

## JULY 2008

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

### Headlines:

- **1. CBP Issues Tips for U.S.-Canadian Border Travelers** – With the onset of summer travel, U.S. Customs and Border Protection recently released tips for cross-border travelers between the U.S. and Canada.
- **2. USCIS Issues Supplemental Guidance on Processing Petitions Affected by AC21 and ACWIA** – USCIS plans to incorporate all previous still-applicable guidance into forthcoming rulemaking relating to various AC21 and ACWIA statutory provisions.
- **3. U.S., U.K. Border Agencies Agree to Expedite Travel Between Nations** – The International Expedited Traveler Initiative will integrate CBP's Global Entry program with the British registered traveler program.
- **4. Homeland Security Tech Undersecretary and Others Warn of Skills Crisis** – The U.S. workforce is "in crisis" because of insufficient numbers of students going into math and science fields.
- **5. Court Rules Del Monte Cannot Avoid Liability for Wage Violations of Contractor** – A federal court ruled that Fresh Del Monte Produce Southeast, Inc. is liable for worker wage violations by a labor contractor.
- **6. State Dep't Issues Final Rule to Offer Electronic Nonimmigrant Visa Applications** – The State Department has developed and introduced an electronic application process for nonimmigrant visas to eventually replace the current application process.
- **7. USCIS Closing Tijuana, Hong Kong Field Offices** – USCIS released details on where applications will be forwarded and processed.
- **8. Federal Court Enjoins Oklahoma From Enforcing State Immigration Law** – The judge found that it was "substantially likely" that Oklahoma's law is preempted by federal immigration law.
- **9. Missouri Enacts Omnibus Immigration Act** – Missouri's new Omnibus Immigration Act which takes effect August 28, 2008, among other things, mandates the use of E-Verify.
- **10. State Dept. Releases Information on Employment Second and Third Preference Availability for August** – The employment second preference for China and India will advance to June 1, 2006 while employment third preference remains unavailable.
- **11. Diversity Visa Lottery Results Announced** – Those selected will need to act on their immigrant visa applications quickly.

- **12. New Publications and Items of Interest**
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- **14. Klasko News** – Upcoming and recent speaking engagements, appointments, publications, and much more.

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## 1. CBP Issues Tips for U.S.-Canadian Border Travelers

With the onset of summer travel, U.S. Customs and Border Protection (CBP) recently released tips for cross-border travelers between the U.S. and Canada.

U.S. and Canadian citizens are now required to present proof of citizenship and identity to enter the U.S. at land and sea ports of entry. This may include a passport, trusted traveler program card (NEXUS), or birth certificate with a driver's license. Travelers 18 and under may present just a birth certificate. A passport has been required for all travelers entering and departing the United States by air since January 2007.

CBP also reminded U.S. lawful permanent residents that the I-551 form (green card) is acceptable for land and sea travel into the U.S.

CBP's tips include:

- **Tip #1** – Travelers should familiarize themselves with the “Know Before You Go” section of the CBP Web site to avoid fines and penalties associated with the importation of prohibited items. “Know Before You Go” brochures are also available at border ports of entry.
- **Tip #2** – Travelers should prepare for the inspection process before arriving at the inspection booth. Individuals should have their crossing documents available for the inspection and they should be prepared to declare all items acquired abroad. In addition, individuals should end cellular phone conversations before arriving at the inspection booth.
- **Tip #3** – Members of the traveling public should consult the CBP Web site to monitor border wait times for various ports of entry, including Blaine and Sumas, Washington; Sweetgrass, Montana; and Pembina, North Dakota. Information is updated hourly and is useful in planning trips and identifying periods of light use and short waits.
- **Tip #4** – During periods of heavy travel, border crossers may wish to consider alternative, less heavily traveled entry routes.
- **Tip #5** – Travelers should plan to build extra time into their trips in the event they cross during periods of exceptionally heavy traffic (e.g., Canada Day and the Fourth of July holidays and adjacent weekends).
- **Tip #6** – Know the difference between goods for personal use and goods for commercial use.

- **Tip #7** – Do not attempt to bring fruits, meats, dairy, poultry products, or firewood into the U.S. from Canada without first checking whether they are permitted.
- **Tip #8** – CBP officers have the authority to conduct enforcement examinations without a warrant, ranging from a simple luggage examination up to and possibly including a personal search. Even during the summer vacation season, international border crossers should continue to expect a thorough inspection process when they enter the U.S. from Canada.

