

October 2006

The law firm of *Klasko, Rulon, Stock & Seltzer, LLP* is pleased to present our *October 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. KRSS Issues Holiday Travel Warning, Update on VWP Program, Biometric Passport Requirements** - KRSS reminds travelers to ensure that their passports, visas, and other documents are current and in order well in advance of the busy holiday travel season; biometric passport requirements for VWP-participating countries are set to take effect on October 26.
- **2. USCIS Expands Premium Processing Service** - EB-1, EB-2, and EB-3 immigrant visa categories have been added to premium processing service.
- **3. Shifts in Visa Number Availability Kick Off New Fiscal Year** - Although visa numbers have not fully recovered, there has been some movement in the employment-based categories.
- **4. State Dept. Instructs on Effective Business Referral Programs** - Posts throughout the world have established business facilitation programs to ensure that they are responsive to the needs of the U.S. business community.
- **5. 2008 Diversity Visa Lottery Instructions Released** - Entries for the DV-2008 lottery must be submitted electronically between October 4 and December 3, 2006.
- **6. USCIS Eliminates Locally Produced Employment Authorization Cards** - USCIS is phasing out the I-688B.
- **7. Dep't of Labor Updates Procedures on Backlogged Cases, Launches Web Site for Checking Status of Applications** - The DOL has issued a FAQ on backlogged cases that have received "no contact" from the agency, and has launched a Web site for checking case status.
- **8. USCIS Announces Elimination of Naturalization Backlog** - USCIS announced the elimination of the backlog for the N-400 Naturalization Application and the reduction of backlogs overall.
- **9. Recent Klasko News — Annual Fall Seminar Wednesday (10/25); 2007 Best Lawyers in America; Another Attorney joins Klasko; The November Elections and more; On the Lecture Circuit; Helping Effectuate Change; On the airwaves, in print and more.**

1. KRSS Issues Holiday Travel Warning, Update on VWP Program, Biometric Passport Requirements

Klasko, Rulon, Stock & Seltzer LLP (KRSS) reminds travelers to ensure that their passports, visas, and other documents are current and in order well in advance of the busy holiday travel season. Travelers should also remember that because of heightened security measures, delays are possible and full compliance with security procedures is necessary.

For most applicants, a personal appearance interview is required as a standard part of visa processing. Additionally, applicants affected by security procedures are informed of the need for additional screening at the time they submit their applications and are being advised to expect delays. The time needed for adjudication of individual cases will continue to be difficult to predict. For travelers, the need for an interview will mean additional coordination with the embassy or consulate to schedule an interview appointment. Individuals should build in ample time before their planned travel date when seeking to obtain a visa. To estimate how long you will have to wait to get an interview appointment to apply for a visa (not including any additional time required for special clearances and administrative processing), see the Department of State's "Visa Wait Times for Interview Appointment," http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php (choose the consular location from the drop-down menu and click on "Get Wait Times").

Some applicants must obtain advance parole (advance permission to travel) to leave the U.S. while their applications are pending. Advance parole processing time is now averaging about 3.5 months (up from about two months last year), so sufficient lead time to apply for parole, if needed, should be factored into travel preparations. For more information on advance parole requirements and procedures, see <http://www.uscis.gov/graphics/services/Emergency/index.htm>.

Biometric passport requirements for VWP-participating countries are set to take effect on October 26, 2006. Those countries will be required to begin issuing passports with integrated circuit chips containing biometric information. Each VWP country is at a different stage in its development of secure passports, but VWP travelers who obtained machine-readable passports (MRPs) before October 26, 2005, are not required to have a digital photograph or contact-less chip. This means that if you obtained or renewed/extended an MRP before October 26, 2005, you will not be required to get another passport for travel until your MRP expires. Passports issued or renewed/extended between October 26, 2005, and October 25, 2006, must be machine-readable and include a digital photograph printed on the data page; passports issued or renewed/extended on or after October 26, 2006, must be machine-readable and include the integrated chip.

A handy guide for VWP travelers is available at:

http://cbp.gov/linkhandler/cgov/travel/id_visa/vwp/vwp_timeline.ctt/vwp_timeline.pdf. For general information on biometrics and electronic tagging, see "The Frontiers of Privacy Law: Technology Marches On" (http://www.pli.edu/emktg/toolbox/Privacy_Tech33.doc - scroll down for article), published by the Practising Law Institute.

