

SEPTEMBER 2012

The law firm of **Klasko, Rulon, Stock & Seltzer, LLP** is pleased to present our *September 2012* newsletter covering immigration topics that are of interest to our clients.

Headlines:

- **1. State Dept. Announces Numerical Limits for Immigrants in FY 2012** – The worldwide employment-based preference limit for fiscal year 2012 is 144,951, and the family-sponsored preference limit is 226,000.
- **2. Labor Dept. Proposes Reorganizing Applications for Prevailing Wage Determination and Temporary Employment Certification** – The ETA has proposed reorganizing ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification; and the H-2A Certification Letter With Notification.
- **3. Immigration “Extender Bill” Clears Senate and House of Representatives** – The Senate and House of Representative have both passed the S.3245, a bill extending four immigration programs for three years, through September 30, 2015. The four programs are: E-Verify, the EB-5 immigrant investor program; the “Conrad 30” J-1 waiver program, and the Non-Minister Religious Worker Immigrants program.
- **4. EB-5 Immigrant Investor Update: New Office; Stats, Summary Released** – USCIS has announced formation of a new EB-5 program office. Also, USCIS released FY 2012 third-quarter statistics at its stakeholder call in July, and released a summary of questions and answers from the previous stakeholder meeting in May. USCIS also announced that it plans to release a new version of its draft EB-5 policy memo soon.
- **5. CBP Discontinues Admission Stamps on Forms for F, M, J International Students and Scholars** – If a state benefit-granting agency rejects an unstamped Form I-20/DS-2019, applicants may make an appointment with USCIS online through InfoPass and take their I-20/DS-2019 to their local USCIS office to be stamped. This transitional step will end on November 21, 2012.
- **6. USCIS Releases Guidance on Accommodating Religious Beliefs When Capturing Photographs and Fingerprints** – If removal of headwear or adjustments are needed, such as a same-gender photographer or fingerprint-taker, USCIS will offer a private or screened area, if available. If such an area is not available, USCIS will offer to reschedule the appointment.
- **7. Senate Holds Hearing on Student Visa System** – Discussed at the hearing were findings from the GAO's June 2012 report assessing ICE's oversight of the Student and Exchange Visitor Program.
- **8. USCIS Allows 30 Additional Days for Public Comment on Revised I-9** – USCIS received over 6,200 comments in response to its earlier publication on March 27, 2012. Additional comments will now be accepted until September 21, 2012.

- **9. U.S., Canada Issue Joint Statement on 'Beyond the Border' Initiative** – The action plan includes 32 initiatives and calls for enhancements to programs that help trusted businesses and travelers move efficiently across the border; introduces new measures to facilitate movement and trade; and invests in improvements to shared infrastructure and technology.
- **10. Global: Global Entry Program Expands to Ireland's Shannon and Dublin Airports** – Global Entry kiosks are now available in CBP preclearance facilities at Ireland's Shannon and Dublin airports.
- **11. Global: Turkey** – Turkey moves toward stricter employer qualifications to sponsor work permits.
- **12. Global: Canada** – Canada announced new rules for criminal admissibility to Canada, and new criteria for Québec permanent residence applications.
- **13. New Publications and Items of Interest**
- **14. Klasko News** – New attorney, noteworthy news, upcoming and recent speaking engagements, and recent publications.

1. State Dept. Announces Numerical Limits for Immigrants in FY 2012

The Department of State determines worldwide numerical limitations on visa issuances, based in part on data provided by U.S. Citizenship and Immigration Services (USCIS). On August 8, 2012, USCIS provided the required data to the Department's Visa Office. The Department has determined that the worldwide employment-based preference limit for fiscal year 2012 is 144,951, and the family-sponsored preference limit is 226,000. The per-country limit is fixed at 7 percent of the family and employment annual limits; for FY 2012, the per-country limit is 25,967. The dependent area annual limit is 2 percent, or 7,419.

