

November 2006

The law firm of *Klasko, Rulon, Stock & Seltzer, LLP* is pleased to present our *November 2006* newsletter covering immigration topics that are of interest to our clients. This newsletter is published in conjunction with *The Academy of Business Immigration Lawyers (ABIL)*. *

Headlines:

- **1. Special Alert: H-1B and EB Backlog Crisis** - ABIL has issued a special alert and call to action regarding H-1B cap and EB backlog problems.
- **2. Undocumented Workers Sue Wendy's Unit, Houston Law Firm** - Plaintiffs allege that permanent residence applications, for which money was deducted from their paychecks, were not filed on their behalf in time.
- **3. USCIS Announces Extension of Returning Worker Exemption to H-2B Cap** - USCIS announced that the "returning worker" exemption to the H-2B cap has been extended for one year.
- **4. USCIS Announces Filing Change for Extensions or Changes of Nonimmigrant Status for Student Reinstatements** - USCIS announced that local USCIS offices are now forwarding any new filings to the California or Vermont Service Center, depending on where the student is engaged in study..
- **5. Labor Dept. Updates Labor Certification Procedures** - The Department of Labor recently released updates to its procedures on reductions in recruitment conversion extensions, the public disclosure system, and what to do when there has been no contact from a Backlog Elimination Center.
- **6. USCIS Transfers Cases Among Processing Locations** - USCIS has shifted benefit processing workloads among service centers.
- **7. State Dept. Proposes New Limited-Use Passport Card** - The Department of State proposes an alternative format passport designed for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda.
- **8. Recent Klasko News** – Upcoming Speaking Engagements, On the Lecture Circuit, Klasko Trivia, Seminar Booklet Available.

Details...

1. Special Alert: H-1B and EB Backlog Crisis

The inability to hire H-1B workers and delays in obtaining employment-based (EB) green cards are hurting companies, hospitals, and other employers seeking access to the best and brightest global talent. There are no normal H-1B visa numbers available until October 1, 2007. The H-1B visa cap was filled by May 26, 2006, a full 16 months before the end of the next fiscal year. There are also increasing delays in obtaining EB green cards

from some countries. As a result, crucial research and development projects in critical industries are being disrupted, and the lives of talented professionals are being put on hold. In many cases, they simply tire of waiting and leave the U.S. to put their knowledge and skills to use in other countries eager to compete with the U.S.

The Academy of Business Immigration Lawyers has issued a special alert and call to action regarding this crisis. Concerned corporate clients should contact their members of Congress by personalized letter, phone call, or personal meeting to let them know how the H-1B cap and EB backlog problems are hurting them. A model letter that client companies can personalize, formulated by the American Immigration Lawyers Association (AILA), is located at <http://capwiz.com/aila2/issues/alert/?alertid=9100046>.

Nearly 800 companies, universities, and other entities signed a similar letter last fall, when the H-1B cap last hit. ABIL hopes that even more will sign on this year to have a real impact on Congress during this crucial period.

Another way to help is to send examples of how the inability to hire H-1B workers and the EB green card delays are adversely affecting employers. E-mail any such examples to AILA at H1Bhorror@aila.org. If the company is willing to be named, that is ideal, but even examples without attribution will be helpful (e.g., "A manufacturing company in Pennsylvania was unable to hire an H-1B researcher to start in October 2006 because of the H-1B cap. As a result, the company could not launch a new product in its xx division").

2. Undocumented Workers Sue Wendy's Unit, Houston Law Firm

Undocumented workers at a Dallas, Texas-area Café Express have sued the chain, which is a unit of Wendy's International, Inc., as well as the Houston law firm of Boyar & Miller, P.C. The nearly 100 workers allege that Café Express missed a filing deadline in 2001 for green card applications for them. Wendy's said the situation began before it acquired Café Express in February 2001. Wendy's subsequently hired new counsel specializing in immigration matters.

The plaintiffs claim that Café Express promised to file the applications for the employees, but Café Express sent a letter to the lead plaintiff and the other workers in July 2006, stating that their applications could not be completed successfully and that, if the workers could not prove they had submitted the applications themselves by the deadline, they would be fired. The workers alleged that they did not realize their applications had not been filed in time until they received the letter, despite the fact that the company charged them \$25 per week for legal expenses in connection with the applications for several years following the deadline. The workers seek damages for the money that was deducted from their paychecks, as well as lifetime wages and other legal fees. They also seek special damages because they have lost the opportunity to qualify for permanent residence.

The company stated that only 19 workers have been fired; 25 are still in the application process, another 22 have shown they are work-authorized, and 12 left the company on their own volition.