2. USCIS Expands Premium Processing Service

U.S. Citizenship and Immigration Services (USCIS) has announced the addition of three categories to the premium processing service, which allows U.S. businesses to pay a \$1,000 fee in exchange for 15-day processing of the case. On September 25, 2006, USCIS began accepting premium processing requests for the

Immigrant Petition for Alien Worker (Form I-140) for the EB-1B (outstanding professors and researchers); EB-2 (members of professions with advanced degrees or exceptional ability not seeking a national interest waiver); and EB-3 (workers other than skilled workers and professionals, including unskilled labor requiring less than two years of training or experience) immigrant visa categories. In addition, on August 28, 2006, USCIS added EB-3 professionals and skilled workers to categories eligible for premium processing. After these two announcements, all I-140 employment-based immigrant visa petitions will qualify for premium processing other than EB-1A extraordinary ability, EB-1C multinational manager, EB-2 national interest waiver, and EW unskilled.

Since 2001, premium processing service has been available for several nonimmigrant classifications within the Petition for Nonimmigrant Worker (Form I-129), including E treaty traders and investors, H-1B specialty occupation workers, H-2B temporary workers performing nonagricultural services, H-3 trainees, L intracompany transferees, O aliens of extraordinary ability and those performing essential support services, P performers and athletes and those performing essential support services, Q international cultural exchange visitors, R religious workers, and NAFTA professionals from Canada and Mexico.

For more information on premium processing for the three added EB immigrant visa categories, see <http://www.uscis.gov/graphics/publicaffairs/newsrels/PremProc092206PR.pdf>.

3. Shifts in Visa Number Availability Kick Off New Fiscal Year

The Department of State has issued the Visa Bulletin for October 2006, which is the start of fiscal year 2007. Although visa numbers have not fully recovered, there has been some forward movement in the employment-based categories. For example, the EB-2 category for India was unavailable beginning in August; the new cut-off date for October is June 15, 2002 (although this actually represents retrogression from the January 1, 2003, cut-off date in existence before the category became unavailable).

It has also been reported that numbers in the Schedule A category (nurses, physical therapists, and certain persons with exceptional abilities in the arts or sciences that are exempt from labor certification) may be exhausted soon, possibly as early as November. Once that occurs, it will still be possible to file immigrant visa applications for such persons, but they will be subject to the priority dates of the underlying visa category (e.g., EB-2 or EB-3) for their occupations.

Family-based visa numbers also recovered from the steep retrogression imposed last quarter, but not to the cutoff dates previously in existence. The October Visa Bulletin is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3032.html.

4. State Dept. Instructs on Effective Business Referral Programs

In a recent cable to all diplomatic and consular posts, the Department of State noted that facilitating access to timely visa appointments for business travelers is one of the Bureau of Consular Affairs' highest priorities. Businesses are looking for a predictable way to factor the visa process into their travel planning. Posts throughout the world have established business facilitation programs to ensure that the Department is responsive to the needs of the U.S. business community while continuing to maintain visa security standards.

Many such programs are conducted in coordination with American Chambers of Commerce (AMCHAMs) overseas.

The Department noted that the U.S. Chamber of Commerce recently polled regional AMCHAMs on consular sections' business facilitation programs. Survey respondents commended consular sections that allow for group appointments or set aside a specific day or block of time to handle business visa applications. Respondents also cited clearly written procedures and established channels of communication as the most important factors in establishing a successful business facilitation program. Some AMCHAM members complained that programs seem to shift with the arrival of each new section chief, and that changes are not always communicated clearly and promptly.

The Department also noted that having a designated point of contact in the consular section is essential. Model programs include AMCHAM Buenos Aires, where each company designates its own specific officer to communicate with the Chamber's Visa Office. The AMCHAM ensures that the visa application is arranged in a standard format, provides a job letter showing the applicant's position, salary, and length of service, and provides remote data entry. The AMCHAM holds regular meetings with member-company coordinators and provides training to new and current members. It stresses the need to study each applicant thoroughly before scheduling appointments, noting that its productive relationship with the consular post stems from maintaining daily contact with the consular section and the call center. For more information on these efforts and model programs, see the Department's cable at http://travel.state.gov/visa/laws/telegrams/telegrams_3033.html.

