

JANUARY 2007

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

Headlines:

- **1. USCIS Issues Guidance on Periods of Admission for H and L Workers** - USCIS has released guidance on determining periods of admission for certain H and L workers.
- **2. SSA Explains How Foreign Workers Can Get Social Security Numbers** - The Social Security Administration has listed the documentation a foreign worker must have to obtain a Social Security number for work purposes.
- **3. No Progress on Immigration Reform in 109th Congress; Report Released on Immigration Legislation and Issues** - The 109th session of Congress ended in December with no progress on major immigration reform legislation.
- **4. H-2B Cap Reached for First Half of FY 2007** - USCIS has received a sufficient number of H-2B petitions to reach the cap for the first six months of fiscal year 2007.
- **5. State Dept. Changes Personal Appearance Requirements for Interviews** - A consular officer must now interview persons in the same age range (14 - 79) as persons covered by biometric collection requirements.
- **6. USCIS Announces Processing Changes for J-1 Foreign Residence Waivers Under 212(e)** - USCIS outlined processing changes for new filings based on claims of exceptional hardship or persecution.
- **7. Over Six Million Apply for DV-2008 Green Card Lottery** - Over 6.4 million entries for the 2008 Diversity Visa Lottery were received during the two-month electronic registration period.
- **8. USCIS Issues Notice Launching Pilot Test for New Naturalization Exam** - USCIS plans to revise the naturalization testing process to ensure that the process is uniform.
- **9. New Work Authorization Law in Colorado** - Colorado employers will have 20 days to verify the work authorization status of a new employee.
- **10. Significant Regulatory Changes Proposed for 2007** - DHS and other agencies recently released semiannual regulatory agendas for employment-related immigrant and nonimmigrant regulations.
- **11. Recent News from Klasko** - Speaking Engagements, Save the Date, Recent Publications, Trivia.
- **12. Government Agency Links**

1. USCIS Issues Guidance on Periods of Admission for H and L Workers

U.S. Citizenship and Immigration Services (USCIS) released guidance on determining periods of admission for those previously in H-4 or L-2 status, those applying for additional periods of admission beyond the H-1B six-year maximum, and those who have not exhausted the six-year maximum but who have been absent from the U.S. for over one year. Specifically, the memorandum:

- clarifies that time spent as an H-4 or L-2 dependent does not count against the maximum allowable period of stay available to principals in H-1B or L-1 status;
- clarifies that H-1B workers who qualify under section 106(a) and (c) of the American Competitiveness in the Twenty-First Century Act of 2000 need not be in H-1B status when requesting an additional period of stay beyond the six-year maximum; and
- clarifies how to determine the maximum period of admission in H-1B status for a beneficiary who was in the U.S. in valid H-1B status for less than the six-year maximum period of admission, but who has since been outside the U.S. for more than one year.

USCIS noted that a worker seeking H-1B or L-1 status (or corresponding derivative status) in light of these clarifications still must meet all of the substantive requirements for those classifications and is subject to the normal maintenance-of-status requirements. For more information, visit <http://www.uscis.gov/files/pressrelease/PeriodsofAdm120506.pdf>.

2. SSA Explains How Foreign Workers Can Get Social Security Numbers

The Social Security Administration (SSA) lists the following documentation required of a foreign worker in order to obtain a Social Security number (SSN) for work purposes:

- Department of Homeland Security (DHS)-stamped work-authorized status on an I-94 (e.g., L-1 is work-authorized inherent in status), or
- I-551 Permanent Resident Card ("green card"), or
- Machine-readable immigrant visa with temporary work authorization language embedded on the face of the visa (upon endorsement, this serves as a temporary I-551 evidencing permanent residence for one year), or
- Employment Authorization Document (EAD): I-766 or I-688B

B-2 temporary visitors for pleasure (tourists) are not authorized by DHS to work in the U.S. so they cannot be assigned SSNs for work. The only other way for a B-2 to get an SSN, which a spokesperson for the SSA said is rare, is if he or she qualifies for a non-work SSN. The only valid non-work reasons are:

- a federal statute or regulation requires that the individual provide his or her SSN to get a particular benefit or service to which he or she has otherwise established entitlement;

- a state or local law requires the individual, who is legally in the U.S., to provide his or her SSN to get public assistance benefits to which entitlement has been established and for which all other requirements have been met.

