

SEPTEMBER 2011

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *September 2011* newsletter covering immigration topics that are of interest to our clients.

Headlines:

- **1. USCIS Institutes Direct E-Mail Communication for Regional Center Applicants** – Beginning on September 13, 2011, Form I-924 applicants are able to communicate directly with USCIS adjudicators via e-mail.
- **2. U.S. Consulate in Mumbai Resumes H and L Visa Processing** – The resumption in processing follows a hiatus since March due to infrastructure problems.
- **3. SEVP Updates SEVIS Instructions, List of Approved Schools** – The Student and Exchange Visitor Program has updated instructions and the list of approved schools for SEVIS.
- **4. Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings** – Secretary of Homeland Security Janet Napolitano announced that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate a related interagency case-by-case review.
- **5. USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants** – The new policy memorandum on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants clarifies, among other things, that one or more extensions are appropriate in the exercise of discretion for household members, including the cohabitating partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.
- **6. USCIS Redesigns Customer Service Center 1-800 Options** – USCIS shortened and reorganized the menu options.
- **7. Ombudsman Recommends That USCIS Improve EAD Process** – The Ombudsman noted that many problem areas remain unaddressed.
- **8. Government Agency Links**
- **9. New Publications and Items of Interest**
- **10. Klasko News** – Upcoming and recent speaking engagements and recent publications.

1. USCIS Institutes Direct E-Mail Communication for Regional Center Applicants

USCIS is implementing the first phase in a series of proposed enhancements to the EB-5 immigrant investor program. Beginning on September 13, 2011, Form I-924 (Application for Regional Center Under the Immigrant Investor Pilot Program) applicants are able to communicate directly with USCIS adjudicators via e-mail.

USCIS intends to monitor the progress of this new line of communication to assess whether changes are needed and to implement any needed changes on a "real-time basis." Feedback in response to the use of the direct line of communication for the I-924 may be e-mailed to opefeedback@uscis.dhs.gov.

USCIS said it "is eager to implement all of the proposed enhancements to the EB-5 program that it first announced on May 19, 2011." USCIS is exploring how it can accelerate the implementation of premium processing, "which customarily takes months due to the need to revise the applicable forms." USCIS said it is hiring economists and other experts who will enhance and accelerate the adjudication process and also help constitute the Decision Board that was first described on May 19.

Click [here](#) for a related Q&A.

2. U.S. Consulate in Mumbai Resumes H and L Visa Processing

The U.S. Consulate General in Mumbai recently [announced](#) the resumption of interviews for H and L visas, after a stoppage beginning in March 2011 due to aging infrastructure. In 2010, Indian applicants received 65 percent of all H-1B visas issued worldwide. All interviews will be conducted at the Lincoln House Consulate building, located at 78, Bhulabhai Desai Road, until further notice. Visa appointments may be made online via VFS at <http://www.vfs-usa.co.in/AppInForms/ScheduleMenu.aspx>.

3. SEVP Updates SEVIS Instructions, List of Approved Schools

U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) released updated [instructions](#) on September 7, 2011, for users of the Student and Exchange Visitor Information System (SEVIS). The instructions include information for new users, users with deleted SEVIS access, those deleting or terminating access, and password resets. Also, on September 1, SEVP released an [updated list of approved schools](#), along with an [approved schools map](#).

4. Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings

On August 18, 2011, Secretary of Homeland Security Janet Napolitano [announced](#) that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate an interagency case-by-case review to ensure that both those currently in

removal proceedings and new cases placed in removal proceedings meet those priorities. Secretary Napolitano cautioned that this process “will not provide categorical relief for any group.”

A related [memorandum](#) from U.S. Immigration and Customs Enforcement (ICE) issued in June on prosecutorial discretion notes:

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

The new focus on only deporting high-priority cases, such as criminals, does not amount to an amnesty program for others, as Secretary Napolitano noted. Nor does the new policy necessarily mean that people whose removal cases are stayed can obtain work permits. They will remain in immigration limbo: not in removal proceedings but not legal either.

5. USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants

U.S. Citizenship and Immigration Services' [new policy memorandum](#) on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants does not change eligibility requirements for change of status to B-2, or extension of B-2 status. Rather, it clarifies that such a change and/or one or more extensions are appropriate in the exercise of discretion for household members, including the cohabiting partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.

When evaluating an application for change to or extension of B-2 status based on cohabitation, the memo states, the cohabiting partner's relationship to the principal nonimmigrant in another status will be considered a favorable factor in allowing the household member to obtain or remain eligible for B-2 classification. When considering a change of status and/or multiple extensions for the cohabiting partner or other household member, the finite nature of the stay, rather than the duration of the stay or number of extensions sought, is

controlling with respect to nonimmigrant intent. For example, the visit should be considered temporary even if the status may be extended several times over several years to match an extended course of study undertaken by the principal. However, while the I-539 (B-2) application must be adjudicated on its own merits, the memo notes, a finding that the principal nonimmigrant lacks nonimmigrant intent is a negative factor in the exercise of discretion.