5. 2008 Diversity Visa Lottery Instructions Released

The Department of State's Bureau of Consular Affairs has released instructions for the 2008 Diversity Immigrant Visa Program. Entries for the DV-2008 lottery must be submitted electronically between noon EDT (GMT-4) October 4, 2006, and noon EST (GMT-5) Sunday, December 3, 2006. Paper entries will not be accepted. Applicants may access the electronic DV entry form and instructions at http://travel.state.gov/visa/immigrants/types/types_1318.html during the registration period. Because heavy demand may result in Web site delays, applicants are strongly encouraged not to wait until the last week to enter. Also, receipt of more than one entry per person will disqualify the person from registration. There is no fee.

For DV-2008, natives of the following countries are not eligible to apply because these countries sent more than 50,000 immigrants to the U.S. over the previous five years: Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

To enter the lottery, a person must have either a high school education or its equivalent, or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The Department of Labor's O*Net OnLine database will be used to determine qualifying work experience. Certain people from ineligible countries may qualify on the basis of their spouse's or parent's country of birth. For additional details on entry procedures and requirements, see http://travel.state.gov/pdf/DV_2008_Final.pdf.

6. USCIS Eliminates Locally Produced Employment Authorization Cards

U.S. Citizenship and Immigration Services (USCIS) currently issues two types of employment authorization documents: Form I-766, Employment Authorization Document (EAD), and Form I-688B, Employment Authorization Card. The I-766 is produced in Kentucky and accounts for approximately 88 percent of the EADs produced on behalf of USCIS; the remainder are produced at various field offices. Because of various issues with the locally produced cards, such as outdated card technology, obsolete equipment, and lack of maintenance, USCIS is phasing out the I-688B. This affects both locally produced interim EADs and non-interim EADs.

As part of this initiative, USCIS will no longer accept I-765 filings for non-interim EADs at local offices. Applications that were received at any local office through September 30, 2006, have been forwarded to the appropriate Service Center or the Chicago Lockbox for processing. Such applications received on or after October 1, 2006, will be returned and the individual will be advised to file directly with the appropriate Service Center or Lockbox indicated on the I-765 instructions. The agency recommends that applicants seeking to replace an expiring EAD file the I-765 at least 100 days before the current card expires.

For additional information on filing procedures and adjudication issues, see http://www.uscis.gov/graphics/lawsregs/handbook/ElimI688B_081806R.pdf. For information specific to asylees' EADs, see <http://www.uscis.gov/graphics/publicaffairs/statements/AsyleeEAD091406PN.pdf>.

7. Dep't of Labor Updates Procedures on Backlogged Cases, Launches Web Site for Checking Status of Applications

The Office of Foreign Labor Certification (OFLC) of the Department of Labor (DOL) 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 (e.g., no 45-Day Center Receipt Notification Letter (CRNL), case closed letter, or other correspondence about the case) has been received from the BEC. To provide these employers with the opportunity to have their applications processed while also guarding against potential fraud, OFLC has established specific steps for employers or their attorneys to follow, which are outlined in a FAQ at http://www.ows.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_nobec.pdf.

Inquiries must be sent to the appropriate e-mail provided in the FAQ by October 11, 2006. This process is only for employers or their designated attorneys; beneficiaries of labor certification applications are not authorized to use the process. The process is not intended for status checks or other case inquiries, but is to be used only in those cases for which the employer or attorney has received no contact whatsoever from the BEC.

The DOL also has launched a Web site for pending applications filed at a Backlog Elimination Center (BEC). The Office of Foreign Labor Certification (OFLC) has received many requests from employers, attorneys, and applicants regarding the status of applications being processed as part of the backlog elimination effort. To provide basic case status information on specific cases, OFLC introduced the Backlog Public Disclosure System. The status of a case (but not estimated processing times) may be checked at http://www.pbis.doleta.gov/pbis_pds.cfm by entering the ETA case number. The system currently checks only cases beginning with a D (Dallas) or P (Philadelphia).

8. USCIS Announces Elimination of Naturalization Backlog

U.S. Citizenship and Immigration Services (USCIS) announced the elimination of the backlog for the N-400 Naturalization Application. USCIS completed approximately 342,290 backlogged cases and average processing times have fallen from a previous high of 14 months in February 2004 to approximately five months as of September 2006.