3. USCIS Announces Extension of Returning Worker Exemption to H-2B Cap

U.S. Citizenship and Immigration Services (USCIS) announced on October 23, 2006, that the "returning worker" exemption to the H-2B numerical limitation has been extended for one year, until September 30, 2007. Petitions filed for returning H-2B workers do not count toward the semiannual H-2B cap. To qualify, the returning worker must have been counted previously against the H-2B numerical cap in one of the three fiscal years preceding the current year (between October 1, 2003, and September 30, 2006). Any worker not certified as a returning worker is subject to the cap for the relevant fiscal year. Petitions received after the "final receipt date" that contain a combination of returning workers and those subject to the current H-2B cap will be rejected with respect to non-returning workers, and petitioning employers will receive partial approvals for those who qualify as returning workers if otherwise approvable.

USCIS said it will continue to process petitions filed to extend the stay of a current H-2B worker in the U.S.; change the terms of employment for current H-2B workers and extend their stay; allow current H-2B workers to change or add employers and extend their stay; or request eligible H-2B returning workers.

The announcement is available at <http://www.uscis.gov/graphics/publicaffairs/newsrels/H2Bextension102306.pdf>.

4. USCIS Announces Filing Change for Extensions or Changes of Nonimmigrant Status for Student Reinstatements

U.S. Citizenship and Immigration Services (USCIS) announced that local USCIS offices are now forwarding any new filings for an Application to Extend/Change Nonimmigrant Status (Form I-539) for F-1 and M-1 student reinstatement to the California Service Center (CSC) or the Vermont Service Center (VSC), depending on where the student is engaged in study.

The CSC will receive F-1 and M-1 reinstatement applications from USCIS district and suboffices located in the following states and territories: AK, AZ, CA, CO, GU, HI, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, ND, OH, OR, SD, UT, WA, WI, and WY.

The VSC will receive F-1 and M-1 reinstatement applications from USCIS district and suboffices located in the following states and territories: AL, AR, CT, DE, DC, FL, GA, KY, LA, MA, MD, ME, MS, NH, NJ, NM, NY, NC, SC, OK, PA, PR, RI, TN, TX, VA, VI, VT, and WV.

Those applying for student reinstatement will receive a receipt notice from the service center that will process their case. USCIS district offices will continue to process student reinstatement cases received before October 30, 2006, using existing procedures. Local USCIS offices will continue to accept the I-539 for the purpose of student reinstatement until provisions are in place to allow for direct mail filing.

USCIS said it is not necessary for those who previously filed an application at a local USCIS office to file a new application because of this change of procedure.

The announcement is available at <http://www.uscis.gov/graphics/publicaffairs/statements/FilingChange102506.pdf>.

5. Labor Dept. Updates Labor Certification Procedures

The Department of Labor (DOL) recently released the following updates to its labor certification procedures:

RIR conversion extension. Because the Reduction in Recruitment (RIR) application processing takes significantly less time than traditional recruitment (TR), the Department of Labor (DOL) previously encouraged employers to convert TR applications to RIR. The Office of Foreign Labor Certification (OFLC) announced recently that it is extending the application date for employers who wish to convert their TR applications to RIR applications. Any TR application (excluding those for schedule B occupations) submitted to a state workforce agency with a postmark dated on or before March 28, 2005, may request conversion to RIR by following the established process. For additional information, see the frequently asked questions (FAQ) at http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_10-06-06.pdf.

Public disclosure system. The OFLC has received many requests from employers, attorneys, and workers regarding the status of applications being processed as part of the backlog elimination effort. To provide basic case status information on specific cases, OFLC has introduced the Backlog Public Disclosure System (PDS). The purpose of the PDS is to provide a way for employers, attorneys, agents, and workers to determine the status of an application filed at a Backlog Elimination Center (BEC). Users can access the PDS at <http://pds.pbls.doleta.gov/> or by clicking on the "Check Backlog Case Status" link on DOL's Backlog Centers' Web page (<http://workforcesecurity.doleta.gov/foreign/times.asp>).

Once the PDS Web page is open, users enter the 10-digit case number, which begins with a "D" if the case is located in the Dallas BEC or "P" if the case is in the Philadelphia BEC. (Some cases may have had case numbers starting with "T" before data entry was completed at a BEC. All such cases have since been converted and now begin with either "D" or "P," which should be used for case status checks on the PDS.) After entering the case number, the search results show the current case status. Case status definitions are provided at the bottom of the PDS Web page. A FAQ about PDS is available at http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_pds.pdf.

