

OCTOBER 2007

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

Headlines:

- **1. Judge Grants Motion for Preliminary Injunction Enjoining DHS Implementation of Final Rule on Employer "No Match" Obligations** - A federal judge has enjoined the implementation of DHS's "No Match" regulation.
- **2. U.S. Adds Photo Verification, Sues Illinois on Verification Ban; Towns Rethink Anti-Illegal Laws** - The photo tool on E-Verify (formerly Basic Pilot) will be available when a new employee presents an EAD or green card to complete the I-9.
- **3. USCIS Announces New Naturalization Test** - The revised test emphasizes fundamental concepts of American democracy, U.S. history, and the rights and responsibilities of citizenship.
- **4. DV-2009 Lottery Application Period Begins** - Entries for the DV-2009 diversity visa lottery must be submitted electronically between noon EDT, October 3, 2007, and noon EST, December 2, 2007.
- **5. IJs, Border Agents Perform Internet Searches on Applicants' Names, Attorneys Warn** - Applicants have been detained at the border or denied entry as a result of information turning up on Internet searches.
- **6. U.S. Passport Services Back to Standard Processing Time, State Department Says** - DOS announced that it has restored passport service to the standard six- to eight-week processing time for routine passport applications.
- **7. DED Extended for Liberians** - The 18-month deferred enforced departure (DED) extension period expires on March 31, 2009.
- **8. New York Considers Proposal to Allow Driver's Licenses Without Social Security Cards** - New York's Governor Eliot Spitzer has proposed allowing immigrants who reside in New York, regardless of status, to obtain driver's licenses using foreign identity documents.
- **9. Lawsuit Challenges Constitutionality of ICE Raids** - The suit charges that ICE agents unlawfully broke into and entered the homes of Latinos in the New York area without judicially issued warrants or other legal justification.
- **10. Video Debunks Immigration Myths, Calls for Reform** - AILA has produced a video on immigration reform that challenges common myths.
- **11. Bill Would Exempt Returning H-2B Workers from Being Counted Against Cap** - The current exemption expired on September 30, 2007.

- **12. Klasko News** – Upcoming speaking engagements, recent publications, and more.
- **13. Government Agency Links**

1. Judge Grants Motion for Preliminary Injunction Enjoining DHS Implementation of Final Rule on Employer “No Match” Obligations

A federal judge in the U.S. District Court for the Northern District of California has issued an order granting a preliminary injunction enjoining the implementation of the Department of Homeland Security’s (DHS) final rule amending the regulations relating to the unlawful hiring or continued employment of unauthorized workers. The judge found the balance of harm tips sharply in favor of plaintiffs, who raised serious questions going to the merits of their claims that the rule (1) contravenes the governing statute; (2) is arbitrary and capricious under the Administrative Procedure Act; (3) is an exercise of *ultra vires* authority by DHS and the Social Security Administration (SSA); and (4) was promulgated in violation of the Regulatory Flexibility Act.

The Final Rule, should it ever become effective, modifies the current regulation’s definition of “knowing” to add three additional situations where the employer’s failure to take reasonable steps in response to any one of these situations could lead to a finding that an employer had constructive knowledge of the fact that an employee was an “unauthorized alien.” The additional situations are: (1) an employee’s request that the employer file a labor certification or employment-based visa petition on behalf of the employee; (2) written notice known as a “no match” letter from SSA that the combination of name and social security number (SSN) submitted for an employee does not match SSA records; and (3) written notice from DHS that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person or that there is no agency record that the document was assigned to anyone.

The Final Rule also describes the steps that DHS considers reasonable for an employer to take after receiving a “no match” letter from the SSA or a notice of discrepancy from DHS. Such steps would provide the employer with a “safe harbor” ensuring that DHS will not use the written notice as any part of an allegation that the employer had constructive knowledge that the employee referred to in the notice was not authorized to work in the United States.

For further information on this Final Rule, please go to our website at www.klaskolaw.com.

