

MAY 2008

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

Headlines:

- **1. USCIS Revises I-765 to Add F-1 Eligibility Codes** – USCIS has revised the Application for Employment Authorization to include additional eligibility codes under the DHS's interim final rule regarding OPT.
- **2. DOS Issues Annual Guidance on Students and Exchange Visitors** – The Department of State has released a cable regarding student (F and M) and exchange visitor (J) issues.
- **3. USCIS Releases Processing Times for Naturalization Applications Filed During Summer 2007** Projected processing times at the end of September 2008 range from a high of 14.7 months for Washington, D.C., to a low of 5 months for Helena, Montana.
- **4. ICE Arrests Hundreds of Workers** – ICE agents arrested hundreds of undocumented workers, including 306 workers at Agriprocessors, Inc. in Postville, Iowa and more than 300 workers at Pilgrim's Pride plants in five states all of whom are suspected of committing identity theft and other criminal and civil violations to obtain their jobs.
- **5. DHS Signs Visa Waiver Agreement With Korea** – The security enhancements outlined in the agreement put Korea on the path toward visa-free travel to the U.S. and potential designation as a VWP member as early as later this year.
- **6. Travel Between the Netherlands and the United States To Be Expedited** – CBP and the government of the Netherlands agreed to develop a process to integrate CBP's Global Entry program with the Dutch "Privium" program to facilitate travel of U.S. citizens and Dutch citizens between the two countries.
- **7. Expensive Virtual Border Fence To Be Replaced** – Customs and Border Protection officials recently acknowledged that the "Project 28" pilot program is not working sufficiently.
- **8. New Publications and Items of Interest**
- **9. Government Agency Links**
- **10. Klasko News** – Upcoming and recent speaking engagements, appointments, publications, and much more.

1. USCIS Revises I-765 to Add F-1 Eligibility Codes

U.S. Citizenship and Immigration Services (USCIS) announced on April 24, 2008, that it has revised the Application for Employment Authorization (Form I-765) to include additional eligibility codes under the Department of Homeland Security's interim final rule regarding Optional Practical Training (OPT), published on April 8, 2008. The rule modifies the conditions and duration of OPT for qualified F-1 nonimmigrant students.

USCIS will accept the July 30, 2007, edition of the form through July 8, 2008. As of July 9, USCIS will only accept the revised Form I-765, dated April 4, 2008, and will reject all requests using previous editions of the form.

USCIS's announcement is available at http://www.uscis.gov/files/article/I-765_24Apr08.pdf. The OPT interim rule is available at <http://edocket.access.gpo.gov/2008/pdf/E8-7427.pdf>. The revised I-765 is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

2. DOS Issues Annual Guidance on Students and Exchange Visitors

The Department of State has released a cable sent to the field on March 11, 2008, regarding student (F and M) and exchange visitor (J) nonimmigrant visa issues. Among other things, the cable notes that first-time visa applicants may be the highest priority when scheduling appointments, and repeat applicants may be scheduled on a lower-priority tier. The cable also clarifies some information on the DS-2019 form, and discusses new Exchange Visitor Program (EVP) sanctions regulations and new Termination of Designation and Revocation of Program regulations, which took effect January 22, 2008. Specifically, some of the major changes in the sanction and termination process include:

- Sponsors who were at risk of losing their program designations will have their cases heard through a paper review instead of an in-person review.
- A revised suspension process will freeze sponsors' operations for 120 days while their qualifications are under review.
- A new provision allows the Department to terminate an entire class of designated exchange visitor program sponsors if it believes specific programs, sponsors, exchange visitor category(ies), and/or activities compromise the national security of the U.S. or no longer further the Department's public diplomacy mission.
- Sponsors on whom the Bureau of Educational and Cultural Affairs imposes lesser sanctions are no longer allowed to appeal.

The cable is available at http://travel.state.gov/visa/laws/telegrams/telegrams_4202.html. Additional information about the J exchange visitor program is available at <http://exchanges.state.gov/education/jexchanges/>. Statistics and data tables about foreign students and exchange visitors are available at <http://opendoors.iienetwork.org/>.

