

MAY 2014



The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *May 2014* newsletter, covering immigration topics that are of interest to our clients.

Headlines:

- **1. DHS Proposes Rule to Extend Work Authorization to Certain H-4 Dependent Spouses of H-1B Nonimmigrants** – DHS has proposed extending the availability of employment authorization to certain H-4 dependent spouses of principal H-1B nonimmigrants. The extension would be limited to H-4 dependent spouses of principal H-1B nonimmigrants who are seeking lawful permanent resident status through employment.
- **2. DHS Proposes Rule to Enhance Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants** – DHS has proposed various changes to its regulations as part of the Obama administration's effort to attract highly skilled workers to the United States.
- **3. China EB-3 Visa Numbers Retrogress Six Years Unexpectedly; State Dept. Warns that EB-5 Category May Retrogress** – In June, the China E-3 cutoff date is retrogressing by six years, to October 1, 2006.
- **4. USCIS Accepting Only Current Naturalization Applications** – USCIS is now only accepting current versions of the Form N-400, dated 9/13/2013. USCIS will reject and return all naturalization applications using previous versions.
- **5. Dept. of State Releases DV-2015 Results** – Applicants registered for the DV-2015 program have been selected at random, and notified, from among 9,388,986 qualified entries received during the 30-day application period that ran in late 2013.
- **6. CBP Provides Webpage Access to Arrival/Departure Date Records** – A U.S. Customs and Border Patrol webpage now provides access to arrival/departure date records for nonimmigrants.
- **7. USCIS Holds Stakeholder Call on L-1A Site Visits** – The L-1 inspection program is being phased in and may be extended to initial petitions and/or L-1Bs in the future.
- **8. White House to Propose New Regs, Steps to Attract Entrepreneurs** – Among other things, proposed regulations will include rules authorizing employment for spouses of certain high-skill workers on H-1B visas and enhancing opportunities for outstanding professors and researchers.
- **9. Government Agency Links**
- **10. Klasko News** – Rankings and listings, upcoming and recent speaking engagements, publications, and what you may have missed.

1. DHS Proposes Rule to Extend Work Authorization to Certain H-4 Dependent Spouses of H-1B Nonimmigrants

The Department of Homeland Security (DHS) has proposed extending the availability of employment authorization to certain H-4 dependent spouses of principal H-1B nonimmigrants. The extension would be limited to H-4 dependent spouses of principal H-1B nonimmigrants who are seeking lawful permanent resident status through employment.

The proposed rule includes such spouses of H-1B nonimmigrants who are either the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I-140) or who have been granted an extension of their authorized period of admission in the United States under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act. DHS said this regulatory change is intended to lessen any potential economic burden on the H-1B principal and H-4 dependent spouse during the transition from nonimmigrant to lawful permanent resident status, furthering the U.S. goals of attracting and retaining highly skilled foreign workers. The lack of employment authorization for H-4 dependent spouses often gives rise to personal and economic hardship for the families of H-1B nonimmigrants the longer they remain in the United States, DHS noted. In many cases, for those H-1B nonimmigrants and their families who wish to remain permanently in the United States, the time frame required for an H-1B nonimmigrant to acquire lawful permanent residence through his or her employment may be many years. As a result, DHS pointed out, retention of highly educated and highly skilled nonimmigrant workers in the United States can become problematic for employers.

"Retaining highly skilled persons who intend to acquire lawful permanent residence is important to the United States given the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation," the agency said.

DHS believes that this proposal would further encourage H-1B skilled workers to remain in the United States, continue contributing to the U.S. economy, and not abandon their efforts to become lawful permanent residents (to the detriment of their U.S. employers) because their H-4 nonimmigrant spouses are unable to obtain work authorization. DHS said this proposal also would remove the disincentive for many H-1B families to start the immigrant process due to the lengthy waiting periods associated with acquiring lawful permanent resident status.

DHS seeks public comments on the proposed rule. The agency noted that the most useful comments will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support the change.