2. U.S. Adds Photo Verification, Sues Illinois on Verification Ban; Towns Rethink Anti-Illegal Laws

In late September, U.S. Citizenship and Immigration Services's E-Verify (formerly Basic Pilot) work authorization verification system added access to photographs. The photo tool will be available when a new employee presents an Employment Authorization Document (EAD) or Permanent Resident Card (green card) to complete the Employment Eligibility Verification Form (I-9). It allows an employer to compare identical photos: the individual's photograph on the EAD or green card against the image stored in USCIS's databases. The tool is intended to help an employer determine whether the document presented "reasonably relates to the individual presenting it" and contains a valid photo. Employers currently participating in E-Verify will be trained on the system enhancement through a mandatory refresher tutorial that launched automatically on September

17, 2007. New employers who registered after that date are learning how to use the photo tool through an updated E-Verify manual, tutorial, and memorandum of understanding.

Meanwhile, the Bush administration has sued Illinois to block a state law, to take effect January 1, 2008, that would prevent employers from using a federal database to check the work authorization of prospective employees under the E-Verify program. In a signal that the move is part of a nationwide effort, Secretary of Homeland Security Michael Chertoff said, "We will vigorously contest any effort to impede our enforcement measures." A spokesperson for Illinois Governor Rod R. Blagojevich said the governor signed the bill because of concerns about delays in responding to employer inquiries and a reported 50 percent accuracy rate. More than 23,000 employers are enrolled in the system, and 2.9 million employer inquiries were handled in the most recent fiscal year.

Also, a handful of towns and cities around the nation have begun reexamining their newly passed anti-illegal immigration laws. Riverside, New Jersey, previously enacted a law to penalize anyone who employed or rented to an undocumented person. Many mostly Spanish- and Portuguese-speaking immigrants fled the town, and the local economy began to suffer. Shops and restaurants that had immigrant employees and customers began to shut down and storefronts were boarded up. The town also had mounting legal bills resulting from challenges to the law that delayed other high-priority projects. In September, Riverside rescinded the law. "I don't think people knew there would be such an economic burden," said Riverside's current mayor, George Conard, who had been in favor of the original legislation. According to reports, it is unclear whether those who left will return any time soon.

A press release and fact sheet about the new photo verification capability of E-Verify are available at <http://www.uscis.gov/files/pressrelease/EVerifyRelease25Sep07.pdf> and <http://www.uscis.gov/files/pressrelease/EVerifyFS25Sep07.pdf>. Employers can register online for E-Verify at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>.

3. USCIS Announces New Naturalization Test

U.S. Citizenship and Immigration Services (USCIS) has released the 100 questions and answers that comprise the civics component of the new naturalization test. USCIS will administer the new test to citizenship applicants beginning in October 2008. The revised naturalization test emphasizes fundamental concepts of American democracy, basic U.S. history, and the rights and responsibilities of citizenship, and "promote[s] patriotism among prospective citizens," USCIS said.

Earlier this year, more than 6,000 citizenship applicants volunteered to take a pilot version of the test at 10 USCIS sites across the country, including Boston, during a four-month period. Volunteers achieved a 92.4 percent overall pass rate on the first try, USCIS noted. The pass rate on the current test is 84 percent, which includes the wider universe of test-takers who did not volunteer for the pilot test. The 100 civics items on the new naturalization test were selected after USCIS, a panel of history and government scholars, and English as a Second Language (ESL) teachers conducted a review of responses to the 142 items on the pilot test. Following the pilot, USCIS refined the questions and answers, dropped several questions and adjusted others to increase clarity; it also conducted a second review, eventually narrowing the list to the new 100 questions. The range of acceptable answers to questions will increase so that applicants may learn more about a topic and select from a wider range of responses.

The following guidelines determine whether naturalization applicants will take the current test or the redesigned version:

If an applicant:

- Applies for citizenship before October 1, 2008, and is scheduled for his or her naturalization interview before October 1, 2008, he or she will take the current test.
- Applies before October 1, 2008, and is scheduled for his or her naturalization interview after October 1, 2008, he or she can choose to take either the current test or the redesigned version.
- Applies after October 1, 2008, he or she will take the redesigned version.
- Is scheduled for his or her naturalization interview after October 1, 2009, regardless of when he or she applied, he or she will take the redesigned version.

USCIS has posted the 100 new question and answers, the reading and writing vocabulary lists, a side-by-side comparison of the current and new test, answers to frequently asked questions, and other information about the new test online at <http://www.uscis.gov/newtest>.

The related press release is available at http://www.uscis.gov/files/pressrelease/NatzTest_27sep07.pdf.