3. USCIS Releases Processing Times for Naturalization Applications Filed During Summer 2007

U.S. Citizenship and Immigration Services (USCIS) has released the projected times for local offices to complete processing of citizenship applications filed during the summer of 2007. Projected processing times at the end of September 2008 range from a high of 14.7 months for Washington, D.C., to a low of 5 months for Helena, Montana.

Last July, USCIS received 460,000 applications for naturalization, which was three times the record for any previous month. For the year, USCIS received 1.4 million naturalization applications, almost double the normal annual volume.

USCIS said it is hiring and training hundreds of additional immigration officers to adjudicate these cases. The agency is also conducting naturalization interviews on weekends, after normal business hours, and in additional locations.

The processing times, USCIS said, "provide a sense of how quickly a case may be processed if there are no complicating factors," noting that some cases will take longer to complete; for example, if an applicant has been asked to submit additional information or fails the naturalization test, or if the FBI name check is in progress.

The projected processing times are available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=2de02ad51e679110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

4. ICE Arrests Hundreds of Workers

U.S. Immigration and Customs Enforcement (ICE) agents arrested hundreds of undocumented workers, including 306 workers at Agriprocessors, Inc. in Postville, Iowa and more than 300 workers at Pilgrim's Pride poultry plants in five states all of whom are suspected of committing identity theft and other criminal and civil violations to obtain their jobs. The workers at the Agriprocessor plant, although originally arrested on administrative immigration charges, were subsequently charged criminally. These charges vary by individual and include allegations of aggravated identity theft, falsely using a Social Security number, illegally entering the U.S. after being deported and fraudulently using an alien registration card.

ICE special agents also detained 45 undocumented workers at 10 sites and arrested 11 individuals for conspiring to harbor undocumented workers who were smuggled into the U.S. to work in Mexican restaurants in four states. This operation involved approximately 130 ICE agents and 30 state and local law enforcement officers and began in May 2006.

ICE agents interviewed roughly 100 employees at a resort in Leesburg, Virginia. Agents arrested 53 immigration status violators and another six were apprehended outside the facility. The 59 workers are nationals of El Salvador, Guatemala, Mexico, Honduras, Bolivia, Peru, and Argentina. All face removal proceedings.

Details on the arrests are available at <http://www.dhs.gov/ximgtn/enforcement/>.

5. DHS Signs Visa Waiver Agreement With Korea

On April 18, 2008, Department of Homeland Security (DHS) Secretary Michael Chertoff signed a Visa Waiver Program (VWP) Memorandum of Understanding (MOU) with Korean Minister of Foreign Affairs and Trade Yu Myung-hwan. The security enhancements outlined in the agreement "put Korea on the path toward visa-free travel to the U.S., and potential designation as a VWP member as early as later this year," the DHS announcement states.

The DHS said it plans to establish an electronic system of travel authorization for air passengers. VWP travelers will be asked to provide some basic information online, which will generate an authorization number for travel. The agency said it will announce details on how the authorization systems will work, and when they will begin, later this year.

The VWP has 27 current members from Asia and Europe. The U.S. has signed enhanced VWP agreements with the Czech Republic, Estonia, Latvia, Slovakia, Hungary, Lithuania and Malta in recent weeks. Each country has committed to meeting the new security requirements of the program.

The announcement is at http://www.dhs.gov/xnews/releases/pr_1208545066700.shtm.

6. Travel Between the Netherlands and the United States To Be Expedited

On May 19, 2008, CBP and the government of the Netherlands signed a joint agreement to develop a process to integrate CBP's Global Entry program with the Dutch "Privium" program to facilitate travel of U.S. and Dutch citizens between the two countries.

This agreement is an important next step in extending the benefits of expedited and automated CBP processing to additional low risk international travelers, and at the same time providing for reciprocal benefits for U.S. citizens traveling abroad.

7. Expensive Virtual Border Fence To Be Replaced

Just two months after Secretary of Homeland Security Michael Chertoff accepted the Boeing Co.'s completed \$20 million virtual fence along portions of the border with Mexico, the agency announced it will replace the Arizona-Mexico virtual fence with new radios, cameras, towers, and computer software. Customs and Border Protection officials recently acknowledged that the "Project 28" pilot program is not working sufficiently. Border Patrol agents in the Tucson sector agreed with Boeing's conceptual design of Project 28 but said the final system might have been more useful if they and others had been given an opportunity to provide feedback throughout the process, according to a Government Accountability Office (GAO) report issued in February 2008.