For more information, see "Foreign Workers and Social Security Numbers," <http://www.socialsecurity.gov/pubs/10107.html>, and "Social Security Numbers for Noncitizens," <http://www.socialsecurity.gov/pubs/10096.html>.

3. No Progress on Immigration Reform in 109th Congress; Report Released on Immigration Legislation and Issues

The 109th session of Congress ended in December with no progress on major immigration reform legislation or on the Securing Knowledge, Innovation, and Leadership (SKIL) Act of 2006, which was intended to provide visa shortage relief for key foreign nationals working in the U.S. As noted by the Congressional Research Service (CRS) in a detailed report, security concerns figured prominently in congressional debates this past year, and immigration enforcement remains on Congress's agenda. Additional action is possible early in 2007 when appropriations bills will be considered.

Meanwhile, sources said Sen. Ted Kennedy (D-Mass.), the new chairman of the Senate immigration subcommittee, plans to put forward a new version of an immigration bill early this year. The bill is expected to contain many of the components of the measure Sen. Kennedy co-sponsored last year, including a legalization provision for undocumented workers.

4. H-2B Cap Reached for First Half of FY 2007

U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of H-2B petitions to reach the cap for the first six months of fiscal year (FY) 2007. USCIS will reject new petitions for H-2B workers seeking employment start dates before April 1, 2007. The agency will continue to accept petitions for new H-2B workers seeking employment start dates on or after April 1, 2007, only if such petitions are supported by a valid temporary labor certification.

Petitions for workers currently in H-2B status and returning H-2B workers do not count toward the H-2B cap. To qualify as a returning worker, the worker must have counted against the H-2B numerical cap between October 1, 2003, and September 30, 2006. Petitions received after the "final receipt date" (November 28, 2006) that contain a combination of returning workers and workers subject to the cap will be rejected with respect to the non-returning workers. USCIS will continue to process petitions filed in order to:

- extend the stay of a current H-2B worker;
- change the terms of employment for a current H-2B worker;
- allow a current H-2B worker to change or add an employer; and
- request eligible H-2B returning workers.

The notice is available at http://www.uscis.gov/files/pressrelease/H2BCapReleaseFY2007_5dec06.pdf.

5. State Dept. Changes Personal Appearance Requirements for Interviews

The Department of State issued a final rule amending guidance to consular officers for the waiver of in person appearances of applicants for nonimmigrant visas. The most significant change is that a consular officer must now interview persons in the same age range – 14 to 79 years old – as persons covered by biometric collection requirements. The in person interview requirement may not be waived for nonimmigrant visa applicants from third countries and for applicants who have been refused visas previously or found ineligible for visas, where that ineligibility was not overcome. The final rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-21492.pdf>.

6. USCIS Announces Processing Changes for J-1 Foreign Residence Waivers Under 212(e)

U.S. Citizenship and Immigration Services (USCIS) issued a public notice on December 19, 2006, outlining processing changes for new filings based on claims of exceptional hardship or persecution, per the Application of Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration and Nationality Act. Among other things, USCIS's Nebraska, Texas, and Vermont Service Centers have begun forwarding to the California Service Center any such new filings. USCIS noted that it is not necessary for those who filed an I-612 previously to file a new application. New applicants seeking such a waiver should file their I-612s with the Service Center having jurisdiction over the applicant's place of residence.