The proposed rule is available at

<https://www.federalregister.gov/articles/2014/05/12/2014-10734/employment-authorization-for-certain-h-4-dependent-spouses>.

We recommend that employers submit positive comments on the rule asking the Obama Administration to finalize it. For more details on how to submit a comment to the rule, please contact your [Klasko law attorney](#).

2. DHS Proposes Rule to Enhance Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants

The Department of Homeland Security (DHS) has proposed updating its regulations to include nonimmigrant high skilled specialty occupation professionals from Chile and Singapore (H-1B1) and from Australia (E-3) in the list of classes of those authorized for employment incident to status with a specific employer, to clarify that H-1B1 and principal E-3 nonimmigrants can work in the United States without having to apply separately to DHS for employment authorization.

DHS also is proposing to provide authorization for continued employment with the same employer if the employer has timely filed for an extension of a nonimmigrant's stay. DHS proposes this same continued work authorization for Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) nonimmigrants if a Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I-129CW, is timely filed to apply for an extension of stay.

In addition, DHS is proposing to update the regulations describing the filing procedures for extensions of stay and change of status requests to include the principal E-3 and H-1B1 nonimmigrant classifications. These changes would harmonize the regulations for E-3, H-1B1, and CW-1 nonimmigrant classifications with the existing regulations for other similarly situated nonimmigrant classifications.

Finally, DHS is proposing to expand the current list of evidentiary criteria for employment-based first preference (EB-1) outstanding professors and researchers to allow the submission of evidence comparable to the other forms of evidence already listed in the regulations. This proposal would harmonize the regulations for EB-1 outstanding professors and researchers with other employment-based immigrant categories that already allow for submission of comparable evidence.

DHS said it is proposing these changes to the regulations to benefit these highly skilled workers and CW-1 transitional workers by removing unnecessary hurdles that place such workers at a disadvantage when compared to similarly situated workers in other visa classifications.

The proposed rule is available at <https://www.federalregister.gov/articles/2014/05/12/2014-10733/enhancing-opportunities-for-h-1b1-cw-1-and-e-3-nonimmigrants-and-eb-1-immigrants>.

3. China EB-3 Visa Numbers Retrogress Six Years Unexpectedly; State Dept. Warns that EB-5 Category May Retrogress

Retrogressions are looming for several employment-based categories:

EB-3. Due to an "unexpected and dramatic increase" in demand, the Department of State announced in the Visa Bulletin for June 2014 that visa number use in the employment third category has neared the annual limit. As a result, the E-3 cutoff dates will retrogress in June for the China, Worldwide, and Mexico categories. The China E-3 cutoff date is retrogressing by six years, to October 1, 2006.

EB-5. A Department official speaking at an immigration law conference in Washington, DC, on April 11, 2014, warned that higher-than-anticipated visa number usage in the EB-5 immigrant investor category may require the agency to impose a cut-off date this summer. If so, this would be the first time the EB-5 category would have a backlog in its 24-year history.

Every employment-based immigrant visa category has an annual limit. For EB-5, it is approximately 10,000 visas per year. That number includes principal EB-5 investors, their spouses, and their children under 21. For EB-5 cases, a person's priority date is the date the USCIS receives their I-526 petition.

Investors from mainland China constitute about 80% of all EB-5 petitions. The Department would create a waiting list for Chinese investors first to make certain that some EB-5 green cards remain available for investors from other countries. Investors should file their I-526 petitions as soon as possible so that their EB-5 priority dates will be as early as possible. This will help them when EB-5 retrogression occurs. It is unclear when that will happen, possibly in late summer or early fall 2014.

The June 2014 Visa Bulletin, which includes charts showing the employment-based and family based priority dates, is available at <http://travel.state.gov/content/visas/english/law-andpolicy/bulletin/2014/visa-bulletin-for-june-2014.html>.

