

September 2006

Introduction:

The law firm of *Klasko, Rulon, Stock & Seltzer LLP* is pleased to present our *September 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. USCIS Expands Premium Processing Service, Issues New Form** - USCIS has begun accepting premium processing requests for EB-3 professional and EB-3 skilled worker petitions.
- **2. Labor Dept. Asks BALCA to Return Cases for Processing** - BALCA was asked to return numerous cases held pending a decision in *In re HealthAmerica*, the first appeal of a labor certification denial under the new PERM system, in which the employer prevailed.
- **3. Activists Challenge Cities' Crackdown on Undocumented Immigration** - Cities around the country have begun passing tough measures to restrict undocumented immigration, but activists are challenging the new requirements.
- **4. USCIS Releases FAQ on Completing I-9 Verification Form** - USCIS has provided answers to employers' questions about how to complete employment authorization verification using the I-9 form.
- **5. Council of Graduate Schools Notes Rise in Foreign Grad Student Population** - After a lull last year, graduate student applications and admissions are on the upswing.
- **6. Study Finds Immigration Increases Have Not Hurt Employment for U.S. Workers** - The Pew Hispanic Center's new report shows that large increases in immigration have not hurt overall employment prospects for U.S. workers.
- **7. NAFSA Releases Statement on Comprehensive Immigration Reform** - NAFSA says that Senate-passed comprehensive immigration reform legislation contains important provisions that would bolster the U.S. position in the competition for international students and scholars.
- **8. Employment Third Preference Visa Availability May Retrogress** - It cannot be assumed that recent advances in the employment third preference cut-off dates will continue during the coming months and retrogression is possible.

*Also in this issue: **Recent Klasko News***

Details...

1. USCIS Expands Premium Processing Service, Issues New Form

U.S. Citizenship and Immigration Services (USCIS) announced that as of August 28, 2006, it has begun accepting premium processing requests for EB-3 professional and EB-3 skilled worker petitions. EB-3 professionals include immigrant workers with bachelor's degrees who are members of the professions; EB-3 skilled workers include immigrant workers capable of performing skilled labor requiring at least two years of education, training, or experience.

Under premium processing, USCIS guarantees a petitioner that it will issue an approval notice, a notice of intent to deny, or a request for evidence, or that it will open an investigation for fraud or misrepresentation, within 15 calendar days of receipt. If the petition is not processed within 15 calendar days, USCIS will refund the fee and continue to process the request on an expedited basis. The fee for premium processing is \$1,000. Employers may file for both categories using the Immigrant Petition for Alien Worker (Form I-140). A new Request for Premium Processing Services (Form I-907) has been issued and, as of August 28, 2006, previous versions of the form are no longer being accepted.

In addition to faster processing, participating petitioners may use a dedicated telephone number and e-mail address to check on the status of their petitions or ask questions.

Since 2001, premium processing has been available for several classifications using the Petition for Nonimmigrant Worker (Form I-129), including E treaty traders and investors, H-1B specialty occupation workers, H-2B temporary workers performing agricultural 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 services, Q international cultural exchange visitors, R religious workers, and NAFTA professionals from Canada and Mexico. I-129 petitions for these nonimmigrant worker classifications will continue to be eligible for premium processing service unless the filing period has closed (for example, when the annual numerical limit for a specific category has been reached).

USCIS's announcement is available at

<http://www.uscis.gov/graphics/publicaffairs/newsrels/PremProc081806NR.pdf>.

2. Labor Dept. Asks BALCA to Return Cases for Processing

The Department of Labor (DOL) has asked the Board of Alien Labor Certification Appeals (BALCA) to return to the DOL's certifying officers (COs) for processing numerous cases the BALCA was holding pending a decision in *In re HealthAmerica*. In that decision, which was the first appeal of a labor certification denial under the new PERM system, the BALCA found that the CO abused his discretion in denying the employer's labor certification application. Specifically, the application had been denied on the basis of a non-material typographical error; the employer, on a motion to reopen, presented evidence that was in existence at the time the application was filed that demonstrated its compliance with the law.