CBP said its officials continually monitor traffic and border crossing times at area ports of entry. CBP plans to fully staff all inspection lanes during peak periods and to implement various traffic management operations to maintain the flow of traffic during periods of exceptionally heavy usage.

The tips are available at [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/06272008.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/06272008.xml).

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## 2. USCIS Issues Supplemental Guidance on Processing Petitions Affected by AC21 and ACWIA

U.S. Citizenship and Immigration Services (USCIS) released supplemental guidance on May 30, 2008, relating to processing forms I-140 (employment-based immigrant petitions), I-129 (H-1B petitions), and I-485 (adjustment of status applications) affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) and the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The guidance discusses a variety of issues, such as the application of several Department of Labor rules related to labor certification; documentation; H-1B petitions; and portability issues under AC21. USCIS plans to incorporate all previous still-applicable guidance into forthcoming rulemaking relating to various AC21 and ACWIA statutory provisions.

Among other things, the guidance notes that to determine an H-1B beneficiary's eligibility for an extension of H-1B status under § 104(c) of AC21, USCIS adjudicators are instructed to review the Department of State's Visa Bulletin that was in effect at the time of filing of the I-129 petition. If, on the date of filing of the H-1B petition, the Visa Bulletin shows that the beneficiary was subject to a per-country or worldwide visa limitation in accordance with the beneficiary's immigrant visa priority date, the H-1B extension request under AC21 § 104(c) may be granted. To establish the priority date, USCIS may accept a copy of the H-1B beneficiary's I-140 petition approval notice.

The guidance also notes that USCIS adjudicators are instructed that if credible documentary evidence is provided in support of an H-1B petition that the beneficiary faced retaliatory action from his or her employer based on reporting a violation of INA § 212(n)(2)(C)(iv), USCIS adjudicators may consider any related loss of H-1B status by the beneficiary as an "extraordinary circumstance." This process may allow the beneficiary additional time to acquire new H-1B employment and remain eligible to apply for a change of status or extension of stay notwithstanding the termination of employment or other retaliatory action by the employer.

The guidance is available at [http://www.uscis.gov/files/natedocuments/AC21\\_30May08.pdf](http://www.uscis.gov/files/natedocuments/AC21_30May08.pdf).

### 3. U.S., U.K. Border Agencies Agree to Expedite Travel Between Nations

U.S. Customs and Border Protection has signed a joint agreement with the government of the United Kingdom to develop a bilateral pilot program to facilitate travel between the two nations. The International Expedited Traveler Initiative will integrate CBP's Global Entry program with the British registered traveler program.

CBP announced the Global Entry pilot program April 11 to build upon other CBP trusted traveler programs, such as NEXUS and SENTRI, designed to facilitate and expedite the entry process for pre-registered low-risk international travelers into the U.S. NEXUS is a joint program with the Canada Border Services Agency that allows expedited processing into the U.S. and Canada at the land border and at Canadian pre-clearance airports. SENTRI provides for dedicated processing at the U.S.-Mexico land border.

The Global Entry pilot kicked off for U.S. citizens and U.S. permanent residents on June 6 at three airports: John F. Kennedy International Airport in New York; George Bush Intercontinental Airport in Houston, Texas; and Washington Dulles International Airport. CBP began accepting online applications on May 12. CBP expects that citizens of the United Kingdom will be invited to apply as soon as late this year. CBP signed a similar agreement with the government of the Netherlands on May 19.

The announcement is available at [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/06242008\\_4.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/06242008_4.xml).

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### 4. Homeland Security Tech Undersecretary, Others Warn of Skills Crisis

Jay Cohen, the Department of Homeland Security Department's Undersecretary for Science and Technology, warned during his keynote address at a recent University of Maryland global security summit that the U.S. workforce is "in crisis" because of insufficient numbers of students going into math and science fields. Mr. Cohen said students view those topics as too difficult.

Mr. Cohen also noted that "[w]e don't have the leadership in industry to make the sustained investment in basic and applied research because of [falling] monthly and quarterly returns."

Among other things, Mr. Cohen noted, the U.S. government may soon sign an agreement with the European Union, which has promised an investment of 1.3 billion euros in security-related projects, including the development of new technologies.

Rep. Judy Biggert (R-Ill.) and 10 other lawmakers sent a recent letter on the same issue to House Speaker Nancy Pelosi (D-Cal.), Minority Leader John Boehner (R-Ohio), and others, asking that they reinstate a portion of U.S. competitiveness funds cut in the fiscal year 2008 omnibus appropriations bill.

Additional information about the global security summit is available at <http://www.rhsmith.umd.edu/ciber/globalsecurity2008/agenda.html>.