6. USCIS Redesigns Customer Service Center 1-800 Options

U.S. Citizenship and Immigration Services (USCIS) [recently redesigned](#) its Interactive Voice Response System (IVR), accessible via the National Customer Service Center. Among other things, USCIS shortened and reorganized the menu options. The new IVR has three main menu options, a decrease from the 10 options previously in place. The three new options are Immigration Services, Immigration Information, and Special Programs and Other Resources.

The NCSC main number is 1-800-375-5283. Those who are outside the United States and have filed an application or petition with a USCIS Service Center may call 785-330-1048 to check the status of their case via an automated system.

7. Ombudsman Recommends That USCIS Improve EAD Process

The Ombudsman for U.S. Citizenship and Immigration Services (USCIS) recently made [recommendations](#) focused on delays due to processing and adjudications issues of employment authorization document (EAD) applications. The Ombudsman noted that although USCIS has implemented procedures to resolve certain issues, many problem areas have not been addressed. When processing is delayed, the Ombudsman noted, "individuals and employers experience significant adverse consequences such as job loss and disruption in business operations." The Ombudsman recommended specific actions that USCIS can take to improve the EAD process, including:

1. Establishing methods at local offices to facilitate immediate resolution;
2. Establishing a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD;
3. Improving monitoring and ensuring real-time visibility through an automated system for tracking processing times;
4. Following established internal procedures for issuing interim EADs in cases where background checks are pending; and
5. Issuing replacement EADs with validity dates beginning on the date the old EAD expires.

The Ombudsman identified several ways to implement these recommendations that build upon existing USCIS processes.

8. 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

9. New Publications of Interest

Green Card Stories. The immigration debate is boiling over. Americans are losing the ability to understand and talk to one another about immigration. We must find a way to connect on a human level. *Green Card Stories* does just that. The book depicts 50 recent immigrants with permanent residence or citizenship in dramatic narratives, accompanied by artistic photos. If the book's profilees share a common trait, it's a mixture of talent and steely determination. Each of them overcame great challenges to come and stay in America. *Green Card Stories* reminds Americans of who we are: a nation of immigrants, from all walks of life and all corners of the earth, who have fueled America's success. It tells the true story of our nation: E pluribus unum--out of many, one. *Green Card Stories* will be released on November 8. For more information or to order, visit http://www.abil.com/green_card.cfm.

E-Verify/Form I-9 Webinars. The Department of Homeland Security is offering free webinars on E-Verify and the Form I-9 process. Upcoming webinars include the "E-Verify Overview," to be held on Tuesday, September 27, at 2 p.m. EST, and Wednesday, September 28, at 10 a.m. EST; "E-Verify for Existing Users," to be held on Thursday, September 29, at 11 a.m. EST; "E-Verify for Federal Contractors," to be held Wednesday, September 28, at 2 p.m. EST; "Form I-9 Webinar," to be held Thursday, September 22, at 10 a.m. EST; and "E-Verify Self-Check," to be held Friday, September 16, at 2 p.m. EST, Thursday, September 22, at 2 p.m. EST, and Tuesday, September 27, at 10 a.m. EST.

GAO report on DHS ten years after 9/11. In a new report, the U.S. Government Accountability Office (GAO) notes that the terrorist attacks of September 11, 2001, led to profound changes in U.S. government agendas, policies, and structures to confront homeland security threats facing the nation. Most notably, the Department of Homeland Security (DHS) began operations in 2003 with key missions that included preventing terrorist attacks from occurring in the U.S., reducing the country's vulnerability to terrorism, and minimizing the damages from any attacks that may occur. DHS is now the third-largest federal department, with more than 200,000 employees and an annual budget of more than \$50 billion. Since 2003, the GAO has issued over 1,000 reports on DHS's operations in such areas as border and transportation security and emergency management. The report addresses DHS's progress and challenges in implementing its homeland security missions since it began operations, and issues affecting implementation efforts.

Enhancements to DOL enforcement website. The Department of Labor recently updated its enforcement database website. Among other things, the website provides data on Wage and Hour Division (WHD) compliance, such as all concluded WHD compliance actions since FY 2007, including whether any violations

were found and the back wage amount, number of employees due back wages, and civil money penalties assessed.