The letter sent from Gary M. Buff, the DOL's Associate Solicitor for Employment and Training, to John M. Vittone, Chairman of the BALCA, states that the COs have reviewed *HealthAmerica*

and concluded that no purpose would be served in filing briefs in cases that were held in abeyance pending the decision. There may be potentially significant differences between the facts in at least some of these cases and the facts in *HealthAmerica*, Mr. Buff acknowledged, but he said that how those distinctions affect the adjudication of a particular case would be dealt with "more appropriately" by the COs in a new determination. The DOL therefore requested that "the relief provided for in *HealthAmerica* be applied to all of the cases being held in abeyance. Those cases should be returned to the [CO] for review in order to complete processing of these cases in accordance with that decision."

The *HealthAmerica* decision is available at [http://www.oalj.dol.gov/Decisions/ALJ/PER/2006/In_re_HEALTHAMERICA_2006PER00001_\(JUL_18_2006\)_072241_CADEC_SD.PDF](http://www.oalj.dol.gov/Decisions/ALJ/PER/2006/In_re_HEALTHAMERICA_2006PER00001_(JUL_18_2006)_072241_CADEC_SD.PDF). Mr. Buff's August 2 letter is at http://www.bibdaily.com/pdfs/Sheinfeld_8-2-06.pdf.

3. Activists Challenge Cities' Crackdown on Undocumented Immigration

Cities around the country have begun passing tough measures to restrict undocumented immigration. For example, Hazleton, Pennsylvania voted in July to fine landlords \$1,000 if they rent to an undocumented immigrant; deny permits to businesses that hire the undocumented; and make English the city's official language. The Puerto Rican Legal Defense Fund and the American Civil Liberties Union, along with other groups on behalf of Hazleton residents, business owners, and nonprofits, sued Hazleton on August 15, 2006, arguing that the federal government has exclusive power to regulate immigration under the U.S. Constitution and that the new ordinance is discriminatory and unworkable.

Mayor Lou Barletta said he believes "this will be a landmark case. A line has been drawn here in Hazleton. This will impact cities all across the country." He said that undocumented immigration is "destroying small towns" and that he has received requests from officials of 30 towns asking for a copy of Hazleton's new law.

A similar lawsuit was filed against Riverside, New Jersey, for passing such an ordinance. Measures are being voted on -- and protested -- in other localities around the U.S. as well. Stay tuned.

4. USCIS Releases FAQ on Completing I-9 Verification Form

U.S. Citizenship and Immigration Services' *USCIS Today* publication includes a frequently asked questions (FAQ) section. The August 2006 issue's FAQ provides answers to employers' questions about how to complete employment authorization verification using the I-9 form. Among other things, the FAQ notes that an employer "is not required to know with absolute certainty whether a document is genuine or false." USCIS notes that the law merely requires that an employer examine the original document, not a photocopy, and make a good-faith determination that the document appears to relate to the employee, appears to be genuine, and is listed as an acceptable document on the back of the I-9 form.

The FAQ is available at page 7 of *USCIS Today*, http://www.uscis.gov/graphics/publicaffairs/USCISToday_August_06.pdf.

5. Council of Graduate Schools Notes Rise in Foreign Grad Student Population

The Council of Graduate Schools released data on August 9, 2006, that show a continued increase in foreign enrollments in U.S. graduate educational programs. The total number of foreign applications for graduate school in the U.S. is up 12 percent for fall 2006. The numbers vary considerably from country to country, however. For example, although notable increases are coming from China and India, admissions offers fell for applicants from the Middle East. The highest increase was in offers of admission to engineering students; offers in the arts and humanities were slightly down even though more applications in those fields were submitted. The Council of Graduate Schools said the overall increase is a "hopeful sign of a recovery in international admissions" after last year's disappointing results.

The report notes that a variety of new practices were undertaken that might be resulting in the improvement in numbers, such as new international programs or collaborations; new or additional staff time devoted to international students; new funding for international recruitment trips; and new funding for marketing and promotion of graduate programs.