The Visa Bulletin for September 2012, which includes the cut-off dates for employment-based and family-based visa numbers, is available [here](#).

2. Labor Dept. Proposes Reorganizing Applications for Prevailing Wage Determination and Temporary Employment Certification

The Department of Labor's Employment and Training Administration (ETA) has proposed reorganizing ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification; and the H-2A Certification Letter With Notification.

Specifically, the Department is soliciting comments concerning the collection of data in the following information collections: Office of Management and Budget (OMB) Control Number 1205-0466, currently containing ETA Form 9141, Application for Prevailing Wage Determination, and ETA Form 9142, Application for Temporary Employment Certification, which expires on October 31, 2012; and OMB Control Number 1205-0404 containing the H-2A Certification Letter known as ETA-9144.

The Department proposes to divide 1205-0466 into three distinct information collection requests (ICRs), segregated by program, and to merge 1205-0404 into the collection that remains in 1205-0466. The Department proposes to separate out ETA Form 9141, Application for Prevailing Wage Determination, into its own collection, 1205-NEW2. The Department also proposes to divide the ETA Form 9142, Application for Temporary Employment Certification, into two collections. One would remain as 1205-0466 and would contain the ETA Form 9142A, H-2A Application for Temporary Employment Certification and Appendix A, along with other information collection burdens for the H-2A Temporary Labor Certification Program, while the second would become 1205-NEW1 and contain ETA Form 9142B, H-2B Application for Temporary Employment Certification and Appendix B, along with all the information collection burdens for the H-2B Temporary Labor Certification Program. Once separated, 1205-0404, which contains one additional information collection burden for the H-2A program, would be merged with 1205-0466 so that most of the H-2A materials can be accounted for in one ICR.

The Department said it is using this opportunity to separate the collections into “more manageable and easy to understand ICRs.”

Comments will be accepted by October 15, 2012. The notice, which includes instructions on submitting comments, is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/pdf/2012-19944.pdf>. If you are interest in assistance in submitting a comment, please contact Bill Stock at wstock@klaskolaw.com.

3. Immigration “Extender Bill” Clears Senate and House of Representatives

On a vote of 412-3, bill S.3245, the bill which includes a three year extension of four temporarily-authorized immigration programs through September 30, 2012, was passed the House of Representatives on Thursday, September 13, 2012. The four programs are: authorization for USCIS to continue offering the E-Verify system for verifying identity and employment authorization of newly hired workers; the EB-5 Regional Center immigrant investor program; the “Conrad 30” J-1 waiver program for physicians practicing in shortage areas; and the Non-Minister Religious Worker Immigrants program. Having already been passed by the Senate on August 2, 2012, the bill is expected to be signed by President Obama later this week.

4. EB-5 Immigrant Investor Update: New Office; Stats, Summary Released

U.S. Citizenship and Immigration Services (USCIS) has announced formation of a new EB-5 program office. During its stakeholder call in late July, USCIS released the latest third-quarter statistic. USCIS also released a summary of questions and answers from the previous stakeholder meeting in May and announced that it plans to release a new version of its draft EB-5 policy memo soon.

New EB-5 Program Office

On July 18, 2012, USCIS Director Alejandro Mayorkas announced the creation of a new office to oversee administration of the EB-5 immigrant investor visa program, to be led by a new Chief of Immigrant Investor Programs. The position opening was announced the same day.

Directory Mayorkas noted that the EB-5 program “has spurred the creation of tens of thousands of new jobs and the injection of billions of dollars into the U.S. economy since Congress created the program in 1990.”

Director Mayorkas indicated that the creation of a new office stemmed from the interest in the EB-5 program has grown exponentially in recent years both from domestic project developers seeking capital and foreign investors who have the capital that can fuel economic growth. In fiscal year (FY) 2012 to date, USCIS approved more than 3,100 Form I-526, Immigrant Petition by Alien Entrepreneur; this was more than triple the number approved in all of FY 2009. Accordingly, Director Mayorkas noted that, “[s]ince 2009, [USCIS has] quadrupled the size of the EB-5 adjudications team and brought on board eight expert economists dedicated to the EB-5 program to ensure that EB-5 cases are handled expeditiously and with appropriate expertise.”