4. USCIS Accepting Only Current Naturalization Applications

As of May 5, 2014, U.S. Citizenship and Immigration Services is now only accepting current versions of the Form N-400, Application for Naturalization, dated 9/13/2013. USCIS will reject and return all naturalization applications using previous versions.

Among other things, the revised form has a barcode, which USCIS said will result in fewer rejected forms. USCIS said that it also clarified the instructions and made the form more "user friendly."

USCIS issued the revised version of the N-400 on February 4, 2014. The agency allowed applicants to continue using previous versions of the N-400 for a 90-day transition period, which has expired.

The announcement is available at <http://www.uscis.gov/news/alerts/uscis-will-accept-onlycurrent-version-form-n-400-beginning-may-5>. The revised form is available electronically at <http://www.uscis.gov/n-400>, but it can also be printed and completed by hand in black ink. The form must be signed and sent with the filing fee.

5. Dept. of State Releases DV-2015 Results

The Department of State's Kentucky Consular Center has registered and notified those selected in the DV-2015 diversity visa lottery. Approximately 125,514 applicants have been registered and notified, and may now apply for an immigrant visa. The Department said it is likely that not all of those registered will pursue their cases to visa issuance. Therefore, this larger figure should ensure that all DV-2015 numbers will be used during fiscal year 2015 (October 1, 2014, to September 30, 2015).

Applicants registered for the DV-2015 program were selected at random from 9,388,986 qualified entries (14,397,781 with derivatives) received during the 30-day application period that ran in late 2013. The visas have been apportioned among six geographic regions with a maximum of seven percent available to persons born in any single country. Cameroon received the most selections, at 5,000; followed by Ethiopia and Egypt, tied at 4,988; and Iran, at 4992.

During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years. Those selected will need to act on their immigrant visa applications quickly, the Department said.

Registrants living legally in the United States who wish to apply for adjustment of status must contact U.S. Citizenship and Immigration Services for information on the requirements and procedures. Once the total 50,000 visa numbers have been used, the program for fiscal year 2015 will end. Selected applicants who do not receive visas by September 30, 2015, will derive no further benefit from their DV-2015 registrations. Similarly, spouses and children accompanying or following to join DV-2015 principal applicants are only entitled to derivative diversity visa status until September 30, 2015.

Dates for the DV-2016 program registration period will be widely publicized in the coming months, the Department said. The Department noted that the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulated that up to 5,000 of the 55,000 annually allocated diversity visas be made available for use under the NACARA program. The reduction of the limit of available visas to 50,000 began with DV-2000.

The DV-2015 results, including a country-by-country chart, are available in the Visa Bulletin for June 2014 at <http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2014/visabulletin-for-june-2014.html>.

6. CBP Provides Webpage Access to Arrival/Departure Date Records

A U.S. Customs and Border Patrol webpage now provides access to arrival/departure date records for nonimmigrants without necessitating a Freedom of Information Act request. The user can input the person's first and last name, date of birth, passport number and country of issuance, and is supposed to receive information about the person's recent I-94 arrival/departure record or a full travel history dating back several years.

Reportedly, the system records the date of departure when the person books a departing flight, not the actual departure. Users have tried the system to obtain records for lawful permanent residents but have reported that the travel dates listed are sometimes incomplete.

It is available to individuals and their legal representatives at <https://i94.cbp.dhs.gov/I94/request.html>.

7. USCIS Holds Stakeholder Call on L-1A Site Visits

U.S. Citizenship and Immigration Services (USCIS) held a stakeholder call on April 24, 2014, on the implementation of L-1A site visits for intracompany transferee managers and executives. The following are highlights from the call:

USCIS said that site visits are randomly selected and not based on suspected fraud or tips received. All L-1A extensions are included in the pool, not just new offices. The trigger is the filing of a Form I-129, Petition for a

Nonimmigrant Worker, with USCIS. The agency noted that at the moment, there does not seem to be a method for including petitions filed at the border by Canadians or petitions filed at consulates based on a blanket L-1, but USCIS is trying to figure out how to include them as well.