USCIS Ombudsman upcoming events. The USCIS Ombudsman's Office plans several upcoming events, including open houses on Monday, September 26, 2011 (4 to 6 p.m.) and Tuesday, September 27, 2011 (12 noon to 2 p.m.). The open houses will feature an informal discussion of the 2011 Annual Report, recent recommendations, the Ombudsman's Case Assistance Online Pilot Program, and case assistance. Also, the Ombudsman's first annual conference is scheduled for October 20, 2011. For more information, e-mail CISOmbudsman.PublicAffairs@dhs.gov or call (202) 357-8100.

E-Verify "Self Check" available in Spanish, additional states. U.S. Citizenship and Immigration Services (USCIS) recently announced that "Self Check," a free online E-Verify service that allows workers to check their own employment eligibility status, is now available in Spanish and accessible to residents in 16 additional states: California, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Texas, Utah, and Washington. Self Check initially was launched in March 2011 for residents of Arizona, Colorado, Idaho, Mississippi, Virginia, and the District of Columbia.

10. Klasko News

News and Noteworthy

H. Ronald Klasko (Ron), William A. Stock (Bill), and Suzanne B. Seltzer (Suzanne) have been selected by their peers for inclusion in the 2012 edition of [The Best Lawyers in America](#)®. Described by *Corporate Counsel* magazine as the "the most respected referral list of attorneys in practice," selection to *Best Lawyers*® is based on an exhaustive and rigorous peer-review survey comprising more than 3.9 million confidential evaluations by the top attorneys in the country. Because no fee or purchase is allowed, inclusion in *Best Lawyers* is considered a singular honor. Congratulations Ron, Bill and Suzanne on being chosen by your fellow attorneys for inclusion in *The Best Lawyers in America*.



Suzanne B. Seltzer (Suzanne) was recognized in *Chambers USA* for her representation of individuals in the medical research and education sectors, as well as educational institutions. Observers comment that she is "sharp, smart and very plugged in to the changing world of immigration." Congratulations!

Jennifer A. Hermansky (Jen) has been elected Vice-Chair of the ABA Section of Administrative Law, Immigration and Naturalization Law Committee.

Upcoming Speaking Engagements

H. Ronald Klasko (Ron) will be speaking to international MBA students at the Wharton School of the University of Pennsylvania on Wednesday, October 12, 2011.

Ron will serve as a panelist on "Winning the End Game: Removal of Conditions," a session at the American Immigration Lawyers Association (AILA) 2011 Fall EB-5 CLE Conference from October 20 - 21, 2011 in San Antonio, TX. This session will provide an in-depth look at strategies and tips for the successful removal of conditions to permanent resident status, and also will examine possibilities of litigation in the event of petition denial. For more information, write to Ron at rklasko@klaskolaw.com.



Suzanne will be giving presentations at the University of Texas Health Science Center in Houston on Thursday, October 20, 2011 and at MD Anderson Cancer Center the following day. Suzanne will speak to clinicians and researchers on immigration opportunities including understanding the J-1 two year rule, J-1 waivers, the O-1 visa, and permanent residence status. Contact Suzanne at sseltzer@klaskolaw.com for information relating to these topics.

On October 22, Ron will participate at the Annual AILA Central Florida Chapter Fall Conference in Clearwater, FL. Ron will serve as a panelist on "EB-5s: The Future Ain't What It Used to Be." For more information on the EB-5 visa, visit www.eb5immigration.com.



Suzanne will be a speaker at "Making the Leap: A Non-Academic Career Planning and Job Search Boot Camp," an event sponsored by The New York Academy of Sciences on October 28-29, 2011. Suzanne will be presenting on immigration options for researchers including extraordinary ability and national interest waiver immigrant petitions, O-1 nonimmigrant visas, and waivers of the two-year home country residence requirement. For more information on this event, click [here](#).

Recent Speaking Engagements



On Wednesday, September 21, [Elise Fialkowski](#) served as a panelist on "Comprehensive I-9 Question and Answer Session," the final session of a webinar series sponsored by LawLogix. This session was devoted exclusively to answering questions gathered from the first two webinars in this series. The panelists will also field additional questions throughout the webinar and provide the latest updates on I-9 enforcement policies and practices. For more information on any of the sessions or to view the recorded webinar, click [here](#).

On September 16, 2011, Elise was a panelist on "Denver *Nuggets* of Gold: Where Taxation and Immigration Meet" at the 2011 AILA Fall Conference in Denver. This panel discussed the intended and unintended tax consequences of immigration benefits. For more information on this topic, write to Elise at efialkowski@klaskolaw.com.

Recent Publications

Elise published an article entitled "I-9 Audits on the Rise - Discrimination Actions by Office of Special Counsel Increase as ICE Pursues Aggressive I-9 Audit Program" in the July/August edition of PalletCentral magazine, a technical journal for the solid wood packaging industry published by the National Wooden Pallet and Container

Association (NWPCA). For more information on I-9 audits, contact Elise at efialkowski@klaskolaw.com or visit www.worksite-compliance.com.

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