By the end of July, a Review Board consisting of two Supervisory Immigration Services Officers and one economist “will review every pending application for regional center designation for which a denial has been recommended, with applicants receiving the opportunity to discuss their cases in-person before any final adverse decision is rendered,” Director Mayorkas said.

2012 Third-Quarter Statistics. USCIS said it has approved over 3,100 I-526 (Immigrant Petition by Alien Entrepreneur) petitions so far this year and that the number of I-829 (Petition by Entrepreneur to Remove Conditions) filings has decreased. USCIS expects to see more petitions filed in the fourth quarter.

According to the latest EB-5 program statistics based on preliminary data for the third quarter of FY 2012, USCIS received 4,156 I-526 petitions and had approved 3,002 and denied 775 so far. This was a 79% approval rating, compared to an 81% approval rating for all of FY 2011 and an 89% approval rating for all of FY 2010. As of the third quarter of FY 2012, USCIS had received 546 I-829 petitions and had approved 639 and denied 42 so far. This was a 94% approval rating, nearly matching a 96% approval rating for all of FY 2011 and exceeding an 83% approval rating for FY 2010.

USCIS also approved 209 regional centers as of the third quarter.

Summary of May 2012 Stakeholder Meeting. After USCIS's EB-5 stakeholders meeting held on May 1, 2012, attendees lamented that the agency provided little substantive information and did not answer many submitted questions. Over 250 people attended in person, and over 300 listened by phone. USCIS subsequently released a summary of the meeting that provided additional information, presumably based on written questions that were submitted to the agency.

The summary of the May stakeholder engagement meeting is available at http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/May%202012/May_2012_Quarterly_EB5_Engagement_Executive_Summary.pdf.

The next USCIS stakeholder engagement meeting is scheduled for October 16, 2012, in Washington, DC.

5. CBP Discontinues Admission Stamps on Forms for F, M, J International Students and Scholars

As of August 10, 2012, U.S. Customs and Border Protection (CBP) no longer provides admission stamps on Forms I-20/DS-2019 for prospective and returning international students and scholars (traveling on F, M, and J visas) seeking admission to the United States. CBP said this change makes CBP processes consistent with U.S. Citizenship and Immigration Services' (USCIS) recent change to stop stamping Forms I-20/DS-2019.

USCIS implemented this change as part of the launch of the USCIS Electronic Immigration System.

CBP noted that placing an admission stamp on Forms I-20/DS-2019 has been a longstanding practice at CBP, but it is not required. Although the admission stamps on Forms I-20/DS-2019 are not indicators of lawful status or academic program duration, some state and federal benefit-granting agencies have required international students and scholars to present stamped versions. State requirements vary.

If a state benefit-granting agency rejects an unstamped Form I-20/DS-2019, applicants may make an appointment with USCIS online through InfoPass and take their I-20/DS-2019 to their local USCIS office to be stamped. This transitional step will end on November 21, 2012. Contact your Klasko Law Attorney for guidance.

6. USCIS Releases Guidance on Accommodating Religious Beliefs When Capturing Photographs and Fingerprints

U.S. Citizenship and Immigration Services (USCIS) recently released policy guidance on accommodating religious beliefs during fingerprint and photograph capture. Among other things, the guidance notes that USCIS will accommodate an individual who wears headwear as part of his or her religious practices. Religious headwear may be worn if a reasonable likeness can be obtained from an individual, the full face is visible, and the religious headwear does not cast a shadow on the face. If removal of headwear or adjustments are needed, such as a same-gender photographer or fingerprint-taker, USCIS will offer a private or screened area, if available. If such an area is not available, USCIS will offer to reschedule the appointment.