Those who discover problems with the status of their cases (e.g., the case has been closed or withdrawn erroneously) may e-mail information and documentation to info@dal.dflc.us or info@phi.dflc.us.

Sources note that, beginning in November, the DOL plans to issue monthly updates of BEC TR case processing dates. The DOL reportedly is currently working on cases with an April 2001 filing date and does not expect that date to advance any time soon.

No contact from BEC. The OFLC has developed a process for an employer or attorney who believes an application should be pending at a Backlog Elimination Center (BEC) but for which no contact (i.e., no 45-Day Center Receipt Notification Letter (CRNL), case closed letter, or other correspondence about the case) from the BECs has been received.

To provide such employers with the opportunity to have their applications processed while also guarding against potential fraud, OFLC has established steps for employers or their attorneys to follow, outlined in the FAQ at http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_nobec.pdf.

This process is only intended for cases where the employer or attorney has received no contact whatsoever from the BEC about the case, not for status checks or other case inquiries. Also, this process is only intended

for employers or their designated attorneys. Beneficiaries of labor certification applications are not authorized to use this process.

The full text of the DOL's updates is available at <http://www.workforcesecurity.doleta.gov/foreign/> (scroll down to "What's New").

6. USCIS Transfers Cases Among Processing Locations

U.S. Citizenship and Immigration Services (USCIS) periodically shifts benefit processing workloads from one agency service center to another. Most recently, USCIS made the following changes:

Form I-129: Because of unusually high workload surges over the past several months, the Vermont Service Center (VSC) transferred nearly 20,000 H-1B petitions subject to the fiscal year 2007 annual numerical cap to the Texas Service Center (TSC) and 6,000 cap-subject H-1B petitions to the Nebraska Service Center (NSC), rather than to its "sister" service center (California Service Center (CSC)) under USCIS's bispecialization initiative.

Form I-360: The VSC, TSC, and NSC transferred all pending petitions requesting classification as a special immigrant religious worker to the CSC. In addition, all new I-360 religious worker filings received at a service center other than the CSC are being transferred to the CSC.

Form I-130: Over the past several months, the VSC transferred approximately 20,000 green card petitions for alien relatives to the CSC.

Affected applicants will receive a transfer notice from USCIS. Applicants should direct inquiries to the service center where the case is currently located.

USCIS also noted that Requests for Premium Processing Services (Forms I-907) should be filed with the service center where the case is currently pending. The notice announcing the transfers is available at http://www.uscis.gov/graphics/publicaffairs/statements/CaseTrans_092906PN.pdf.

7. State Dept. Proposes New Limited-Use Passport Card

The Department of State (DOS) issued a proposed rule on October 17, 2006, proposing an alternative format passport designed for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda. Under the proposed rule, passport cards, like passport books, would be issued for a 10-year validity period for U.S. citizens 16 years of age and older, and for a five-year validity period for U.S. citizens under 16 years of age. The DOS proposes to use the same application procedures and adjudication standards for the passport book and card and to permit U.S. citizens to hold both a book and a card simultaneously. In addition, if a passport applicant holds a valid passport book, the applicant may apply for a passport card as a renewal and pay the lower renewal fee rate. The DOS said the passport card is designed to address the needs and travel patterns of U.S. citizens who live in land border communities and frequently cross the border in their day-to-day activities. The passport card will not be usable globally but only in the situations set forth above.

The DOS will accept public comments until December 18, 2006. The full text of the proposed rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-17237.pdf>.

8. Recent Klasko News

Upcoming Speaking Engagements

Klasko lawyers will be speaking at these upcoming events this month and next. For information about any of these programs, please contact the lawyer listed.

In Philadelphia:

Clients and friends of the Firm are welcome to attend.

- *Advising the International Executive.* H. Ronald Klasko will be a featured speaker at this Pennsylvania Bar Institute (PBI) sponsored program in Philadelphia at the CLE Conference Center, Wanamaker Building on December 12th from 12:00 - 4:15pm. Ron will address key issues affecting international executives including:



- Alternative visa categories for transferring executives to the U.S.
- Alternative visa categories for hiring foreign national executives in the U.S.
- Options available for spouses of foreign national executives working in the U.S.
- Process of obtaining U.S. permanent resident status for a foreign national executive
- Process for obtaining U.S. citizenship for a foreign national executive
- Issues affecting retiring executives or expatriates

Representatives from Asher and Co., Deutsche Bank and McCarter and English will speak on other key issues affecting international executives including investment decisions and estate, income, and employment tax matters.