USCIS also noted that all 212(e) waiver recommendations received by the agency from the Department of State (DOS) based on a "no objection" statement from the individual's home country, a request by an interested U.S. government agency, or a request by a state health department (State Conrad 30) are being forwarded to the Vermont Service Center (VSC) for processing. Waiver recommendations based on these three eligibility categories are transmitted electronically from the DOS to the VSC and are included in USCIS's electronic case management system as an I-612. Following the review of DOS's recommendation and completion of requisite security checks, the Service Center will issue a decision on the waiver request. The notice is available at http://www.uscis.gov/files/pressrelease/I612_121906PN.pdf.

7. Over Six Million Apply for DV-2008 Green Card Lottery

Over 6.4 million entries for the 2008 Diversity Visa (DV) green card lottery were received during the two-month electronic registration period, from October 4, 2006, through December 3, 2006. This was an increase from the more than 5.5 million applications received in the 2007 DV lottery.

Most of the applications were from Africa and Asia, with 41 percent of the total from Africa, 38 percent from Asia, 19 percent from Europe, and two percent from South America, Central America, and the Caribbean. The largest number of applicants were from Bangladesh (more than 1.7 million), followed by Nigeria (684,735) and Ukraine (619,584). The number of winning entries by country will be released after the random lottery process is conducted in 2007.

Winners will be notified by letter from the Kentucky Consular Center between April and July 2007. The letter will provide further instructions. The DV 2009 lottery registration period has not yet been opened and no applications are being accepted electronically now. The Department's media note is available at <http://www.state.gov/r/pa/prs/ps/2006/77895.htm>.

8. USCIS Issues Notice Launching Pilot Test for New Naturalization Exam

U.S. Citizenship and Immigration Services (USCIS) has published a notice in the Federal Register confirming its announcement last month that it will be conducting a pilot of a redesigned naturalization test. USCIS plans to revise the naturalization testing process to ensure that the process is uniform; currently, test content varies among USCIS district offices. The final test is expected to be implemented nationally beginning in 2008.

USCIS said it plans to retain the current U.S. history and government test format but will replace the "trivia-based content" of the questions with new questions that will test applicants on the fundamentals of American democracy, such as the rule of law, separation of powers, and rights.

The notice, published on December 19, 2006, lists the sites where the pilot test will be conducted beginning in early 2007. The notice is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-21548.pdf>.

9. New Work Authorization Law in Colorado

Colorado employers will have 20 days to verify the work authorization status of a new employee. Employers who fail to maintain the required documentation will be subject to fines of up to \$5,000 for the first offense and \$25,000 for subsequent offenses. For more information, visit www.coworkforce.com/ice/FAQsHB061343HB0651017.pdf.

10. Significant Regulatory Changes Proposed for 2007

Several agencies recently released their semiannual regulatory agendas, which summarize planned upcoming proposed, interim, and final rules intended for publication. If past history is any indication, timetables often change and rules are frequently postponed, but the agencies' semiannual regulatory agendas provide a good overview of what changes can be anticipated in the foreseeable future regarding implementation of processes and requirements. Selected immigrant and nonimmigrant employment-related highlights of the lengthy semiannual regulatory agenda of the Department of Homeland Security (DHS) follow.

Eliminating substitution of beneficiaries on permanent labor certification applications. DHS will propose to eliminate the current practice of allowing the substitution of beneficiaries on permanent labor certifications, among other options. In addition, DHS is proposing to reduce further the likelihood of the submission of

malafide Immigrant Petitions for Alien Worker (Forms I-140), which are employment-based petitions "supported by fraudulent or stale labor certification applications" for the permanent employment of aliens in the U.S., by proposing a 45-day period for employers to file approved permanent labor certifications in support of Form I-140 petitions with DHS after the issuance of an approved labor certification by the Department of Labor.

Requiring electronic filing. U.S. Citizenship and Immigration Services (USCIS), is restructuring its business processes to implement new procedures for filing, processing, and adjudicating all benefit applications and petitions. USCIS will move toward electronic filing and adjudication of benefits to streamline processing, modernize adjudications, and facilitate efficient and effective data collection and reporting.