7. Senate Holds Hearing on Student Visa System

On July 24, 2012, the Senate's Subcommittee on Immigration, Refugees and Border Security held a hearing entitled "*Strengthening the Integrity of the Student Visa System by Preventing and Detecting Sham Educational Institutions.*" Witnesses at the hearing included Rebecca Gambler, Director, Homeland Security and Justice, U.S. Government Accountability Office (GAO), and John Woods, Assistant Director for National Security Investigations, U.S. Immigration and Customs Enforcement (ICE).

Ms. Gambler discussed findings from the GAO's June 2012 report assessing ICE's oversight of the Student and Exchange Visitor Program (SEVP). The GAO reported that ICE does not have a process to identify and assess risks posed by schools in SEVP. Specifically, SEVP does not (1) evaluate program data on prior and suspected instances of school fraud and noncompliance, or (2) obtain and assess information from Counterterrorism and Criminal Exploitation Unit (CTCEU) and ICE field office school investigations and outreach events.

Moreover, the GAO found weaknesses in ICE's monitoring and oversight of SEVP-certified schools that contribute to security and fraud vulnerabilities. For example, the GAO noted that ICE has not consistently implemented internal control procedures for SEVP in the initial verification of evidence submitted in lieu of accreditation and further, ICE has not consistently followed the standard operating procedures that govern the communication and coordination process among SEVP, CTCEU, and ICE field offices.

The GAO recommended that ICE identify and assess program risks, consistently implement procedures for ensuring schools' eligibility, and revise its standard operating procedure to specify which information to share among stakeholders during criminal investigations. Ms. Gambler reported that ICE concurred with all the recommendations the GAO made and "has actions planned or under way to address them."

Mr. Woods testified that ICE has already made progress in implementing the GAO's recommendations and noted that ICE's CTCEU is "the first national program dedicated to the enforcement of nonimmigrant visa violations." SEVP and CTCEU execute complementary missions to regulate foreign students and exchange visitors and to proactively develop investigations that bolster national security, he said.

Mr. Woods further noted that each year, CTCEU "analyzes the records of hundreds of thousands of potential status violators using information from SEVIS and the United States Visitor and Immigrant Status Indicator Technology database, along with other information." The CTCEU resolves these records "by further identifying potential violations that would warrant field investigations, establishing compliance, or establishing departure dates from the United States. Since the creation of the CTCEU in 2003, analysts have resolved more than two million such records."

Though details of the procedures being implemented in targeting possible immigration violation has not been promulgated, we recommend educational institutions and international students diligently follow all immigration regulations and maintain all relevant records. Contact your Klasko Law Attorney for guidance.

8. USCIS Allows 30 Additional Days for Public Comment on Revised I-9

U.S. Citizenship and Immigration Services (USCIS) announced that it is allowing an additional 30 days for public comment on the revised I-9 form. USCIS received over 6,200 comments in response to its earlier publication on March 27, 2012. Additional comments will now be accepted until September 21, 2012.

USCIS previously announced that employers should continue to use the current I-9 employment eligibility verification form even after the August 31, 2012, Office of Management and Budget control number expiration date passes.

The notice announcing the extension of the comment period, which includes instructions on submitting comments, is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-22/pdf/2012-20631.pdf>. If you are interest in assistance in submitting a comment, please contact your [Klasko Law attorney](#).

9. U.S., Canada Issue Joint Statement on 'Beyond the Border' Initiative

On June 28, 2012, the United States and Canada released a joint "Statement of Privacy Principles" as an "important milestone in the implementation of the Beyond the Border Action Plan," according to Secretary of Homeland Security Janet Napolitano. The Statement of Privacy Principles concerns the provision, receipt, and use of personal information exchanged between the two countries to "address shared threats to national security."