## 5. Court Rules Del Monte Cannot Avoid Liability for Wage Violations of Contractor

A federal court ruled that Fresh Del Monte Produce Southeast, Inc., is liable for worker wage violations by a labor contractor. The lawsuit was filed by the Southern Poverty Law Center (SPLC) in April 2006 on behalf of up to 500 field and factory H-2A agricultural workers working in Georgia on planting, harvesting, and packaging onions.

Mary Bauer, director of the SPLC's Immigrant Justice Project, said the decision was particularly significant "because it provides a roadblock to a disturbing trend by large corporate growers that import workers. Increasingly, those corporations attempt to evade responsibility for their workers by having middlemen — generally penniless crew leaders — submit the applications for H-2A workers, instead of the wealthy corporations doing so themselves."

Additional information about the case, *Luna v. Del Monte Fresh Produce*, is available at <http://www.splcenter.org/news/item.jsp?aid=304>.

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## 6. State Dep't Issues Final Rule To Offer Electronic Nonimmigrant Visa Applications

The Department of State has issued a final rule, effective April 29, 2008, to offer a completely electronic application procedure for nonimmigrant visas as an alternative to submission of the Form DS-156.

The full text of the final rule is available at <http://edocket.access.gpo.gov/2008/E8-9336.htm>.

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## 7. USCIS Closing Tijuana, Hong Kong Field Offices

U.S. Citizenship and Immigration Services (USCIS) announced on June 18, 2008, that it is closing its Tijuana and Hong Kong field offices. Details on where applications sent to the Tijuana office will be forwarded and processed are at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=29b534a30f49a110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

Details on where applications sent to the Hong Kong office will be forwarded and processed are at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a70af774c6c9a110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

## 8. Federal Court Enjoins Oklahoma From Enforcing State Immigration Law

On June 4, 2008, a federal court in Oklahoma City enjoined Oklahoma from enforcing portions of the state's immigration law, H.B. 1804, that were scheduled to take effect July 1. Among them were a requirement that employers use E-Verify to check work authorizations of employees, which is currently voluntary for private employers under federal law. Judge Robin J. Cauthron found that it was "substantially likely" that Oklahoma's law is preempted by federal immigration law. The lawsuit was filed by the U.S. Chamber of Commerce and other groups.

The court noted that:

[W]hile the public clearly has an interest in issues of illegal immigration, and no court should treat the prospect of overturning state law without grave consideration, the Constitution requires that the will of the States must occasionally give way to the need for uniformity among the States, and that uniformity can only be accomplished through congressional action. Thus, for now, the provisions of H.B. 1804 challenged by Plaintiffs must be enjoined until a final determination can be made about the extent to which States can permissibly regulate without interfering with areas reserved exclusively for congressional action. The Court is not deciding that Plaintiffs will ultimately prevail, rather, when the materials before the Court are viewed as the facts and law exist today, it appears that Plaintiffs are likely to prevail and consequently are entitled to a preliminary injunction.

The decision is available at <http://www.uschamber.com/assets/nclc/henrypreliminjunction.pdf>. For additional details and a history of the case, see [http://www.nfib.com/object/IO\\_37522.html](http://www.nfib.com/object/IO_37522.html) and <http://hr.cch.com/news/employment/062008a.asp>.

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## 9. Missouri Enacts Omnibus Immigration Act

Missouri's new Omnibus Immigration Act will take effect August 28, 2008. This law, among other things, mandates the use of E-Verify. It specifically requests that all public employers in the State use E-Verify and that contractors and subcontractors with State contracts or grants in excess of \$5,000 or a state-administered tax credit, tax abatement or loan from the State also use E-Verify. An employer's use of the E-Verify program creates an affirmative defense for that employer. The new law also provides that knowingly employing an illegal alien will result in the suspension of a company's applicable local licenses, permits and exceptions for 14 days. A second violation will result in suspension for a period of one year. A third or subsequent violation will result in permanent suspension. A violation can also result in termination of the contract and the suspension or debarment of the business entity from doing business in the State for a period of three years. A second or subsequent violation will result in the termination of the contract and the permanent suspension or debarment of the business entity from doing business in the state.

## 10. State Dept. Releases Information on Employment Second and Third Preference Availability for August

The Department of State's Visa Office has released the following information on employment second and third preference visa number availability for August 2008:

Employment second preference. The employment second preference category is "Current" for all countries except China and India. The China/India cut-off date made a significant jump forward to June 1, 2006.