An article on the report by *Inside Higher Ed* is available at <http://www.insidehighered.com/news/2006/08/09/intl>. The Council of Graduate Schools' full report, which includes a table in the appendix showing the percent change in applications and offers of admission from 2005 to 2006, is available at http://www.cgsnet.org/portals/0/pdf/R_intladm06_II.pdf.

6. Study Finds Immigration Increases Have Not Hurt Employment for U.S. Workers

The Pew Hispanic Center released a study on August 10, 2006, showing that large increases in immigration since 1990 have not hurt overall employment prospects for U.S. workers. Other factors, such as economic growth, played a larger role than immigration, said Rakesh Kochhar, the author of the study. He noted that immigration may affect job markets in local areas but that there were no national trends supporting such a link. The study did not examine the effects of immigration on wages. The report is available at <http://pewhispanic.org/reports/report.php?ReportID69>. An article summarizing the report's findings is available at <http://www.federalnewsradio.com/index.php?sid=876849&nid=78>.

7. NAFSA Releases Statement on Comprehensive Immigration Reform

NAFSA: Association of International Educators released a statement on August 3, 2006, estimating that international students and their dependents spend more than \$13 billion on the U.S. economy each year. NAFSA said that attracting international students and scholars promotes U.S. foreign policy and international leadership and supports the U.S. position in cutting-edge innovation. The statement notes that Senate-passed comprehensive immigration reform legislation "contains important provisions that would bolster the U.S. position in the competition for international students and scholars," and that NAFSA is "alarmed by the attempts of the House leadership to promote the idea that nothing else should be done until the

border is secure." NAFSA quoted New York City Mayor Michael Bloomberg: "It is as if we expect border control agents to do what a century of Communism could not -- defeat the natural forces of supply and demand and defeat the natural human instinct for freedom and opportunity. You might as well sit on the beach and tell the tide not to come in."

NAFSA's statement is available at

http://www.nafsa.org/press_releases.sec/press_releases.pg/comprehensive_immigration.

NAFSA has summarized its position in a June 2006 report, *Restoring U.S. Competitiveness for International Students and Scholars*, available at

http://www.nafsa.org/_/Document/_/restoring_u.s.pdf.

8. Employment Third Preference Visa Availability May Retrogress

The Department of State noted in its Visa Bulletin for September 2006 that the employment third preference cut-off date for most countries has advanced rapidly in recent months in an effort to maximize number use under the annual numerical limit. As a result, applicant demand for numbers, particularly for adjustment of status cases at U.S. Citizenship and Immigration Services (USCIS) offices, is expected to increase significantly. Therefore, it cannot be assumed that such advances will continue during the coming months. The Visa Bulletin noted that the Department of Labor expects to complete its backlog reduction effort during fiscal year (FY) 2007. This effort "will result in tens of thousands of cases, including many with very early priority dates, becoming eligible for processing" at USCIS offices, which could require the retrogression of the employment third preference cut-off dates at any time during FY 2007, the Department said.

The Visa Bulletin for September 2006 is available at

http://travel.state.gov/visa/frvi/bulletin/bulletin_3009.html.

Recent Klasko News

➤ *Richard Rulon honored by the American Immigration Lawyers Association*



At the AILA's sixtieth anniversary celebration gala in New York City on September 14, 2006, founding Klasko partner [Richard R. Rulon](#) was honored for his significant contributions to the *American Immigration Lawyers Association*, particularly for his leadership of the *AILF Board of Trustees* which helped put AILF on a firm financial footing and established it as a recognized, effective force in the immigration arena.

➤ ***Klasko on the Lecture Circuit***



Managing partner, [Ronald Klasko](#) was a panelist at the August meeting of the *Council of State Governments' Eastern Regional Council* on the impact of possible federal immigration legislation on the states. Other panelists included Miami Police Chief and former Philadelphia Police Commissioner John Timoney and Tony Fabelo, a nationally known criminal justice advisor to five governors. Some 50 democratic and republican legislators from 17 states attended the session. The *Council of State Governments* is composed of state legislators and executives who share resources, strategies and ideas with the goal of improving the efficiencies, and developing solutions, to important state problems and issues.