U.S. President Barak Obama and Canadian Prime Minister Harper announced the joint "Beyond the Border" declaration on February 4, 2011. The action plan includes 32 initiatives and calls for enhancements to programs that help trusted businesses and travelers move efficiently across the border; introduces new measures to facilitate movement and trade across the border while reducing the administrative burden for business; and invests in improvements to shared border infrastructure and technology. "By expediting lawful trade and commerce into and across our shared border, the United States and Canada seek to enhance our economic competitiveness, create jobs and support economic growth," a related announcement notes.

The announcement is available at <http://www.dhs.gov/ynews/releases/20120628-us-and-canada-btb-statement-of-privacy-principles.shtm>.

10. Global Entry Program Expands to Ireland's Shannon and Dublin Airports

U.S. Customs and Border Protection (CBP) announced on July 26, 2012, that Global Entry kiosks are now available in CBP preclearance facilities at Ireland's Shannon and Dublin airports. The Global Entry program allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. Current Global Entry members can begin using these new kiosks immediately.

The Global Entry program is now available at 37 U.S. and preclearance airports. Over the last four years, CBP has enrolled more than 378,000 members in Global Entry, with more than 1.1 million travelers receiving Global Entry benefits. Travelers have used the kiosks more than 2.7 million times.

Travelers who use Global Entry kiosks on average experience reduced wait times of 70 percent over travelers going through traditional passport inspection, and more than 75 percent of travelers using Global Entry are processed in under five minutes, according to CBP.

The program is available to U.S. citizens, U.S. lawful permanent residents, and pre-approved Mexican nationals. In addition, citizens of the Netherlands may apply under a special reciprocal arrangement that links Global Entry with the Dutch Privium program. In a recently implemented arrangement, the Republic of Korea's Smart Entry Service program has been linked to Global Entry, allowing Korean citizens to participate in Global Entry. Canadian citizens and residents may participate in Global Entry through membership in the NEXUS program.

Applications for Global Entry must be submitted online using the CBP Global Online Enrollment System (GOES). A non-refundable fee of \$100 is also collected via the website for a five-year membership in Global Entry. CBP will review the applicant's information and conduct a background investigation. The applicant must complete an in-person interview at a CBP enrollment center, at which time fingerprints are collected. Application for Global Entry is available at <https://goes-app.cbp.dhs.gov/main/goes>.

11. Global: Turkey

Historically, obtaining work permits in Turkey meant adjudication periods of three to nine months, requests for documents without explanation, and a lack of transparency of requirements by the Work Permit Directorate (Directorate). In 2010 the Turkish government made a bold effort to change the work permit regime. In the same year it also chose to enact employer qualifications for the entity that wished to sponsor a work permit. This was a relatively new concept in Turkey. Since implementation, the Directorate has attempted to create exemptions.

On July 29, 2010, the Directorate published a communique that requires an employer to have at least five Turkish citizen employees per registered worksite per foreign applicant as evidenced on payroll records (termed 5:1 ratio). The communique also requires that the employer's *paid in capital* must be at least 100,000 Turkish Lira (TL). Alternatively, the employer can show either gross (assumedly annual) sales amounting to 800,000 TL annually or exports with a gross annual value of USD \$250,000.

The 5:1 ratio has been particularly burdensome to employers, partially because the ratio must be evident at each worksite. Therefore, work permit applications will be denied if they do not evidence a 5:1 ratio of Turks to foreigners at the worksite selected for the foreigner (the worksite location is normally specified on social security records). Soon after the publication of the employer criteria, the Directorate was confronted with many employers who could no longer sponsor foreigners. In an attempt to ameliorate the impact of the 5:1 ratio requirement, the Directorate published the following exemptions on April 25, 2011:

- 1) If a founder/investor of a newly established legal entity owns at least 20% (but amounting to at least 40,000 TL) worth of shares of the entity and can meet the five employee criteria can be met, the founder/investor is exempt.
- 2) If there is evidence the position that is the subject of the work permit application requires advanced technology and a Turkish national specialist cannot be found, both the 5:1 employee ratio and the capital requirement will not apply.
- 3) For companies that satisfy the foreign direct Investment requirements, the 5:1 ratio will be applied by taking into consideration every employee of all the company's worksites in Turkey. Also, if the foreign employee is a "key personnel" under this law, the Directorate may not count him or her in the 5:1 ratio.
- 4) If the foreigner will work on a product or service procurement for public institutions or is pursuant to a public tender, or when the work permit application is subject to a bilateral or multilateral agreement to which Turkey is a party, both the 5:1 ratio and capital requirement will not apply.