An article about plans to replace the virtual fence is available at http://www.govexec.com/story_page.cfm?articleid=39838&dcn=e_gvet. A GAO report on border security, issued in March 2008, is available at <http://www.gao.gov/new.items/d08542t.pdf>. The GAO report issued in

February 2008, detailing some of the problems with the virtual fence program, is available at <http://www.gao.gov/new.items/d08508t.pdf>.

8. New Publications and Items of Interest

How immigration is saving Social Security. The *New York Times* published an editorial on April 2, 2008, "How Immigrants Saved Social Security." The editorial argues that undocumented immigration has had an even better effect on Social Security than legal immigration. The editorial is available at http://www.nytimes.com/2008/04/02/opinion/02wed3.html?_r=2&ref=opinion&oref=slogin&oref=slogin.

2007 LPR statistics. The Department of Homeland Security has posted online the *Annual Flow Report: U.S. Legal Permanent Residents: 2007*, published March 2008. The Office of Immigration Statistics report presents information, obtained from applications for lawful permanent resident (LPR) status, on the number and characteristics of persons who became LPRs in the U.S. during 2007.

The report notes that employment-based immigrant preference categories, including principals and their dependents, represented 15 percent of the total LPR flow in 2007, up from 13 percent in 2006. The LPR flow for employment preferences increased 2 percent from 159,081 in 2006 to 162,176 in 2007, but was below the record of 246,877 set in 2005. The large number of LPRs in the employment preferences in 2005 was primarily due to the American Competitiveness in the 21st Century Act of 2000 (AC21). This Act resulted in the recapture of 130,107 unused employment-based visa numbers from 1999 and 2000 to be made available to first, second, and third preference employment-based immigrants once the annual limit had been reached. Approximately 94,000 of those recaptured visa numbers were used in 2005, none were used in 2006, and 7,312 were used in 2007.

In addition, provisions of the REAL ID Act of 2005 resulted in the recapture of 50,000 unused employment-based visas from 2001 to 2004, of which 11,950 were used in 2005, 33,335 were used in 2006, and 4,743 were used in 2007. The number of employment-based LPRs for 2007 includes 10,849 recaptured REAL ID visas. The majority of these visas were issued to individuals whose country of origin was the Philippines (64 percent) or India (21 percent). As a result of the use of additional visas recaptured by provisions of the AC21 and the REAL ID Act, the number of employment-based preferences in 2007 was greater than the annual limit of 147,148.

The report is available at http://www.dhs.gov/xlibrary/assets/statistics/publications/LPR_FR_2007.pdf.

9. 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

10. Klasko News

Current and Upcoming Speaking Engagements



H. Ronald Klasko (Ron), William A. Stock (Bill) and Suzanne B. Seltzer are attending this week's NAFSA 2008 Annual Conference and Expo in Washington, D.C. from May 25 - 30 and speaking at several educational programs during the Conference.

If you are attending the Annual Conference, please stop by any of Ron, Suzanne or Bill's scheduled sessions and introduce yourself to them. A list of topics and dates when our partners will present workshop and sessions can be found at <http://www.klaskolaw.com/events-calendar.php?action=view&id=91>.

Our firm is proud to be NAFSA's first global advocate partner and to have a chance to play a role in educating universities and research institutions on key immigration developments. For more information on NAFSA: Association of International Educators or our Firm's role in this organization, write to Ron at rklasko@klaskolaw.com.

Ron Klasko and Elise A. Fialkowski presented the first part of a three-part national tele-seminar series on E-2, L-1, and EB-5 Visas entitled "Options for the Wealthy Client," sponsored by [ILW.com](http://www.ilw.com). This first session, "Options for the Entrepreneur" was on May 22 and discussed:

- Advantages/disadvantages of E-2
- Advantages/disadvantages of H-1B
- Advantages/disadvantages of L-1
- Advantages/disadvantages of EB-5 individual investment
- Advantages/disadvantages of EB-5 regional center investment
- EB-5 Ethical/malpractice issues

Ron Klasko and Bill Stock will present Part 2 of this series "EB-5 and E-2 Issues" on June 12. This session will compare EB-5 and E-2, regional center and individual EB-5 investments, and cover EB-5 litigation issues. For more information on this seminar series, e-mail Ron or Elise at rklasko@klaskolaw.com or efialkowski@klaskolaw.com. Register online now for parts two and three at <http://www.ilw.com/seminars/may2008.shtm>.