4. DV-2009 Lottery Application Period Begins

Entries for the DV-2009 diversity visa lottery must be submitted electronically between noon EDT, Wednesday, October 3, 2007, and noon EST, Sunday, December 2, 2007. Applicants must use the electronic entry form at <http://www.dvlottery.state.gov> during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in website delays. There is no fee to enter the DV lottery.

For DV-2009, natives of the following countries are not eligible to apply because these countries sent a total of more than 50,000 immigrants to the United States over the period of the previous five years: Brazil, Canada, China (mainland born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, 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.

A computer will select individuals randomly from among all qualified entries. Those selected will be notified by mail between May and July 2008, and will be provided further instructions, including information on fees connected with immigrating to the United States or adjustment of status to a legal permanent resident already in the United States in lawful status. Individuals not selected will not receive any notification. Spouses and unmarried children under age 21 of successful entrants also may apply either for visas to accompany or follow to join the principal applicant or to adjust their status if the principal is in the United States and adjusting his or her status to a legal permanent resident. DV-2009 visas will be issued between October 1, 2008, and September 30, 2009.

To receive a diversity visa to immigrate to the U.S. or to adjust one's status, those chosen in the random drawing must meet all eligibility requirements. Processing of entries and adjustment or visa issuance to individuals and their eligible family members must occur by midnight on September 30, 2009.

Several questions and options for answers have been added to the DV-2009 program to gather additional information, including the country where the applicant lives today, the highest level of education the applicant has achieved, and the term "legally separated" instead of "separated" as an option under the marital status question. Legal separation means that a court has formally declared that the applicant and his or her spouse are legally separated, and means that the spouse would not be eligible to immigrate as the applicant's derivative.

Those electing to file a DV lottery application should be aware that the Department of State considers the DV application to be a petition to be reported in the standard visa application Form DS-156 (item 36). While this may be safe enough if seeking an H or L nonimmigrant visa, any others choosing to participate should seek legal advice first to see if the application will adversely impact a future visa application.

Detailed information on how to apply, eligibility requirements, and frequently asked questions is available at <http://travel.state.gov/pdf/2009DVInstructions.pdf>.

5. IJs, Border Agents Perform Internet Searches on Applicants' Names, Attorneys Warn

Immigration attorneys have reported that immigration judges, adjudicators, and border agents sometimes perform Internet searches (Google, etc.) for applicants' names, even printing out items from websites like MySpace, published articles, or letters to the editor and questioning petitioners about them. Some have been detained at the border or denied entry as a result of information revealed about the applicant such as his or her use of a controlled substance.

6. U.S. Passport Services Back to Standard Processing Time, State Department Says

The Department of State (DOS) announced that it has restored passport service to the standard six- to eight-week processing time for routine passport applications, and to no more than three weeks for expedited service.

To date, over 16 million passports have been issued in fiscal year (FY) 2007, compared with 12.1 million issued in FY 2006. DOS said it plans to expand passport facilities and to hire more passport specialists to increase production capacity and meet rising demand expected in the coming years, as passport requirements are extended to land and sea borders. By January 2008, production capacity at the National Passport Center in New Hampshire, the largest passport facility, is expected to have doubled. Longer-term expansion plans include new passport facilities around the country.

The DOS notice is available at <http://www.state.gov/r/pa/prs/ps/2007/sep/91868.htm>.

7. DED Extended for Liberians

Effective October 1, 2007, U.S. Citizenship and Immigration Services (USCIS) has announced an 18-month automatic extension of employment authorization for Liberians (and persons without nationality who last habitually resided in Liberia) who have been provided deferred enforced departure (DED) under a memorandum sent on September 12, 2007, from President Bush to Secretary of Homeland Security Michael Chertoff. A copy of USCIS's notice in conjunction with an employment authorization document (EAD) expiring on September 30, 2007, that was issued previously to the person as a beneficiary of temporary protected status may be accepted as evidence of a covered individual's continued work authorization through March 31, 2009. The notice provides information on how Liberians and their employers may determine which EADs are automatically extended. The notice also provides instructions for Liberians who have DED and would like to apply for permission to travel outside the United States during the 18-month DED extension period, which expires on March 31, 2009.

The notice is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/07-4645.htm>. A fact sheet is available at http://www.uscis.gov/files/pressrelease/LiberiaFS_19Sep07.pdf.