The Work Permit Directorate has not yet published guidance on the evidence to be presented to qualify for these exemptions. Although these exemptions have been published and available for over a year, the exemptions are not sufficient to meet the legitimate business needs of companies.

12. Global: Canada

Canada has announced new rules for criminal admissibility to Canada, and new criteria for Québec permanent residence applications.

New Rules for Criminal Admissibility to Canada

Certain individuals, previously ineligible for entry to Canada due to past criminality, may be eligible for a fee-exempt "on the spot" temporary resident permit for one visit to Canada, under new rules that took effect March 1, 2012.

To qualify for the exemption, the port-of-entry applicant must:

- have served no jail time; and
- have committed no other acts that would prevent him or her from entering Canada.

Applicants may further be eligible for a fee waiver if they:

- have been convicted of an eligible offense (or its equivalent in foreign law). Eligible convictions include those equivalent to *criminal* offenses under the Immigration and Refugee Protection Act (IRPA), Section 36(2);
- have served no jail time;
- have committed no other acts that would prevent them from entering Canada; and
- are not inadmissible for any other reason.

Eligible convictions include those equivalent to *criminal* offenses under the Immigration and Refugee Protection Act (IRPA), Section 36(2).

Applicants may become admissible again if they:

- apply for a temporary resident permit and are approved;
- demonstrate through appropriate documentation that they meet the legal requirements to be deemed rehabilitated;
- apply for rehabilitation and are approved; or
- obtain a pardon.

Legal representation for these various applications and processes is strongly recommended because refusal rates are high. Contact your Klasko attorney for assistance.

New Criteria for Québec Permanent Residence Applications

Over the last three years, the number of applications for economic permanent immigration to the Canadian province of Québec has more than doubled, rising from approximately 30,000 in 2008 to approximately 65,000 in 2011. In response to this growing volume, the Québec government's Ministry of Immigration and Cultural Communities (MICC) proposed on March 21, 2012, an omnibus bill encompassing several major changes to Québec's immigration law, the *Loi sur l'immigration au Québec*. If passed in the Québec National Assembly, the bill will represent significant changes to eligibility for obtaining a Québec Selection Certificate to immigrate permanently to Québec.

The proposed changes will govern applications accepted by Québec for the period April 1, 2012, through March 31, 2013. These changes are aimed at expediting processing times and according priority treatment to candidates for Québec permanent residence with professional profiles currently highly sought after in the Québec labor market, and at restricting the eligibility of other candidates. A new Demand Management System will dictate the numbers of applications for Québec permanent residence accepted.

Applications for Québec permanent residence by foreign workers and students will be divided into two main groups. Group 1 will not have any restrictions on the number of applications accepted and will include candidates who obtain at least 12 out of 16 points for their Field of Training based on the MICC's list of Fields of Training. Other candidates who may form part of Group 1 are foreign nationals working in Québec with valid work permits, foreign nationals participating in recognized youth exchange programs, foreign nationals holding valid study permits who obtained their diplomas from recognized post-secondary educational institutions in Québec, and foreign nationals with an employment offer validated by the MICC. Foreign workers who can be attributed points for their Field of Training but obtain less than 12 points will form part of Group 2, with a limit of 14,300 applications.