Fee changes. In several upcoming rules, USCIS is proposing to raise fees or charge new fees. USCIS proposes to charge a new immigrant visa service fee to every immigrant visa applicant. Currently, USCIS does not charge immigrant visa applicants overseas the service fee that it charges to adjustment of status applicants in the U.S. By charging a new immigrant visa service fee, USCIS hopes to recover the full operating costs of providing maintenance services to all new permanent residents. USCIS expects to issue a notice of proposed rulemaking in January.

Another rule proposes increases in immigration benefit application and petition fees and the biometric fee for applicants/petitioners who apply for certain immigration benefits for fiscal years 2008 and 2009.

Changes in premium processing fees and timetables. DHS proposes to raise the premium processing fee for employment-based petitions and applications, and provides that all future fee adjustments for Premium Processing Service will be made annually through publication in the Federal Register. Meanwhile, an interim rule planned for mid-2007 changes the premium processing time from 15 calendar days to 15 business days and adds circumstances that will stop the premium processing clock. This rule also clarifies that for e-filed petitions and applications, the 15-business-day processing period begins when USCIS receives the initial required supporting documentation to adjudicate the case at the Service Center with jurisdiction over that case.

Allocating H-1B numbers. A final rule will implement certain changes made by the Omnibus Appropriations Act for Fiscal Year 2005 to the numerical limits on the H-1B nonimmigrant visa category and the fees for filing H-1B petitions. The rule also notifies the public of the procedures USCIS will use to allocate the additional H-1B numbers made available under that Act. This rule further modifies USCIS premium processing regulations by providing authority to delay, suspend, or set an alternate date on which the 15-calendar-day premium processing period starts.

Halting concurrent filing of I-140s and I-485s. USCIS is proposing to amend its regulations concerning employment-based immigrant status. Under the current regulations, employers may file a Form I-485, Application to Register Permanent Residence or Adjust Status (I-485) concurrently with Form I-140, Immigrant Petition for Alien Worker (immigrant petition), while the immigrant petition is pending; or after the immigrant petition has been approved, as long as a visa number is immediately available to the alien. USCIS is considering modifying the current system to disallow concurrent I-140 and I-485 filings and instead mandate that a foreign worker applying for adjustment of status be the beneficiary of an approved immigrant petition prior to filing the adjustment application.

Withholding adjudication. An interim rule will expand the circumstances under which DHS may withhold adjudication or toll any applicable regulatory deadline for completion of adjudication of an application or petition.

Extending O and P filing times. This final rule amends DHS regulations to enable certain petitioners to file O and P nonimmigrant petitions up to one year before the petitioners' need for the worker's services. Petitioners frequently plan for an event or performance more than one year in advance when seeking O and/or P nonimmigrant workers. By extending the filing time requirement for O and P petitions from the current six months to one year, DHS "hopes to provide relief and assurance to petitioners that, if approvable, such petitions will be approved prior to the date of the petitioners' need for the alien's services."

Reduction of employment verification documents. DHS intends to publish a final rule this year implementing changes to employment verification requirements, including a reduction in the number of documents required.

Elimination of advance parole requirement for H-1 and L workers. DHS plans to publish a final rule that, among other things, eliminates the requirement for permission for overseas travel for adjustment applicants who are maintaining H-1 or L nonimmigrant status.

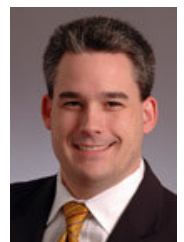
Significantly changing H-2B agricultural worker regulations. Under the redesigned H-2B temporary nonagricultural program, employers seeking to use H-2B workers, except for applications filed for employment in Guam or in logging, will file directly with the DHS instead of first filing an application for labor certification with the Department of Labor (DOL). Under regulations simultaneously proposed by DOL and DHS, the employer will be required to conduct recruitment before filing its petition. The petition will include a number of attestations concerning labor market and related issues. DHS will administer the petition adjudication process. After adjudication, DOL will audit selected approved petitions. In such audits, DOL will exclusively examine whether the employer has complied with those aspects of the approved petition related to the labor market and other related attestations. Employers will be expected to have documentation available to support their attestations and will be required to provide such documentation to DOL within 30 days from notice of the audit. If, after completion of the audit, DOL determines that the employer has failed to comply with the terms of the attestations contained in the DHS petition or made material misrepresentations in its attestation, DOL will, after notice to the employer and opportunity for a hearing, recommend to DHS that the employer be debarred for a period of up to 3 years. The DHS's semiannual regulatory agenda is available at <http://a257.g.akamaitech.net/7/257/2422/11dec20060800/edocket.access.gpo.gov/ua061211/ua061009.txt>.

