

FEBRUARY 2008

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

Headlines:

- **1. USCIS Has Revised Requirements Regarding FBI Name Check** - USCIS has announced that in connection with I-485, I-601, I-687, and I-698 Applications, adjudicators should approve such applications, which are otherwise approvable, where the FBI name check request has been pending for more than 180 days.
- **2. Processing Times for Adjustment of Status and Naturalization Petitions Increase Drastically** - The average processing time for naturalization applications has increased to approximately 18 months; family-based adjustment of status applications will now take an average of 12 months to process.
- **3. H-2B Cap Reached** - USCIS has received a sufficient number of petitions to reach the H-2B cap for the second half of fiscal year 2008.
- **4. DHS Begins Collecting 10 Fingerprints at Boston Airport** - DHS has begun collecting additional fingerprints from international visitors arriving at Boston Logan International Airport.
- **5. DOS Issues Travel Documentation Reminder** - All persons traveling by air between the U.S. and Canada, Mexico, Bermuda, and the Caribbean region must present a passport or other valid travel document to enter or re-enter the U.S.
- **6. New ICE System Analyzes Suspicious Relationships, Patterns** - The ICEPIC system is intended to assist investigators by "identifying suspect identities and discovering possible non-obvious relationships."
- **7. Marriott Speaks Out on Immigration** - Bill Marriott, chief executive officer of Marriott International, Inc., recently spoke about critical issues facing the hospitality industry.
- **8. New Publications and Items of Interest**
- **9. Klasko News** - Annual Spring seminar, upcoming and recent speaking engagements, publications, and more.
- **10. Government Agency Links**

1. USCIS Has Revised Requirements Regarding FBI Name Check

USCIS Associate Director, Domestic Operations, Michael Aytes, issued an Interoffice Memorandum dated February 4, 2008, revising the national security adjudication and reporting requirements. The Memorandum reiterates that (i) before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (under Section 245A of Public Law 99-603) (I-698) is approved, a definitive FBI fingerprint check and IBIS check must be obtained and resolved, and (ii) that USCIS will continue to initiate FBI name checks when those applications are received. However, where I-485, I-601, I-687, or I-698 applications are otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicators are directed to approve such applications and to proceed with card issuance. Unfortunately, FBI fingerprint checks, IBIS checks, and FBI name check results still must be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400). The Memorandum also provides that pending further guidance, I-485, I-601, I-687, and I-698 applications approved pursuant to such Memorandum will be held at the adjudicating office, and if derogatory or adverse information is received from the FBI after the application is approved USCIS will determine if rescission or removal proceedings are appropriate and warranted.

2. Processing Times for Adjustment of Status and Naturalization Petitions Increase Drastically

U.S. Citizenship and Immigration Services (USCIS) has reported that because of a surge in applications over the past summer, partly in anticipation of fee increases from late July 2007, and resulting massive backlogs, the average processing time for naturalization applications has increased for applications filed after June 1, 2007, from the previous average of seven or less months to approximately 18 months. Likewise, processing times for family-based adjustment of status applications increased from the previous average of six or less months to 12 months.

USCIS noted that in July and August 2007, the agency received nearly 2.5 million applications and petitions--double the number typically received in any two-month period. Specifically, in fiscal year (FY) 2007, USCIS received 1.4 million applications for naturalization, more than the totals from FYs 2006 and 2005 combined. Forty percent of those, or 562,000, were filed in the fourth quarter. Moreover, applications for employment- and family-based adjustment of status increased by 76 percent, from 497,000 in FY 2006, to 875,000 in FY 2007.

USCIS said it plans to reduce processing times to six months by the third quarter of FY 2010. To accomplish this task, USCIS Director Emilio Gonzalez plans to add up to several thousand new employees to deal with the "deluge." Additionally, approximately 700 retired federal government employees are being hired back without having to sacrifice their pensions under a plan proposed by Sen. Charles Schumer (D-NY).