The overall backlog of all applications has decreased from 3.8 million in 2004 to just over 1.1 million as of July 2006, USCIS noted. Of the gross backlog of 1.1 million applications, 140,000 cases are considered "backlogged and under USCIS control" as of July. Cases considered as within USCIS's control are defined as those that are ready to be adjudicated. Cases outside USCIS's control that are not counted as included in the net backlog include cases that are pending law enforcement security checks, naturalization test retakes, naturalization candidates awaiting scheduling of a judicial ceremony, and cases in which an applicant has failed to respond to a request for additional evidence.

For more on the elimination of the naturalization backlog, see <http://www.uscis.gov/graphics/publicaffairs/newsrels/N400Bklg091506NR.pdf>.

9. Recent Klasko News

Klasko seminar in Philadelphia is Wednesday!

<i>Focus:</i>	<i>Get Ready for Changes to Immigration Laws</i> <i>What Universities, Hospitals and Research Institutes Have to Know</i>
<i>Date:</i>	October 25, 2006
<i>Time:</i>	8:00 am to 8:45 am (<i>Fundamentals of Immigration Law</i>) 9:00 to 12:15 pm (<i>General</i>)
<i>Location:</i>	Union League of Philadelphia 140 S. Broad Street, Philadelphia

Our annual Fall Seminar examining employment-based immigration issues affecting hospitals, universities and research institutions will be held on Wednesday, October 25, 2006 at the Union League in Philadelphia. This year's seminar features a special session for newcomers to the field entitled: "*Fundamentals of Immigration Law.*" **Come to part or all of the morning events.** For more information, visit our website www.klaskolaw.com for a downloadable seminar brochure or call 215-825-8600.

2007 Best Lawyers in America includes Klasko lawyers

All of the partners in the Philadelphia office of Klasko, Rulon have been selected by their peers to be included in the 2007 edition of *The Best Lawyers in America* published by Woodward/White Inc. for the specialty of immigration law. The lawyers so selected are H. Ronald Klasko, Richard Rulon, and William A. Stock. This is firm Chairman Ron Klasko's 10th year of inclusion in the book. According to the Editor, "inclusion in Best Lawyers® is based on an exhaustive and rigorous peer-review survey. Because no fee or purchase is required to be listed, inclusion in *Best Lawyers* is considered a singular honor."

Another Attorney joins Klasko

Geoffrey Forney was recently admitted to the Pennsylvania Bar and officially joined Klasko as an Associate Attorney. Geoffrey graduated from Sarah Lawrence College (B.A.) and went on to receive his Masters degree in philosophy from Temple University. While in law school, Geoffrey served as a law clerk at the Firm where we got to know his great work. Geoffrey is a graduate of Temple University Law School (J.D. 2006).



Forney's Jump Start: Geoffrey was a guest lecturer at the Philadelphia Kaplan Center for their *Fall 2006 Immigration Workshop* on October 17th. Geoffrey discussed general immigration issues affecting F-1 Students, including Maintaining Status, Optional Practical Training, Change of Status, employment options through other nonimmigrant classifications and strategies for pursuing permanent residence. The workshop was well attended by international students and educators alike.

On October 20th, Geoffrey delivered the keynote address to 9th grade students at the High School of the Future in North Philadelphia, a Microsoft sponsored charter school. Geoffrey discussed the United Nations' initiative on global migration and development in conjunction with the school's own program. He lectured on general issues in U.S. immigration law affecting migrant workers. In the program, students will meet with representatives from around the world to investigate issues affecting migrant workers and travel to New York to present their findings to the United Nations.

The November Elections and more: Upcoming Speaking Engagements

November Elections—What effect will they have?: Richard R. Rulon will moderate a panel discussion on *"How the November Elections will Affect Business Immigration"* at a New Jersey Institute of Continuing Legal Education program for Attorneys, In-House Counsel & Human Resource at the New Jersey Law Center in New Brunswick, NJ on November 1, 2006. Topics the panel will address include:



- How will the November elections play out?
- How will the elections affect Immigration policy?
- Will Comprehensive Immigration Reform Pass?
- Which Business Proposals Will Pass?
- When Will The H-1B/H-2B Cap Be Increased?
- Will the IV Quotas Be Increased?
- Employer Verification Programs Pros/Cons of joining
- What can employers expect in increased enforcement and how can and should they prepare for legislative changes?