As noted, other federal agencies have also issued their semiannual regulatory agendas, some of which have immigration-related components. For example, the Department of State's agenda has final rules planned on the Student and Exchange Visitor Information System, uncertified foreign health care workers, exchange visitors, and others. DOS's agenda is at <http://a257.g.akamaitech.net/7/257/2422/11dec20060800/edocket.access.gpo.gov/ua061211/ua061014.txt>. Other federal agency agendas can be found by clicking on the links at http://www.access.gpo.gov/su_docs/fedreg/a061211c.html.

11. Recent News from Klasko

Upcoming Speaking Engagements

More Lore Than Law: Advising Clients, Managing Risks and Practicing Law Without Clear Guidelines. William A. Stock, AILA Philadelphia Chapter Chair, will serve as Program Chair of the American Immigration Lawyers Association's (AILA) 2007 Midyear CLE Conference in San Jose, Costa Rica to be held on January 19, 2007. The conference will focus on advanced business immigration topics.



Some of the sessions include:

- The Business of Law in a Flat World: Law Practice Management in the New Millennium
- Steps to More Effective Labor Certifications
- Litigating Immigration Cases Without Breaking the Bank
- All the Things You "Know" But Can't Find in the Regulations

For more information visit AILA's direct website link at <http://www.aila.org/content/default.aspx?docid=18570> or write to Bill at wstock@klaskolaw.com.



H. Ronald Klasko continues to be a highly sought after lecturer. Mr. Klasko will be speaking at Harvard Business School, Yale University, Columbia University and Thomas Jefferson University among others in the coming weeks. If you are interested in having Mr. Klasko speak at your program or for more information on how to arrange an on-site program, write to Ron at rklasko@klaskolaw.com.

Recent Publications

William A. Stock's newly authored article, "Labor Certification Survivor: Seven Steps to More Effective Labor Certifications" will be featured in AILA's Midyear Conference Handbook. Bill's article explores what makes an effective labor certification and how to work with clients to prepare labor certifications that can easily be approved even if audited. To request a copy of this article, e-mail Bill at wstock@klaskolaw.com.

"Prepare Now for Timely Filing of H-1B Petitions" recently written by associate Ralf D. Wiedemann is slated to appear in an upcoming edition of *The Legal Intelligencer*. Write to Ralf at rwiedemann@klaskolaw.com to request a copy of the article.

Hold the Date

Mark Your Calendars for Klasko's annual Spring Educational Seminar to be held on Tuesday, March 27, 2007. Details will follow soon. To make sure you are on our mailing list to receive an invitation, please e-mail Joel at jphilip@klaskolaw.com with full contact details including mailing address.



Klasko Trivia

Did You Know. . .

- That while known around the world as a leading immigration law firm, 2007 marks only the Firm's 4th anniversary.
- That Klasko Associate Geoffrey Forney is an amateur ornithologist. An ornithologist studies the lives and behaviors of birds, including observations on the structure and classification of birds, and on their habits, song and flight.
- That Associate Stephanie L. Browning enjoys camping and astronomy and will be attending Le Cordon Bleu for gourmet cooking classes in March.

12. 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

**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 © 2007 Academy of Business Immigration Lawyers and Klasko, Rulon, Stock and Seltzer, LLP. All rights reserved.*