A sign-on letter expressing deep concern about the delays notes, among other things, that "[m]any of the undersigned organizations opposed fee increases of the magnitude that USCIS proposed and warned that if USCIS were to proceed with the fee increases, it must prepare for a surge in applications from immigrants wishing to avoid the fee increases. In fact, USCIS did move forward with the fee increases, but did not adequately prepare to handle such a surge." The sign-on letter is available at <http://www.aila.org/content/default.aspx?docid=24331>.

An announcement about processing times and case status is available on page 5 of USCIS's December 2007 newsletter at http://www.uscis.gov/files/nativedocuments/USCIS_Monthly_Dec07.pdf. Related testimony from Mr. Gonzalez on January 17, 2008, before the House of Representatives' immigration subcommittee is available at http://www.uscis.gov/files/testimony/testimony_ETG_17jan08.pdf.

3. H-2B Cap Reached

U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the second half of fiscal year (FY) 2008. USCIS stated that January 2, 2008, is the "final receipt date" for new H-2B worker petitions requesting employment start dates before October 1, 2008. The final receipt date is defined as the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of FY 2008.

USCIS will reject any petitions for new H-2B workers seeking employment start dates before October 1, 2008, that arrive after January 2, 2008. It will apply a computer-generated random selection process to all petitions subject to the cap that were received on January 2, 2008, to select the number of petitions needed to meet the cap. The agency will reject, and return the fee for, all cap-subject petitions not randomly selected.

Petitions for workers who are currently in H-2B status do not count toward the congressionally mandated biannual H-2B cap. USCIS will continue to process petitions filed to extend the stay of a current H-2B worker in the United States; change the terms of employment for current H-2B workers and extend their stay; or allow current H-2B workers to change or add employers and extend their stay.

Kathleen Campbell Walker, President of the American Immigration Lawyers Association (AILA), said, "This continuing failure to connect the dots between meeting valid labor needs and our immigration laws is inexcusable. Placing America at a competitive disadvantage is unacceptable. Maxing out on a cap four months before the applicable period even begins shows how little relation there is between immigration policy and the needs of the economy." AILA said that service industries such as hospitality (including restaurants and hotels), landscaping, construction, and seafood processing are among those most damaged by Congress's inaction.

The USCIS announcement is available at http://www.uscis.gov/files/pressrelease/H-2B_3jan08.pdf. AILA's press release is available at <http://www.aila.org/content/default.aspx?docid=24215>.

4. DHS Begins Collecting 10 Fingerprints at Boston Airport

The Department of Homeland Security (DHS) announced on January 22, 2008, that it has begun collecting additional fingerprints from international visitors arriving at Boston Logan International Airport (Logan). The change is part of DHS's upgrade from two- to 10-fingerprint collection under the purview of the US-VISIT program. On an average day at Logan, nearly 2,000 international visitors (mainly from the United Kingdom, Ireland, Germany, and France) complete US-VISIT biometric procedures.

DHS's US-VISIT program includes checks of a visitor's fingerprints against DHS records of immigration violators and Federal Bureau of Investigation (FBI) records of criminals and known or suspected terrorists. DHS said that

collecting 10 fingerprints improves both fingerprint matching accuracy and the agency's ability to compare a visitor's fingerprints against latent fingerprints collected by Department of Defense (DOD) and the FBI from "known and unknown" terrorists. Additionally, visitors' fingerprints are checked against the FBI's Criminal Master File.

Washington Dulles International Airport began 10-fingerprint collection on November 29, 2007, and Hartsfield Jackson Atlanta International Airport began 10-fingerprint collection on January 6, 2008. Seven other air ports-of-entry soon will begin collecting additional fingerprints: Chicago O'Hare International Airport, San Francisco International Airport, George Bush Houston Intercontinental Airport, Miami International Airport, Detroit Metropolitan Wayne County Airport, Orlando International Airport, and John F. Kennedy International Airport in New York. The remaining air, sea, and land ports will transition to collecting 10 fingerprints by the end of 2008. The DHS announcement is available at http://www.dhs.gov/xnews/releases/pr_1201104663578.shtm.