Employment third preference. Demand for numbers, primarily by USCIS for adjustment of status cases, brought the entire employment third preference category to the annual numerical limit by the end of June. As a result, this category became "unavailable" beginning in July, remains so for August and probably for the remainder of fiscal year 2008.

The latest Visa Bulletin containing this and other information on priority dates is available at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4252.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4252.html).

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## 11. Diversity Visa Lottery Results Announced

The Department of State's Visa Office has reported that the Kentucky Consular Center in Williamsburg, Kentucky, has registered and notified the winners of the DV-2009 diversity lottery. The DV lottery makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. Over 9.1 million people applied for the DV lottery this year. Of that number, approximately 99,600 applicants have been registered and notified and may now make an application for an immigrant visa. Because it is likely that some of the first 50,000 persons registered will not pursue their cases to visa issuance, the Department said this larger figure should ensure that all DV-2009 numbers will be used during fiscal year 2009 (October 1, 2008, to September 30, 2009). Those selected will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letter and must fully complete the information requested.

The latest Visa Bulletin for July 2008 contains a country-by-country breakdown of those registered for DV-2009, at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4252.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4252.html).

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## 12. New Publications and Items of Interest

New USCIS ombudsman postings:

- Questions & Answers from CIS Ombudsman's Teleconferences - updated 6/16/2008
- N-648 Medical Waivers - How Are They Working For You? - updated 6/11/2008

These items are available at [http://www.dhs.gov/xabout/structure/editorial\\_0482.shtm](http://www.dhs.gov/xabout/structure/editorial_0482.shtm).

Globalization links. The University of Maryland's Center for International Business Education and Research has posted a number of links to information about globalization, trade, merging economies, and American competitiveness at <http://www.rhsmith.umd.edu/ciber/resources.html>.

DOJ Inspector General Report on Name Check and Fingerprint Processes. The Department of Justice's Office of the Inspector General has released "The Federal Bureau of Investigation's Security Check Procedures for Immigration Applications and Petitions" (Audit Report 08-24, June 2008). The report notes that the FBI's largest name check and fingerprint identification user is the Department of Homeland Security's U.S. Citizenship and Immigration Services, for use in adjudications of immigration and naturalization benefits. The volume of requests for name checks and fingerprint identification has surged since the terrorist attacks of September 11, 2001. More than 4 million name checks were performed in fiscal year (FY) 2007, and 26 million fingerprint identification requests were made in FY 2007. The Inspector General's audit found that the FBI's name check processes performed under the National Name Check Program (NNCP) are "inefficient and untimely, rely on outdated technology, and provide little assurance that pertinent and derogatory information is being retrieved and transmitted to customer agencies." The Inspector General found, however, that the fingerprint identification process performed under the Integrated Automated Fingerprint Identification System (IAFIS) is generally "accurate and timely" because of enhanced technology, well-trained personnel, efficient tracking mechanisms, and proficient interaction with requesting agencies.

The DOJ Inspector General's report is available at <http://www.usdoj.gov/oig/reports/FBI/a0824/final.pdf>.

DOL Inspector General report on labor certification applications. The Department of Labor's Inspector General issued a semiannual report to Congress on May 31, 2008, recommending that Congress authorize the Department to verify information on labor certification applications. The report stated that "[i]f DOL is to have a meaningful role in the H-1B specialty occupations foreign labor certification process, it must have the statutory authority to ensure the integrity of that process, including the ability to verify the accuracy of information provided on labor condition applications." The Department recommends consideration with USCIS of a legislative proposal that would "require foreign nationals to have their eligibility determined by USCIS before the employer's labor certification application is reviewed by DOL."

The DOL Inspector General's report is available at <http://op.bna.com/dlrcases.nsf/r?Open=gcii-7falst>.

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### 13. Government Agency Links

*Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:*

- USCIS Service Center processing times online: <https://egov.uscis.gov/cris/jsps/ptimes.jsp>
- Department of Labor processing times and information on backlogs: <http://www.foreignlaborcert.doleta.gov/times.cfm>
- Department of State Visa Bulletin: [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

## 14. Klasko News

### Klasko Named Corporate Immigration Lawyer of the Year



H. Ronald Klasko (Ron) has been named Corporate Immigration Lawyer of the Year by *Who's Who Legal 2008: The International Who's Who of Business Lawyers*, for the second consecutive year. According to the publication, nominations for this award were made by clients and "fellow professionals" and Mr. Klasko "was the most highly nominated individual overall."