8. New York Considers Proposal to Allow Driver's Licenses Without Social Security Cards

New York's Governor Eliot Spitzer has proposed allowing foreign nationals who reside in New York, regardless of status, to obtain driver's licenses using foreign identity documents, such as passports and birth certificates, without having to present Social Security cards. The idea is to reduce the number of unlicensed, uninsured drivers while aiding law enforcement efforts by increasing the number of license records that could be used in conducting investigations.

The proposal has drawn criticism from New York City Mayor Michael Bloomberg and others. Mayor Bloomberg said the proposal would conflict with identity document requirements. "People would need other government ID, generally a passport, and that would be a very big problem. The state's going to have to work with the federal government in terms of having to fix that problem." New York Senate Homeland Security Chairman Vincent Leibell (R-Brewster) said the new licensing proposal would not fly. "Just because you change a regulation doesn't mean you change our statute," Leibell said, referring to a 1995 law that requires New York's driver's license applicants to present a valid Social Security number. In most cases, New York also allows people to drive using valid foreign driver's licenses.

Additional details on the proposal and the reaction are available at

<http://www.ny.gov/governor/press/0921071.html>. For more information on current New York driver's license requirements for foreign nationals, see <http://www.nydmv.state.ny.us/license.htm#driversfromothernations>.

9. Lawsuit Challenges Constitutionality of ICE Raids

Several Latino families and individuals, represented by the Puerto Rican Legal Defense and Education Fund and an international law firm, filed a class action suit on September 20, 2007, against the Immigration and Customs

Enforcement (ICE) division of the Department of Homeland Security, charging that its agents unlawfully broke into and entered the homes of Latinos in the New York area without judicially issued warrants or other legal justification. The complaint describes armed ICE agents breaking down doors or forcing their way into Latino households in the pre-dawn hours without court warrants, terrifying children and adults, and looking for individuals who often do not even reside in the homes.

A press release announcing the suit is available at <http://www.prdef.org/Press/Press%20Releases/ICE/Press%20Release%20-%20Latinos%20Challenge%20Constitutionality%20of%20Home%20Raids%20Conducted%20by%20ICE.pdf>. A related article is at <http://jurist.law.pitt.edu:80/paperchase/2007/09/ice-sued-over-immigration-raids.php>.

10. Video Debunks Immigration Myths, Calls for Reform

The American Immigration Lawyers Association (AILA) has produced a video on immigration reform. The video debunks common myths, such as that immigrants are a drain on the economy, that Americans do not support comprehensive immigration reform, that legalizing the undocumented is unfair to those who are waiting in line, that immigration reform is really an "amnesty" program for those in the U.S. illegally, and that enforcement of existing laws is sufficient to fix the system. The video is critical of enforcement-only efforts, which the narrator and commentators say tend to drive the undocumented further underground and contribute to smuggling and fraud.

The video is available at:
mms://a1791.v167312.c16731.g.vm.akamaistream.net/7/1791/16731/1189998/stream-1.onstreammedia.com/cdn_stream/multivu/14574/29806_300k.wmv.

11. Bill Would Exempt Returning H-2B Workers from Being Counted Against Cap

The "Save Our Small and Seasonal Businesses Act of 2007" (H.R. 1843/S. 988) would ensure that returning seasonal workers continue to be exempt from an annual cap of 66,000. The exemption expired on September 30, 2007. The U.S. Chamber of Commerce and other business organizations support the legislation. Senators Barbara Mikulski (D-Md.) and John Warner (R-Va.) introduced the bill. Sen. Mikulski vowed to continue to fight for the provision despite the expiration. "Without these seasonal workers, many businesses would not survive – forced to limit services, lay off permanent U.S. workers or, worse yet, close their doors," she said. "I will use every option available to move this as a stand alone bill or to attach it to another piece of legislation."

Details are available in Sen. Mikulski's announcement at <http://mikulski.senate.gov/record.cfm?id=284315>.

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12. Klasko News

Suzanne B. Seltzer Named in Best Lawyers and Super Lawyers

New York partner **Suzanne B. Seltzer** was selected recently for inclusion in *The Best Lawyers in America*, the definitive guide to legal excellence in the United States. 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." Additionally, Suzanne was named in *New York Super Lawyers*. Congratulations Suzanne!