5. DOS Issues Travel Documentation Reminder

The Department of State (DOS) issued a reminder that, effective January 23, 2007, all persons traveling by air between the United States and Canada, Mexico, Bermuda, and the Caribbean region must present a passport or other valid travel document to enter or re-enter the United States.

Beginning January 31, 2008, for land and sea travel between the United States and Canada, U.S. and Canadian citizens need to present either a Western Hemisphere Travel Initiative (WHTI)-compliant document, or a government-issued photo ID, such as a driver's license, plus proof of citizenship, such as a birth certificate.

At a later date to be determined, the Departments of State and Homeland Security will implement the full requirements of the land and sea phase of WHTI. Proposed rules require most U.S. citizens entering the United States at sea or land ports-of-entry to have either a U.S. passport; a U.S. passport card; a trusted traveler card such as NEXUS, FAST, or SENTRI; a valid Merchant Mariner Document (MMD) when traveling in conjunction with official maritime business; or a valid U.S. Military identification card when traveling on official orders. Members of the U.S. Armed Forces on active duty traveling on orders are exempt from the passport requirement. The passport requirement does not apply to U.S. citizens traveling to or returning directly from a U.S. territory.

U.S. citizens may begin applying on February 1, 2008, for the new, limited-use, wallet-size passport card. DOS said it expects that the cards will be available and mailed to applicants in spring 2008. When available, it will be valid only for land and sea travel between the United States and Canada, Mexico, the Caribbean region, and Bermuda.

A related 23-page letter on the WHTI from Richard Stana, Director of Homeland Security and Justice Issues for the Government Accountability Office, to the House of Representatives' Subcommittee on Border, Maritime and Global Counterterrorism, is available at <http://www.aila.org/content/default.aspx?docid=24355>. Among other issues, Mr. Stana noted that the GAO "acknowledge[s] that DHS has taken a number of actions to prepare for testing and deploying technologies and managing the implementation of other WHTI activities. However, as key elements of planning for program management and execution remain uncertain, we continue to believe that DHS faces challenges deploying technology, and staffing and training officers to use it." More information on the WHTI is available at http://travel.state.gov/travel/cbpmc/cbpmc_2223.html.

6. New ICE System Analyzes Suspicious Relationships, Patterns

U.S. Immigration and Customs Enforcement (ICE) plans to soon launch the "ICE Pattern Analysis and Information Collection (ICEPIC)" System. The system is intended to assist investigators by "identifying suspect identities and discovering possible non-obvious relationships among individuals and organizations" to discern violations of customs and immigration laws as well as possible terrorist threats or plots. The databases, which ICE declined to identify specifically, include those that track foreign students and visitors, immigrants, criminals, and suspected terrorists. "All ICEPIC activity is associated with ongoing and valid law enforcement investigations," a Department of Homeland Security (DHS) report noted.

ICEPIC reveals relationships to an identified target, but it is not used to reveal a "predictive pattern," the report said. From the relationships identified, ICE agents will develop specific leads and intelligence for active and new investigations.

The system reportedly includes the terrorist watch list, from which an estimated 15,000 people have appealed to have their names removed because of incomplete information or inaccuracies.

The report is available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_icepic.pdf. A January 30 proposed rule to exempt parts of ICEPIC from the Privacy Act is at <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=042632391282+0+0+0&WAIAction=retrieve>.

7. Marriott Speaks Out on Immigration

Bill Marriott, chief executive officer of Marriott International, Inc., recently spoke at the National Press Club on January 17, 2008, about critical issues facing the hospitality industry. Mr. Marriott is an advocate of immigration reform and creating an efficient visa system. "This country is powered really by immigrant labor," he said, noting that about 300,000 new workers will be needed over the next several years in his industry and that U.S. visa policies are discouraging foreign workers and visitors from coming. "It's too tough to visit America. Here in the U.S. we need to put out the welcome mat."

