval. This applies to the H, L, O, P, and Q nonimmigrant petition-based visa categories. The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, many of the records contain information from KCC's Fraud Prevention Unit.

Reportedly, this unanticipated change has resulted in four-day delays at many posts between the date of the interview and actual visa issuance for these categories.

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## 6. USCIS Releases List of EB-5 Regional Centers

U.S. Citizenship and Immigration Services recently released an updated list of active approved EB-5 "Regional Centers," which are public or private entities approved to participate in the EB-5 immigrant investor program. The Regional Center program makes available EB-5 visas to individuals unable to invest the full \$1 million by allowing \$500,000 investments that require minimal hands-on involvement, and are useful for those who do not have the time or resources to qualify their own business for this permanent residence program.

The list, current as of October 2007, is available at <http://www.globallawcenters.com/pdfs/23812.pdf>. For more on the role of Regional Centers in the EB-5 program, see <http://www.greencardinvestor.com/regional.html>.

## 7. DHS to Begin Requiring 10 Fingerprints at Ports of Entry

The Department of Homeland Security (DHS) is now requiring 10 fingerprints, instead of just two, from international visitors who fly into Washington Dulles International Airport. This US-VISIT requirement will be expanded to the following nine additional airports next spring:

- Boston Logan International Airport
- Chicago O'Hare International Airport
- Detroit Metropolitan Wayne County Airport
- Hartsfield-Jackson Atlanta International Airport
- George Bush Houston Intercontinental Airport
- Miami International Airport
- John F. Kennedy International Airport (NYC)
- Orlando International Airport
- San Francisco International Airport

By the end of 2008, DHS plans to deploy the expanded fingerprint system to 107 other airports and also to begin collecting 10 fingerprints at other ports-of-entry. The Department of State currently uses 10-fingerprint scanners at most of its visa-issuing posts and will complete deployment worldwide by the end of 2007.

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## 8. DHS Converting Checks Into Electronic Transfers for I-765

The Department of Homeland Security (DHS) is now converting funds from checks into electronic funds transfers for the Application for Employment Authorization (Form I-765). Checks should be made payable to "U.S. Department of Homeland Security." DHS notes in the instructions to the form that "[y]ou will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT [electronic funds transfer] cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times." In the past, sources noted, the receipt number could be retrieved from the cancelled check to track the application if the receipt got lost in the mail.

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## 9. Department of State Issues Record Number of Student Visas

The Department of State (DOS) announced on November 16, 2007, that it has issued a record number of visas to students coming to study in the United States. During fiscal year 2007, DOS issued more than 651,000 student and exchange visitor visas, which was 10 percent more than last year and 90,000 more than were issued in fiscal year 2001.

The notice is available at <http://www.state.gov/r/pa/prs/ps/2007/nov/95290.htm>.

## **10. Target and Whole Foods Market Charged with Discriminating Against Immigrant Workers**

The Legal Aid Society - Employment Law Center (LAS-ELC) recently filed two employment discrimination charges with the Department of Justice against the Target Corporation and Whole Foods Market, alleging that the companies illegally fired and suspended, respectively, two immigrant workers, even though they had presented clear evidence of their authorization to work in the United States. Target allegedly terminated an employee who is authorized to work under Temporary Protected Status (TPS), and Whole Foods allegedly suspended for 30 days without pay an employee who is a naturalized U.S. citizen.

"The facts could not show more clearly that both Target and Whole Foods Market engaged in classic document abuse, and our clients have suffered the harsh consequences of such illegality," said Carole Vigne, a Skadden Fellow with the LAS-ELC.

The LAS-ELC's announcement is available at <http://www.las-elc.org/whatsnew.html>.

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## **11. Department of State Issues Final Passport Rule**

The Department of State (DOS) has issued a final rule that reorganizes, restructures, and updates passport regulations. DOS said it issued the rule "to make [the regulations] easier for users to access information, to better reflect current practice and changes in statutory authority, and to remove outdated provisions." In general, the revisions do not mark a departure from current policy. Rather, DOS's intent is "to bring greater clarity to current passport policy and practice and to present it in a less cumbersome way."

The final rule, which includes comments and responses, is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22461.pdf>. Because issues regarding passport fees and the passport card are addressed in a separate rulemaking, DOS said it will respond to comments on those issues at a later time.