In August, [Ron](#) also moderated a panel on “*What Corporate Clients Want from Immigration Counsel*” at the 2006 *American Immigration Lawyers Association (AILA)* conference in San Antonio. Panelists included immigration counsel, immigration managers and specialists from the Coca-Cola Company, University of Pittsburgh Medical Center, NIKE Inc. and the Mayo Clinic.

➤ ***Upcoming Speaking Engagements***

On October 3, 2006, [Richard Rulon](#) will serve as a faculty member of a Web Seminar sponsored by the *AILA* on the topic: *Surviving the H-1B Cap*. For details, please contact the *AILA* Education Department.

On November 1, 2006, [Rich](#) will moderate a panel discussion of “*How the November Elections Will Effect Business Immigration*” at a Continuing Education Event for lawyers, in-house counsel and Human Resource managers sponsored by *NJ ICLE*.

To register visit www.njicle.org.



[Bill Stock](#) will speak on *Global Mobility-Surprises and Recovery* seminar for the *Employee Relocation Council* at the 2006 *Global Workforce Symposium* to be held on October 13, 2006.

➤ **Key Immigration Committee Assignments**



Suzanne Seltzer, head of our NY office, has been appointed by *AILA's Executive Committee* to two national committees, the *Annual Conference Program Committee* (that plans the national conference) and the *Vermont Service Center (VSC) Liaison Committee*.

In addition, **Suzanne** was recently named Co-Chair of *The FMG Taskforce of The Organization of Physician Immigration Lawyers*. The Taskforce is a coalition of law firms that handle physician immigration issues. The Taskforce engages in advocacy initiatives designed to help shape the legislative and regulatory environment for immigrant physicians.

➤ **Three Attorneys join our Firm**

We are delighted to announce the addition of three associates. A hearty welcome to Joanne Matsuo, Ebin Sandler and Stephanie Browning.

1. **Joanne Matsuo** – Joanne joined the firm as an associate attorney in the New York City office. Joanne graduated from George Washington University with Bachelor of Arts, Political Science in 1997 and The American University Washington College of Law in May 2001. Joanne has been admitted to the New York State Bar.
2. **Ebin Sandler** – Ebin joined the firm as an associate attorney in the New York City office. Ebin graduated from Boston University with a Bachelor of Arts in May 1996 and Boston University School of Law in May 2000. Ebin has been admitted to the New York State Bar.
3. **Stephanie Browning** – Stephanie joined the firm in September as an associate attorney in the Philadelphia office. For the last 3 ½ years, Stephanie has been working at the AILA office in Washington DC as a Legal Editor. Stephanie graduated from the University of Chicago with a Bachelor of Arts in June 1996 and the University of Michigan Law School in May 2002. Stephanie has been admitted to the PA State Bar.

➤ **Open House in New York City: Join Us!**

Please join us as we celebrate our *new* NYC location on **Wednesday, September 27, 2006**. The address: 317 Madison Avenue, Suite 1518, New York, NY 10017. Please RSVP to Karen Miller at kmiller@klaskolaw.com or 212.796.8840 if you can make it.

➤ **MS 150 "City to Shore" Bike Tour**

Several KRSS employees participated in this past weekend's *MS Bike Tour*. They include David Bridges, Chris McCleary and Nadia Sowinski, who went the distance and completed the full 160 miles. Congratulations! We are very proud of our employees and the individual contributions they make to the community. Thank you.

➤ ***Upcoming Free Immigration Law Seminar: Join us in Philly on October 25, 2006***

Get Ready for Changes to Immigration Laws

What Universities, Hospitals and Research Institutes Have to Know

Date: October 25, 2006
Time: 8:00 am to 12:15 pm
Location: Union League of Philadelphia
140 S. Broad Street, Philadelphia

KRSS is holding our annual Fall Seminar on *Wednesday, October 25, 2006* at the Union League in Philadelphia. This year's seminar features a special session requested by you, our participants: "*Fundamentals of Immigration Law.*" The main session will focus on topics of interest to professionals involved in employment-based immigration at hospitals, universities and research institutions. For more information, visit our website www.klaskolaw.com for a downloadable seminar brochure or call 215-825-8600.

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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