Mr. Marriott has also sounded off about immigration issues on his blog: "Without hard-working, law-abiding immigrants to the United States - many who come from Mexico - the hospitality industry could not function. It's just that simple." He said his company "continues to support changes in the U.S. laws that not only create a path to legal status for immigrants, but also protect the integrity of our U.S. borders." Mr. Marriott noted that "[r]emoving 12 million undocumented workers from our economy with near full employment would be an absolute disaster for us. We'd like to see a fast, efficient and accurate employment verification system so when we hire someone, we know they are legal." He said that "[a]t Marriott we firmly believe that the diversity of our workforce makes us great because it's a reflection of our ever-diversifying global customer base. We value our associates - it doesn't really matter where they're born."

Mr. Marriott's comments on immigration are available on his blog, which also includes audio links, at <http://www.blogs.marriott.com/employment/default.asp?item=704047> and <http://www.blogs.marriott.com/employment/default.asp?item=499434>.

8. New Publications and Items of Interest

USCIS ombudsman hosts teleconferences. The U.S. Citizenship and Immigration Services (USCIS) Ombudsman is hosting teleconferences to discuss interactions with the agency. Questions and answers from previous teleconferences have been posted recently to the Department of Homeland Security (DHS) website. Topics available include N-648 medical waivers, the new naturalization test, the USCIS receipting delay, and temporary worker visas. See http://www.dhs.gov/xabout/structure/gc_1171038701035.shtm.

9. Klasko News

SAVE THE DATE: KRSS Annual Spring Seminar

Date: April 10, 2008
Time: 9:30am – 2:00pm*
Location: Union League of Philadelphia
140 S. Broad Street, Philadelphia
Topic: **Immigration Challenges: Quotas, Delays and Enforcement**

Klasko, Rulon, Stock & Seltzer's Annual Spring Seminar: "Immigration Challenges: Quotas, Delays and Enforcement" will be held on Thursday, April 10, 2008, at The Union League of Philadelphia. The Spring Seminar will once again commence with a special session on the "Fundamentals of Immigration Law," a tutorial for those new to the field or just wanting a refresher. Topics during the main session will include:

- The New World of Worksite Enforcement
- Avoiding Backlogs and Upgrading Visas
- The Problem of the Eternal Adjustment Applicant
- Updates on PERM, Mandamus lawsuits, regulations, and much more.

Look for your formal e-invitation with the detailed agenda and registration information in your "in-box" soon. We look forward to seeing you on April 10.

* 8:30am – 9:30am *Fundamentals of Immigration Law*. Come to part or all of the morning events. Lunch will be served.

Upcoming Speaking Engagements



H. Ronald Klasko (Ron) will be at Hahnemann University Hospital on February 26, 2008, speaking to clinical doctors about current issues in H-1B, J-1, and O-1 visas. Additionally, Ron will be a guest speaker at the Massachusetts Bar Association Immigration Conference in Boston on March 6 and 7, among numerous other programs in the coming weeks. If you would like more information on these talks or to find out how to arrange an on-site program at your organization, write to Ron at rklasko@klaskolaw.com.

Suzanne B. Seltzer is serving as moderator of a three-part seminar series entitled "J Waivers In-Depth," sponsored by ILW.com. Part II of this program, "Clinician Specific Waivers," will take place on February 21, and topics will include:

- Overview of Procedures
- HHS clinical, ARC, DRA, VA
- Conrad 30
- 3 Year Obligation & Timing for LPR
- Options if No Waiver?



For more information on this series, e-mail Suzanne at sseltzer@klaskolaw.com or register online at <http://www.ilw.com/seminars/januaryA2008.shtm>.