The inspection program is being phased in and may be extended to initial petitions and/or L-1B specialized knowledge employees in the future, USCIS said. Inspection officers do not have authority to withdraw, approve, deny, or re-adjudicate a petition. Also, they do not have the authority to make a finding of fraud, but they can forward the results of the inspection to the Fraud Detection and National Security Directorate (FDNS) for further investigation. The inspection report assesses compliance with the L regulations and the result is either "verified" or "unverified." A supervisor reviews all inspection findings.

Attorneys may be present, but officers may not wait for them to show up. Participation in the inspection is voluntary, USCIS noted. The petitioner may at any time request that the inspection be stopped, and the inspection officer will stop and create the report based on the information obtained up to that point and through other methods (e.g., Internet, telephone, email, conversations with neighbors). Stopping the investigation will not necessarily result in an "unverified" conclusion, USCIS said.

Employers should be prepared to present all documents submitted with the original L-1A petition. One caller noted that employers are not required to maintain public access files in the L context and therefore may have difficulty immediately producing these documents. USCIS replied that the production expectation is the same for Ls as it is for Hs, but they will be allowed to follow up with the officer after the inspection to clarify and/or provide requested documents that were not readily available at the time of the inspection.

According to USCIS, each inspection will touch on issues easily addressed in many cases by information contained in the L-1A petition. Some of those issues noted on the call include:

1. Whether the facility employed by the business appears to be the one described in the petition.
2. Whether the inspector made contact with the signatory of the petition or a human resources representative or management point of contact who could answer questions about the petition filed and the visa holder.
3. Whether the information in the petition is viable and whether the documents collected related to the presence of the organization as a business.
4. Whether the inspector was able to interview the beneficiary.
5. Whether the petition signatory, human resources representative, or manager interviewed had knowledge of the originally filed petition associated with the beneficiary.
6. Whether the inspector found the beneficiary to be working for the organization cited in the petition.
7. Whether the beneficiary was knowledgeable, forthcoming, and cooperative.
8. Whether the beneficiary is being compensated with the salary indicated in the petition.
9. Whether the beneficiary is performing the duties indicated in the petition.

8. White House to Propose New Regs, Steps to Attract Entrepreneurs

The Obama administration released a fact sheet on April 7, 2014, summarizing efforts to strengthen entrepreneurship, including a series of proposed regulations and other steps.

Among other things, the Department of Homeland Security is set to publish soon several proposed rules intended to make the United States more attractive to talented foreign entrepreneurs and other high-skill immigrants. The proposed regulations will include rules authorizing employment for spouses of certain high-skill workers on H-1B visas and enhancing opportunities for outstanding professors and researchers.

Also planned is the launch of "Entrepreneur Pathways," an online resource center "that gives immigrant entrepreneurs an intuitive way to navigate opportunities to start and grow a business in the United States," the fact sheet says.

Additionally, the Department of State will launch two new exchange programs for entrepreneurs in the Western hemisphere. The Small Business Network of the Americas (SBNA) Fellowship Program will connect incubators across the hemisphere "to share best practices in entrepreneurial development and unlock market access for small businesses across the region," the fact sheet states. The Professional Fellows Program will bring Salvadoran, Guatemalan, and U.S. officials together for a six-week internship and training program focusing on professional development, problem-solving, and networking.

The White House fact sheet is available at <http://m.whitehouse.gov/the-press-office/2014/04/07/fact-sheet-strengthening-entrepreneurship-home-and-abroad>.