If you would like additional information or are interested in attending this program as Mr. Klasko's guest, please call or e-mail Ron at rklasko@klaskolaw.com. If you cannot attend but would like Ron to come to your office and brief you and your staff on what was covered, please contact him directly.

- H. Ronald Klasko will address post-doctoral fellows at the annual University of Pennsylvania Post-Doc seminar on November 30th.

In New York:

- *Immigration Options for Researchers and Scholars.* Suzanne B. Seltzer, head of the NY office, and Ron Klasko, managing partner, will address post-doctoral fellows on J-1 waivers, O-1's, moving out of academia and into industry, and permanent residency issues at New York University on November 29.
- *Post-Student Years Immigration Options.* Suzanne will be back the following day at New York University (Nov. 30th) to discuss options to remain and work in the U.S. to



candidates for Bachelors and Master's Degrees. Suzanne will highlight issues relating to the H-1b cap.

- *HealthCare Worker 101*. On December 13, **Suzanne Seltzer** will be leading a discussion on basic issues relating to representing doctors, nurses, and affiliated healthcare works at the 9th Annual American Immigration Lawyers Association (AILA) NY Chapter Symposium.
- **William A. Stock**, Chair, AILA Philadelphia Chapter, will also be in attendance at the 9th Annual AILA NY Chapter Symposium on December 13th and will present "*BEC & PERM UPDATE: THE GOOD, THE BAD AND THE UGLY.*" Bill's talk will include:
 - Status of BEC
 - BALCA Update
 - What to do When DOL Makes a Mistake
 - How to Use the FAQ's
 - Latest Trends in Audits: Triggers & Responses

For more information or to register, visit the direct conference webpage at:

<http://www.aila.org/content/default.aspx?docid=18873>

On the Lecture Circuit



Stephanie L. Browning, an associate attorney with the firm, was the featured speaker at the "Post Student Years: Immigration Options" conference sponsored by Delaware State University on November 15th in Dover, DE. Stephanie spoke to *F-1 students and discussed immigration options available to them as they approach graduation*, including options for gaining lawful permanent residency, and suggested creative solutions on how to handle the quota limits. To request a copy of the presentation materials, contact Stephanie at sbrowning@klaskolaw.com.

Suzanne B. Seltzer spoke on *immigration options for researchers and scholars* at Columbia University on November 15th. Suzanne's talk included information about J-1 waivers, O-1 visas, and permanent residency. To request a copy of the handout materials, e-mail Suzanne at sseltzer@klaskolaw.com.

Managing partner, **H. Ronald Klasko** continues to be one of the most sought after and active immigration law speakers in the country. His talks are in demand from Coast to Coast. On November 3rd, Ron was a special guest speaker at the *American Immigration Lawyers Association (AILA) California Conference*. Ron headed a session entitled "*Myths of H, L and E Visas.*" Ron discussed and analyzed many cutting edge solutions to seemingly impossible problems involving business visas. The very next week, Ron spoke at the Moore-Stephens International Accounting Network Conference in Washington DC. Then on November 9, Ron participated on a panel discussing *ethics issues in immigration practice* at the *NAFSA: Association of International Educators Region XI Conference* in Newport, Rhode Island—before concluding the week with a talk to NAFSA Region VIII on November 10 in Washington, D.C. discussing *PERM*. For a copy of the papers Ron presented at the NAFSA Conferences, please e-mail Ron at rklasko@klaskolaw.com.



William Stock addressed human resources professionals, physician recruiters and hospital administrators on "*Immigration Options for Physicians and Healthcare Workers*" in a presentation at the Geisinger Medical Center in Danville, Pennsylvania on October 20, 2006. Bill addressed temporary and permanent visa issues that recruiters of physicians and healthcare workers need to be aware of, particularly including the requirements for physicians to work in medically underserved areas of rural Pennsylvania.

klasko Trivia ~ Did You Know...

That Klasko partner **William A. Stock** is an adjunct Professor at Villanova University School of Law (teaching immigration law!).



That **Suzanne B. Seltzer** is a past recipient of the Cornerstone Award from the Lawyers Alliance for New York in recognition of her outstanding contributions of *pro bono* work on behalf of non-profit agencies, and the Samuel E. Klein Pro Bono Award for her work on behalf of victims of human trafficking.

Seminar Booklet Available

At our client seminar last month in Philadelphia, Klasko partners discussed in great detail employment-based immigration issues affecting hospitals, universities and research institutions. We were thrilled with the record turnout of clients and friends this year-- which included staff members from various US congressional offices. If you would like a copy of the seminar handout, or information on a program that could be held on-site at your offices, please contact **Bill Stock** at wstock@klaskolaw.com.



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

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