Under the new Demand Management System, applications for business immigrants will be restricted to pre-set quotas. For investors, the maximum number of applications accepted for the period April 1, 2012, through March 31, 2013, is 2,700. That quota was reached on April 12, 2012. A maximum of 215 entrepreneur applications will be accepted for the April 1, 2012-March 31, 2013, period. The Demand Management System is not intended to have an impact on the Québec government's commitment to accept approximately 50,000 immigrants annually from 2012 to 2015. The proposed changes will make it more difficult, however, for many candidates who would have qualified before March 21, 2012, for permanent immigration to Québec.

13. New Publications and Items of Interest

New Yorker article on skilled immigration. The *New Yorker* has published a commentary on the need for high-skilled immigration, noting among other things that many of the best foreign Olympic athletes were trained in the United States.

Foreign labor certification statistics. The Department of Labor's Office of Foreign Labor Certification (OFLC) has posted updated program fact sheets presenting selected fiscal year 2012 statistics for the permanent labor certification, prevailing wage determination, H-1B temporary visa, H-2A temporary agricultural visa, and H-2B temporary nonagricultural visa programs. Also, the OFLC has created a web page from which users can access performance data, including Annual Reports, Selected Statistics by Program, and Disclosure Data. The fact sheets and web page link are available at <http://www.foreignlaborcert.doleta.gov/>.

OSC webinar series, videos, best practices. The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) is offering a number of upcoming webinars for workers, advocates, employers, and HR professionals. For more information or to register, see <http://www.justice.gov/crt/about/osc/webinars.php>.

OSC released a short educational video highlighting common problems encountered by employers when re-verifying the employment authorization of refugees and asylees, and providing guidance on how to avoid violating the anti-discrimination provision of the INA. The video is available at

<http://www.youtube.com/watch?v=rbtVn9VX0zE&feature=youtu.be>. OSC also released a second video that encourages employers, employees and advocates to attend a free webinar on unfair employment practices under the INA. The video is available at <http://www.youtube.com/watch?v=vCR-ndCv2Pk&feature=youtu.be>.

OSC also released "Best Practices for Job Postings," a guide for employers, recruiters, and Internet job search engine sites, including language to avoid in job postings. The information is available at http://www.justice.gov/crt/about/osc/htm/best_practices.php. A related flier is available at <http://www.justice.gov/crt/about/osc/pdf/publications/BestPracticesFlyer.pdf>.

USCIS national engagements. On October 16, 2012, USCIS will hold a public engagement (in-person in Washington, DC, and via teleconference) for EB-5 immigrant investor stakeholders. See [here](#).

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. *Green Card Stories* 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 has won five national awards. It was named a Nautilus book award silver medal winner, and won a silver medal in the Independent Book Publishers Association's Benjamin Franklin Award in the multicultural category. The book also won a Bronze Medal in the Independent Publisher's "IPPY" Awards and an honorable mention for the 2012 Eric Hoffer Book Award. Ariana Lindquist, the photographer, won a first-place award in the National Press Photographers Association's Best of Photojournalism 2012. *Green Card Stories* is also featured on National Public Radio's photo blog at <http://www.npr.org/blogs/pictureshow/2012/07/05/156303716/told-in-pictures-how-50-immigrants-got-green-cards>. For a copy, please contact your [Klasko Law attorney](#).

14. Klasko News

Associate Joins Firm



Klasko, Rulon, Stock & Seltzer, LLP, is pleased to announce that **Anusree Nair** (Anu) has recently joined the Firm.

Anu, an Associate in the Firm's Philadelphia office, focuses her practice on both employment-based and family-based immigration. Anu has represented hospitals, international record companies, multinational businesses, and major production companies in securing a variety of employment-based immigration benefits for their employees including E-1, E-2, E-3, H-1, L-1, O-1, O-2 and P nonimmigrant visas as well as EB-1 and EB-2 nonimmigrant visas. Anu also has experience assisting clients with family-based immigration matters and has represented clients before the Immigration Court, the Citizenship and Immigration Service, and Customs and Border Protection. A member of the Firm's

EB-5 immigrant investor practice, Anu is responsible for preparing and filing I-526 petitions, both through regional center investments and individual investment opportunities.