For additional information please contact Rich at rrulon@klaskolaw.com.

On the Lecture Circuit

Managing partner, H. Ronald Klasko was a keynote speaker at the *Educational Commission for Foreign Medical Graduates (ECFMG) Annual Conference* in Philadelphia on September 29, 2006. Ron discussed hospital compliance issues dealing with changes during the H-1B resident's employment.



Ron was a special guest speaker at the Central Florida *American Immigration Lawyers Association* conference in St. Petersburg on October 13-14. Ron discussed advanced H and L visa issues and PERM. To obtain a copy of the presentation materials, write to Ron at rklasko@klaskolaw.com.

Ron discussed "*Immigration Issues in Employment*" at the *Fall 2006 Breakfast Briefing* sponsored by Obermayer Rebmann's Labor Relations and Employment Law Department in Philadelphia on Wednesday, October 18th at the Sheraton Philadelphia City Center. For more information on this briefing, go to www.obermayer.com.

Ron lectured at the *NAFSA: Association of International Educators* Region I Conference entitled "*To the Consulate and Back*" in Boise, ID on October 19th. His presentation dealt with travel/security clearances and the increased risk in traveling overseas. For information on this conference, please visit the direct conference website link as follows: http://www.region1.nafsa.org/Regional2006-Boise/Index_Regional06.htm.

Bill Stock lectured at a symposium of national and local leaders on: "*Immigration—The Real Issues Behind the Headlines*" on the 28th of September. The program was co-sponsored by the Montgomery County Bar Association and the Welcoming Center for New Pennsylvanians. Over 200 members of the local community, including representatives from hospitals, community groups and more, attended.



On Tuesday, October 10th, Bill Stock moderated a panel including Michael Aytes, Associate Director of *Domestic Operations for US Citizenship and Immigration Services*, to discuss "*Current Developments in USCIS Processing*" at the *Practicing Law Institute's (PLI) 39th Annual Immigration & Naturalization Institute Law Symposium* in New York, New York. Visit www.pli.edu to download an audio or video copy of the program.

Bill also spoke about avoiding immigration problems in a panel forum on "*Managing Unanticipated Problems in International Relocation*" at the *Worldwide Employee Relocation Council 2006 Annual Conference*, held in Dallas, Texas from October 11-13. For additional information or to request a copy of his presentation materials, please contact Bill at wstock@klaskolaw.com.

Helping Effectuate Change

NY partner Suzanne B. Seltzer is one of the founding members of, and serves on the Steering Committee of the NY Anti-Trafficking Network. The Network is a coalition of diverse service providers in the NY metropolitan area dedicated to ending human trafficking and coordinating resources for trafficked persons. The *Identification and Legal Advocacy for Trafficking Victims Manual*—which Suzanne had a large hand in writing, editing, publishing, and distributing is available at www.ny-anti-trafficking.com.



On the airwaves, in print and more

Bill Stock was a panelist on *NBC10's Live@Issue*, speaking on the history of immigration statutes in the US, the limitations of an "enforcement only" approach and the benefits of a more comprehensive solution that would align America's immigration policy more with its economic and demographic needs.

Richard Rulon participated in a national webinar sponsored by the *American Immigration Lawyers Association* entitled *"Surviving the H-1B Cap"* on Tuesday, October 3, 2006. Rich contributed creative strategies for employing foreign professionals when the H-1B cap is reached.

Richard Rulon's article *"The ICE-Man Cometh" Part Two: Proposed Legislative and Regulatory Changes to Strengthen Workforce Enforcement* will be featured in *The Legal Intelligencer* in October. This is the second of a two-part article examining what all employers need to know about the new "interior enforcement strategy" being implemented by the Department of Homeland Security. Part One, authored by William A. Stock, appeared in the September 20, 2006 edition of *The Legal Intelligencer*.

Were You at Our Open House in NYC?

It was great to see so many old and new friends at our reception in NYC last month.



Our guests received a fun Klasko tee-shirt. If you would like one, write to Joel at jphilip@klaskolaw.com with your complete mailing address. Quantities are limited, so don't delay – let us know today!

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.*

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