Elise A. Fialkowski and Theodore J. Murphy (Ted) will be speaking at a Delaware Valley Chapter of the Association of Corporate Counsel ("DELVACCA") seminar on March 27, 2008. The presentation will cover 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.

Recent Speaking Engagements



William A. Stock (Bill) presented at the Pennsylvania State University on February 14 in State College, PA, on post-graduation options for foreign students. Articles and the PowerPoint presentation used for this seminar are available at <http://www.klaskolaw.com/events-calendar.php?action=view&id=87>. Bill also spoke at the Florida Bar Association Annual Immigration Law Update on February 7 and 8 in Miami, FL. He participated in two panel discussions including, "Employment-Based Immigration: Where Are We Now?," and "Strategies for Immigration Case Management." For more information on either program or to request materials, write to Bill at wstock@klaskolaw.com.

Suzanne B. Seltzer spoke to clinicians and post-docs at Columbia University on February 6 about hot topics in immigration law. The PowerPoint presentation and a listing of suggested reading materials can be accessed at <http://www.klaskolaw.com/events-calendar.php?action=view&id=86>. For more information on this talk, write to Suzanne at sseltzer@klaskolaw.com.

H. Ronald Klasko (Ron) spoke on February 19 at Thomas Jefferson University Hospital to clinical doctors about post-residency options. PowerPoint and related articles for this seminar are now available at <http://www.klaskolaw.com/events-calendar.php?action=view&id=72> to download.

Ron spoke at the CUPA-HR Public Policy Forum in Washington, DC, on February 11. His remarks focused on the prospects for immigration legislation; employer compliance and employer best practices issues involving verifying the legal status of the university's workforce; the PERM labor certification process; and the impact of the immigrant quota backlogs.

Additionally, Ron participated at the Florida Bar Association Annual Immigration Law Update in Miami, FL, on February 7 and 8. He presented two programs to approximately 300 immigration attorneys in attendance. Ron was a panelist on a program entitled, "Employment-Based Immigration: Where Are We Now?" The main areas

of focus of this panel were the PERM labor certification program; strategies for dealing with immigrant visa quota delays; and advice for dealing with all of the complicated legal issues involved with applicants for adjustment of status to permanent residence whose cases will be pending many years, including associated employment, travel, and family issues. He served as discussion leader for "Federal Court Redress for Adjudication Delays." This panel dealt with the issues involved in filing actions in federal court to force the government to adjudicate delayed adjustment of status to permanent residence cases and naturalization cases.

Also in Florida, Ron presented at the Philadelphia Regional Center EB-5 Seminar in Miami February 6. Ron presented to immigration attorneys the advantages of the EB-5 regional center investment program and the many types of clients for whom a regional center EB-5 petition provides the best or sometimes the only immigration option. Ron also set out areas of attorney due diligence in evaluating the various approved regional centers and explained how the Philadelphia Regional Center compared favorably to others in these areas of due diligence.

Ron spoke at the Annual Washington International Education Conference in Washington, DC, on January 28. He participated on a panel with representatives from the U.S. Department of Homeland Security, U.S. Department of State, and U.S. Department of Commerce. The audience included representatives of universities throughout the country involved in international programs as well as foreign embassies in Washington, DC. Ron discussed the issue of visa delays engendered by security clearances; lack of employment opportunities for foreign students compared to students in other countries; restrictions on foreign students in the United States obtaining permanent residence status; and the prospect for regulatory and legislative changes that could improve the landscape for universities. If you would like more information on these talks, write to Ron at rklasko@klaskolaw.com.

Recent Publications

Theodore J. Murphy's (Ted) recently-authored article, "Justice Delayed is Justice Denied," is slated to be published in *The Legal Intelligencer*. The article discusses the saga and heartbreak of the Paputchi family, one of the firm's clients. To learn about their story and the injustice they face, request your copy of this publication by writing to Ted at tmurphy@klaskolaw.com.



10. 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

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