ALL Klasko Partners with Distinction

All of the partners of **Klasko, Rulon, Stock & Seltzer, LLP**, are named in *The Best Lawyers in America, Super Lawyers* (Pennsylvania and New York, respectively), and received the highest rating of "AV" from LexisNexis Martindale-Hubbell "the authoritative resource for the legal profession worldwide." Congratulations to Ron, Rich, Bill and Suzanne on this significant accomplishment! These awards are a testament to the fact that their peers rank them at the highest level of professional excellence. No surprise the Firm has been named as **one of the six best** immigration firms in the United States for two consecutive years by the prestigious *Chambers Global*. Congratulations!

Upcoming Speaking Engagements

Suzanne B. Seltzer will be presenting at NAFSA: Association of International Educators' Region XI 2007 Conference in Burlington, VT, on October 25. Suzanne will serve as chair of a session entitled "Navigating the Four Levels of Prevailing Wage." The session will provide a step-by-step review of the U.S. Department of Labor's "Worksheet for Use in Determining OES Wage Level," including a discussion of the factors that go into making a determination. The goals of the session are to enhance familiarity and comfort with the system, provide strategies on using the system to best advantage, develop institutional policies, and learn from the experiences of other institutions. To find out more on this program, contact Suzanne at sseltzer@klaskolaw.com.

H. Ronald Klasko and Associate **Stephanie L. Browning** will present a seminar on Wednesday, October 17 in Philadelphia at The Pennsylvania Bar Institute. Ron and Stephanie's presentation will be on Immigration Issues for the International Executive, where they will cover critical immigration issues facing international executives.



Ron also will be speaking at the University of Texas School of Law 2007 Immigration Law Conference on October 19, in San Antonio, TX. He will give two talks with topics to include "What's New with PERM in 2007" and "Mandamus and Other Options for Judicial Relief." Additionally, this month, Ron will be speaking at the Greater Delaware Valley Hispanic Chamber of Commerce, at a NAFSA: Association of International Educators regional conference, and at Temple University, among other programs.

Recent Speaking Engagements

Senior Associate **Ralf D. Wiedemann** presented a program for the National Association of Black Accountants in King of Prussia, PA, on October 5. Ralf's lecture centered on post-graduation immigration options for foreign students. For more information or to request presentation materials, write to Ralf at rwiedemann@klaskolaw.com.

Ron Klasko presented several seminars on October 15, 2007, at Yale University. Ron spoke to students, MABs and professionals, and scholars and researchers about various visa options including J-1, O-1, H-1B, and permanent resident status, as well as travel issues. Last week, Ron and Tammy Fox-Isicoff, Esq. of Rifkin & Fox-Isicoff, P.A., jointly presented at the American Immigration Lawyers Association (AILA) Central Florida Conference in Clearwater, Florida. Their presentation dealt with handling the H-1B crisis, offered numerous options and alternatives to the H-1B, and illustrated common hypothetical scenarios with proposed solutions. In the last week of September, Ron was a guest speaker at the AILA 2007 Fall CLE Conference and participated on a panel entitled, "Securing the Lines: Security Clearance Delays and Litigation Update" on September 28, 2007, in Lake Tahoe, NV. The panel addressed delays in security clearances and name checks in adjustment of status and naturalization cases and discussed federal court remedies for dealing with security clearance and other delays in cases. Additionally, Ron spoke at the Washington, DC, AILA Chapter meeting on September 19 where he discussed adjustment of status issues. If you would like more information on any of these talks or to find out how to arrange an on-site program at your organization, e-mail Ron at rklasko@klaskolaw.com.

William A. Stock also presented at the AILA 2007 Fall CLE Conference in Lake Tahoe, NV. Bill participated in the panel discussion, "Department of Labor: Under Water Again?" and discussed DOL's new regulations on employers and attorneys in the labor certification process. Additionally, Bill addressed sanctions an employer may face if it fails to administer immigration policies correctly. Write to Bill at wstock@klaskolaw.com to request presentation materials.



Recent Publications



Ralf D. Wiedemann's recent article, "3rd Circuit: Jurisdictional Procedure Required Action within 30 Days," was published on September 19 in *The Legal Intelligencer*. Additionally, Ralf's updated version of this article renamed "3d Circuit: Use 30-day Rule in Immigration Appeals" was published in *The National Law Journal* in the October 15, 2007 issue. Write to Ralf at rwiedemann@klaskolaw.com to request your copy.

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