9. 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](#)
- [Department of Labor processing times and information on backlogs](#)
- [Department of State Visa Bulletin](#)
- [Visa application wait times for any post](#)

10. Klasko News

Rankings and Listings

Chambers Ranks KRSS Among Top Firms Nine Consecutive Years

Klasko, Rulon, Stock & Seltzer has once again been selected as one of the top 5 business immigration law firms in the United States by the prestigious *Chambers Global: The World's Leading Lawyers for Business* (Chambers and Partners). Impressively, the firm has achieved this top ranking in *Chambers Global* for the past nine consecutive years (2006 - 2014). Moreover, *Chambers Global* has recognized founding partners [H. Ronald Klasko](#) (Ron), [William Stock](#) (Bill) and [Suzanne Seltzer](#) as leaders in the field. The publication states:

Managing partner [Ronald Klasko](#) is "a fixture in the US immigration Bar" and represents clients from a diverse range of industries and sectors, including biotech, manufacturing and healthcare.

[William Stock](#) elicits praise for his creativity in litigation and is also described as an "impressive strategist around immigration issues." Stock concentrates on assisting individuals and domestic US and international companies with their immigration needs and related litigation.

[Suzanne Seltzer](#) is a well-known figure in the US immigration law community and advises many universities, hospitals and research institutions on J-1, national interest waiver and extraordinary ability visas.

Chambers USA also honored Klasko, Rulon, Stock & Seltzer with high marks and listed Ron, Bill and Suzanne among the top immigration attorneys, based on interviews with firm clients, and provided the following analysis:

What the team is known for Dedicated to assisting clients with immigration matters, with particular expertise on employment-based immigration issues. Sought out by companies, research organizations, hospitals and universities.

Strengths (Quotes mainly from clients) "They do great, sophisticated work."

The "outstanding" [Ronald Klasko](#) is highly skilled in handling immigration matters before United States Citizenship and Immigration Services and the Department of Labor. He is well known for his work in compliance and enforcement actions.

[William Stock](#) is praised by market observers as "a brilliant technician." His clients include companies in the engineering, finance and pharmaceuticals sectors.

The "excellent" [Suzanne Seltzer](#) is held in high esteem for aiding universities and hospitals with regards to securing O-1 nonimmigrant visas and extraordinary ability and national interest waiver petitions. She also frequently represents research institutions.

KRSS is particularly proud of the top firm and lawyer ratings as *Chambers* bases its rankings solely on reviews and interviews by clients and other attorneys.



Upcoming Speaking Engagements



[Elise A. Fialkowski](#) will be attending and speaking at the NAFSA 2014 Annual Conference in San Diego, CA from May 25-30, 2014. On May 29, Elise will be a panelist on “Advanced H-1B Topics” and will discuss and answer questions related to key complex H-1B issues petitioners may encounter, including intermittent and concurrent employment, LCA compliance, export control, document retention, AC-21 issues, fee payment, last action rule, policy development, audits, travel issues, and the impact of the electronic I-94 on the H-1B process. For more information on these topics, write to Elise at efialkowski@klaskolaw.com.



Ron, Bill, Suzanne and Elise will be speaking at the 2014 AILA Annual Conference from June 18-21 in Boston.

- Ron will be co-presenting “Representing the Direct EB-5 Investor.” Although a majority of EB-5 petitioners invest in regional center projects, a growing number are choosing the direct EB-5 route. These cases have unique issues unrelated to regional center EB-5s, ranging from acquiring the business to multiple location businesses to the investor’s involvement in the business—and everything in between. This panel will cover the significant issues in representing these cases including pooled direct EB-5 and source of funds of other investors, acquisition of a business and business plans, transitioning from E-2 to EB-5, proving “qualifying employees,” and I-829 issues including RFEs, denials and NTAs.
- Bill will participate in the “Hot Topics Strategy Session with AILA Superstars” panel. Bill will also be a presenter on “Opening a New Practice: What I Wish I Knew When I Started.” This session will provide basic tips and strategies for setting up a firm, hiring staff, setting prices, and managing the practice for new and seasoned practitioners. This panel will also discuss the do’s and don’ts of opening a new practice, including what to look for and how to problem solve when presented with challenges
- Suzanne will participate in the “RFE Toolbox” session which will explore strategies and creative approaches for handling RFEs successfully by holding USCIS accountable, using the language of policy memoranda, field manuals, precedent cases and other sources, and psychologically preparing yourself and the client to respond rationally no matter what comes in the mail.
- Elise will be a panelist on “Social Security Challenges for Foreign National Employees” and will discuss various issues that employees and employers are facing based on current social security policies, many of which may be inconsistent with immigration policies.