Ron Klasko, Bill Stock, Suzanne Seltzer, and Elise Fialkowski will all be presenting at the American Immigration Lawyers Association (AILA) Annual Conference in Vancouver, BC, Canada from June 25 - 28. Following are the program names accompanied by a brief synopsis of each respective session:

- **Ron** will lead a panel discussion entitled "Dealing with the Eternal Adjustment Applicant." Horrifically long priority date backlogs have given rise to a new category of foreign national - the "Eternal Adjustment Applicant," which poses a whole new set of problems for practitioners.
- **Bill** will serve as a panelist on "Driving Us Crazy – The Localization of Immigration Law: State and Local Regulations." Frustrated by the lack of comprehensive immigration reform, local and state governments have jumped into the legislative fray to enact laws controlling immigration. This panel will survey local restrictions that impact driver's licenses, the ability to work, renting a home, running a business or getting married, as well as cover up-to-the minute challenges, discuss trends and grass-roots advocacy efforts.
- **Suzanne** will be the lead faculty member of "Silver Into Gold: Transforming Your Case Into EB-1 or NIW." Severe retrogression in employment-based immigrant visa numbers and lengthy delays in the processing of adjustments make EB-1 qualification, or even an EB-2 national interest waiver, an attractive green card strategy. However, not every client is a Nobel Laureate. For those who are not, this panel discusses strategies for effectively triaging less obvious cases, flushing out evidence of national or international renown and developing a winning case.
- **Elise** will serve as a panelist in "Show Me the Money: Financial Issues in Employment-Based Immigration." This panel will address financial issues that commonly arise in the life of an employment-based visa petition. It will provide an overview of complex financial transactions and guidance on reading financial statements and satisfying the "net assets" test to show ability to pay.

Recent Speaking Engagements

Suzanne Seltzer presented at the New York State Bar Association's (NYSBA) *Immigration Law Update 2008* conference on May 13 and 14 in New York, NY. Suzanne spoke on "Employment-Based Immigration Basics" and discussed non-PERM routes, PERM routes, and pitfalls and audits. For more information on this program, e-mail Suzanne at sseltzer@klaskolaw.com.

Ron Klasko was at Temple University on May 2, 2008, speaking to international students about immigration options available to them. Visit <http://astro.temple.edu/~joanw/otheremployment.html> for more information on this program.

Bill Stock spoke at the American Immigration Lawyers Association (AILA) Midwest Immigration Conference in Minneapolis, MN on May 1. Bill provided an update on PERM issues and discussed how to deal with corporate immigration policies. For more information on this talk, write to Bill at wstock@klaskolaw.com.

In the News and on the Airways

Ron Klasko was interviewed in the Legal Intelligencer headline story on May 5, 2008 about what it takes to be a rainmaker in the legal field. Ron offers insightful advice on how to become a rainmaker and balance being a lawyer at the same time. According to Ron, "rainmaking takes work, a lot of planning and execution." Ron suggests that it is easier to become a rainmaker in a niche practice by being an expert. He says "ask a hundred people a hundred questions" and ultimately you'll become the expert. Contact Ron at rklasko@klaskolaw.com for a copy of this article and start on your way to increasing your bottom line.

New Appointments

Suzanne B. Seltzer was recently appointed as chairperson of the Vermont Service Center (VSC) Liaison Committee of the U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services.

Elise A. Fialkowski was recently appointed to serve as a member of the American Immigration Lawyers Association E-Verify Liaison Committee. Congratulations Suzanne and Elise!

Recent Publications



Suzanne Seltzer's recently-authored article, "I-9s: Substance Over Form?," is slated to be published in *The Legal Intelligencer* next week. The article discusses the Form I-9 and how employers are expected to do their part in combating illegal immigration. To request your copy of this publication, write to Suzanne at sseltzer@klaskolaw.com.

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 © 2008 Alliance of Business Immigration Lawyers and Klasko, Rulon, Stock & Seltzer, LLP. All rights reserved.*