For nearly 30 years, Ron has practiced exclusively immigration law. He is a former national President and three-term General Counsel of the American Immigration Lawyers Association. He is listed in the 2008 edition of the *Best Lawyers in America* and is named one of the country's top immigration lawyers by *Chambers Global: The World's Leading Lawyers for Business 2008*. A frequent lecturer and prolific author on immigration law topics, Ron is one of only three immigration lawyers ever honored by the American Immigration Lawyers Association with the Founders Award, an award given to the individual or group who has had the most important impact on immigration law. Congratulations Ron on your continued professional achievements.

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### Upcoming Speaking Engagements



Elise Fialkowski will be presenting on August 5 in Philadelphia at "Employment Law Update," a seminar organized by Sterling Educational Services. Elise will discuss worksite enforcement issues for employers including I-9 compliance issues, SSN mismatch letters, E-Verify (including proposed regulations requiring federal contractor participation as well as the growing body of state laws requiring E-Verify), the impact of undocumented or improperly documented employees and ICE raids. Human Resources professionals, business owners, managers, and attorneys are encouraged to attend this program. For more information and to register, visit

<http://www.sterlingeducation.com/ELU6Philadelphia.html> or contact Elise at [efialkowski@klaskolaw.com](mailto:efialkowski@klaskolaw.com).

Elise will also be conducting a seminar on July 29 at St. Joseph's University in Philadelphia regarding nonimmigrant and immigrant visas, as well as legal issues that may arise in hiring and retaining foreign national personnel.

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### Recent Speaking Engagements

Ron Klasko was the guest speaker at "Hot Topics in Immigration 2008" held on Thursday, July 17, 2008 in Philadelphia. This program was sponsored by the French-American Chamber of Commerce, the German-American Chamber of Commerce, and the Irish American Business Chamber & Network of Philadelphia. Ron provided updates on H, L, E and O visas; attaining permanent resident status and the EB-5 investor visa.



Several countries have developed immigrant investor programs, which offer permanent residency visas or green cards to qualified investors. The most prominent countries that have developed such programs are Canada, Australia, the United Kingdom, and the United States.

The U.S. immigrant investor program provides for the issuance of "conditional" or temporary (two year) green cards to qualifying investors and their families who invest a minimum of US \$1 million (or US \$500,000 in designated target areas, including the PIDC Regional Center in Philadelphia) in businesses that create at least ten full-time permanent jobs for U.S. workers. Provided that the investment is maintained and achieves the job requirements of the program, "unconditional" or permanent green cards will be issued after two years. To access the PowerPoint presentation used for this program and related articles, click here: <http://www.klaskolaw.com/events-calendar.php?action=view&id=93>. To learn more about the investor visa program and to see if you or someone you know qualifies, contact Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

Elise Fialkowski was a guest presenter at Lehigh University on July 15 for a program hosted by the Global Village for Future Leaders of Business and Industry. The Global Village is a cross cultural program bringing together future leaders from over forty countries. Elise lectured on U.S. immigration rules and regulations affecting students, scholars, employees, business people, and investors. For more information on this program e-mail Elise at [efialkowski@klaskolaw.com](mailto:efialkowski@klaskolaw.com).



Ron Klasko served as discussion leader for the final part of the three-part national tele-seminar series "Options for the Wealthy Client" entitled "EB-5 Regional Centers" on July 10. For information on this series, contact Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).

Ron Klasko, Bill Stock, and Suzanne Seltzer participated and presented at the American Immigration Lawyers Association (AILA) Annual Conference in Vancouver, BC, Canada from June 25 – 28. For more information on the panel sessions, including PowerPoint presentations, conducted by our partners, go to <http://www.klaskolaw.com/events-calendar.php?action=view&id=84>.

Ron Klasko served as a discussion leader at the National Association of College and University Attorneys (NACUA) Annual Conference in New York on June 24. Ron led the session "Undocumented Resident Aliens: Employment and Admission Issues" which addressed ICE enforcement standards, social security no-match letters, E-Verify, state laws relating to immigration and the new I-9 form. For related articles on employer compliance, E-Verify, social security mismatch, I-9s and government enforcement efforts targeted to employers of undocumented workers, visit <http://www.klaskolaw.com/events-calendar.php?action=view&id=92>.

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## Recent Publications

Ron Klasko's latest article, "Immigrant Investors: Two Choices, One Goal" was published in *The Legal Intelligencer* on July 11, 2008. In this article, Ron discusses how foreign nationals seeking permanent resident status in the U.S. are relying on the investment route more frequently than ever before. For more information on the investor option, or to request your copy of this publication, write to Ron at [rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com).



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