On Wednesday, June 25, Ron will participate in “Preparing for the I-829 Bubble,” an EB-5 webinar hosted by NES Financial Corp. The webinar will deal with considerations for an I-829 submission. For more information on filing an I-829 application, contact Ron at rkasko@klaskolaw.com.

Recent Speaking Engagements

Ron was at the AILA NY Chapter annual EB-5 program on May 19 and presented "EB-5 Fundamentals" along with two co-panelists. For information on EB-5, visit www.eb5immigration.com.

Bill participated at the 11th Annual Federal Bar Association Immigration Law Seminar in Memphis, Tennessee from May 16-17, 2014. Bill was a speaker on the "U.S. Citizenship and Immigration Services (USCIS) Hot Topics" panel and also the "U.S. Department of Labor (DOL) Hot Topics" session. Bill discussed the latest developments and policy changes at USCIS and DOL as they adjudicate cases.

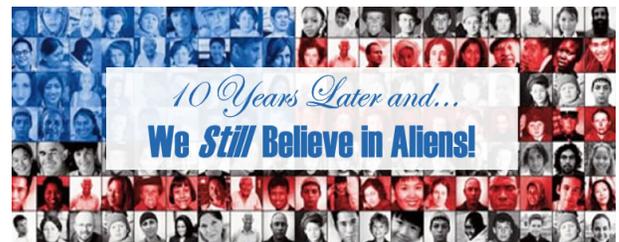
Ron spoke on "Hot Issues in EB-5" at the 5th Annual EB-5 Boot Camp sponsored by Artisan Business Group in Los Angeles on May 14. For more information, click [here](#).

Bill was at Thomas Jefferson University in Philadelphia on May 12 and spoke to scholars and researchers regarding immigration options available to them.

Ron presented "Update on USCIS Policies" at IIUSA's 7th Annual EB-5 Regional Economic Development Advocacy Conference in Washington, DC from May 7-9.

Ron spoke at the Invest in Texas Initiative conference on "Immigration Due Diligence Training for EB-5 Projects" on May 6, 2014 in Austin, TX. For more information on the program, write to Ron at rklasko@klaskolaw.com.

Klasko, Rulon, Stock & Seltzer's annual spring seminar "10 Years Later and...We *Still* Believe in Aliens!" was held on Tuesday, April 29, 2014 at the Union League of Philadelphia. The PowerPoint presentation and articles from the seminar is now available on our website. [Click here](#) to download the materials folder from this event.



If you would like us to present a free abbreviated version of this seminar or any program at your organization, please contact Ron Klasko at rklasko@klaskolaw.com or Bill Stock at wstock@klaskolaw.com.

On April 24 and 25, Elise attended PBI's 20th Annual Employment Law Institute seminar at the Pennsylvania Convention Center. Elise spoke on "Immigration Law 101, What Every Employment Lawyer Should Know." More than ever, immigration is a topic that needs to be addressed by employment counsel. This session provided an overview of immigration law in the United States including: the US immigration system, current trends and developments; employment based immigration/sponsorship requirements; key visa categories and procedures; nonimmigrant (temporary) visas; immigrant (permanent) visas; naturalization; immigration enforcement and employer sanctions; and corporate immigration policies and best practices.

On April 11, Suzanne participated at the 2014 AILA Spring CLE Conference titled "Government Agency Update" in Washington, DC. Suzanne, in her capacity as AILA USCIS Service Center Operations Committee Chair, led the "U.S. Citizenship and Immigration Services (USCIS) Open Forum."

What You May Have Missed

Blog Entries

- [Reflecting on the Past Year](#)
April 10, 2014 by [H. Ronald Klasko](#)

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