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## **12. China, India Second Preference Cut-Off Dates Retrogress; Other Projections**

The Department of State's (DOS) Visa Office announced in the latest Visa Bulletin that the China-mainland born and India employment-based second preference cut-off dates both will retrogress in December. DOS said the retrogression is a direct result of extraordinarily heavy applicant demand for numbers, primarily by U.S. Citizenship and Immigration Services offices for adjustment-of-status cases. Additional retrogressions cannot be ruled out during the second quarter of the fiscal year, which begins in January 2008.

DOS also made the following projections based on current demand patterns, which could change. "Under no circumstances should they be used as a basis for making any formal plans prior to the announcement of the monthly cut-off dates," it warned.

- Employment Preferences - Worldwide and Philippines:

First and second preferences: Will remain Current.

Third: Slow forward movement should be possible while demand patterns are established.

Third "Other Workers" category (all countries): Little if any forward movement is expected at this time. If the current demand pattern continues, it may be necessary to retrogress the cut-off date at some point later in the fiscal year.

- Employment Preferences - China-mainland born and India:

First: Continued heavy demand may require the establishment of a cut-off date at some point during the fiscal year.

Second: Demand during October and the first week of November has already used over 38 percent of the annual limit. It is hoped that the December retrogressions will return monthly number use within the target range. If not, further retrogressions cannot be ruled out.

The Visa Bulletin for December 2007 is available at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3841.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3841.html).

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### 13. Japan Begins Fingerprinting, Photographing Foreign Visitors

Japan has begun fingerprinting and photographing foreign visitors under new anti-terror legislation approved by Japan's upper house of parliament. Those refusing to comply will be denied admission into Japan and will be returned to their port of origin. The European Business Council in Japan and the Australian and New Zealand Chamber of Commerce in Japan sent a letter in October to the Justice Ministry expressing concerns about the new requirement. The letter is available at <http://www.abc-jp.com/news/2007Oct%20Letter%20to%20Immigration%20Bureau%20E.pdf>.

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### 14. Klasko News

#### Recent Speaking Engagements

Partners Ron Klasko, Suzanne Seltzer, and Elise Fialkowski all participated at the 10<sup>th</sup> Annual American Immigration Lawyers Association (AILA) New York Chapter Immigration Law Symposium in New York, NY, on December 13, 2007. Suzanne served as the Program Co-Chair for this conference entitled "*Maintaining the Melting Pot Without Getting Burned.*"



Ron lead a panel discussion entitled "*Yes! I will make a Federal Case Out of It,*" which dealt with federal court litigation to remedy government delays on adjustment of status and naturalization applications. This presentation discussed:

- How to Determine if You Have a Federal Case
- Managing Clients' Expectations and Your Own (What am I Getting Myself Into?)
- Where and When to File
- Tips and Strategies for Possible Resolution

For more information on this program or to request materials, write to Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

Newest partner Elise A. Fialkowski served as discussion leader for the panel "Follow the Money!" This session covered ability to pay issues for immigrant and nonimmigrant petitions. Topics covered include:

- Reading and Understanding Federal Tax Returns
- Finding Your Way Through an Annual Report
- Guiding Your Clients Through Their Business Plans
- Affidavits of Support Issues: How Big is a Household and Calculating Assets
- Understanding Corporate Structures for L, E and H visas.



For more information on these topics or to request presentation materials, contact Elise at [efialkowski@klaskolaw.com](mailto:efialkowski@klaskolaw.com).

Ron Klasko spoke to foreign national postdocs at the University of Pennsylvania on December 5, in Philadelphia. Topics included current issues in H-1B visas, J-1 visas, and the O-1 visa, as well as travel issues. The PowerPoint for the University of Pennsylvania lecture is available at [http://www.klaskolaw.com/library/files/university\\_of\\_pennsylvania\\_-\\_immigrations\\_options\\_for\\_scholars\\_and\\_researchers.ppt](http://www.klaskolaw.com/library/files/university_of_pennsylvania_-_immigrations_options_for_scholars_and_researchers.ppt), and a listing of suggested reading materials can be accessed at <http://www.klaskolaw.com/events-calendar.php?action=view&id=66>. For additional information on this talk, write to Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

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## **New Appointments**



Suzanne B. Seltzer was recently elected as the new Regulatory Ombudsman to Region X for NAFSA: Association of International Educators. Region X includes members in New York and New Jersey and has a long history rich with leadership, programmatic initiatives, enthusiasm, and a reputation for excellence. More information on this region may be found on its website at <http://www.region10.nafsa.org/>. Congratulations Suzanne!



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## **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](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)



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