Anu is a 2006 graduate of Baruch College where she majored in Biology. She went on to obtain her law degree from the Benjamin N. Cardozo School of Law where she served as the submissions editor of the *Cardozo Journal of Law and Gender*. Prior to joining the Firm, Anu practiced with an immigration law firm in New York City and was an Adjunct Lecturer of Biology at Baruch College. Anu is fluent in Malayalam.

News and Noteworthy

Two Attorneys Named Among Most Powerful

[H. Ronald Klasko](#) (Ron) and [William A. Stock](#) (Bill) have been listed as two of the 2012 "Top 20 Most Powerful Immigration Lawyers in the U.S." by *Human Resources Executive* magazine and *Lawdragon*. To see the full list, click [here](#). Congratulations!



Upcoming Speaking Engagements



Ron will be participating in various events in the coming months. Ron will be a panelist at the American Immigration Lawyers Association (AILA) Central Florida Chapter conference on October 5, 2012 in Clearwater, Florida. On October 9, Ron will be at the Wharton Business School to speak with MBA candidates. The following week, Ron will speak at a forum sponsored by the Association to Invest In the USA (IIUSA). For more information on these programs or to schedule a free program at your organization, contact Ron at rklasko@klaskolaw.com.

Ron and [Suzanne B. Seltzer](#) will be speaking at the AILA 2012 Colorado Chapter Rocky Mountain Immigration Law Update from October 11-12, 2012 in Blackhawk, CO.

- Ron will serve as a panelist on "EB-5: Where are we now?" This session will address considerations for investing in a Regional Center, the importance of attorney review of the Business Plan and Economic Methodology, address the top reasons for denial of the petition to remove conditional residence, among other pertinent issues.
- Suzanne will moderate "EB1 and EB2: Is anyone Exceptional or Extraordinary?" a session that will look at determining who is extraordinary or exceptional, discuss EB-1 after Kazarian, how to demonstrate national interest among other topics.



Suzanne will be in Texas from October 22-25, 2012 and will visit the campuses of the University of Texas Houston, MD Anderson and UT Southwestern. She will meet with clinicians and researchers to discuss immigration opportunities including understanding the J-1 two year rule, J-1 waivers, the O-1 visa, and permanent residence status.

[Elise A. Fialkowski](#) (Elise) will present at the Immigration CLE in West Chester, Pennsylvania sponsored by the Chester County Bar Association on October 25, 2012. She will discuss developments in employment based immigration and worksite compliance.

Recent Speaking Engagements



Elise was part of the faculty of the Pennsylvania Bar Institute's Immigration Forum on Friday, September 21. Elise presented on immigration options for the "best and the brightest," including O-1 temporary visas, the EB-1A immigrant category, and immigration through the National Interest Waiver program.

Elise also presented a program at Saint Joseph's University on Wednesday, September 19, 2012. Elise spoke with human resources personnel about best practices in hiring foreign nationals for university positions. For more information on this talk, write to Elise at efialkowski@klaskolaw.com.



On September 14, 2012, [Jennifer A. Hermansky](#) (Jen) gave a presentation entitled, "The I-829 Petition – Removing Conditions on Permanent Resident Status" at the ILW Eb-5 Summit for Attorneys and Developers. Jen's presentation included a detailed assessment of removing the conditions on immigrant investors' conditional resident status. The ILW Eb-5 Summit is a comprehensive review of the Eb-5 visa program for both attorneys and developers seeking Eb-5 capital.

On behalf of AILA's Texas Service Center Liaison Committee, Elise attended the USCIS Texas Service Center Leadership Team Conference in Dallas, TX on September 13, 2012. During the conference, Elise met with the leaders of the Texas Service Center to discuss adjudication issues and trends at the service center.

Bill spoke to business school students at Duke University Fuqua School of Business in Durham, NC on August 27, 2012 about visa options after graduation for students interested in starting businesses and earning permanent residence through investment. For more on this talk, contact Bill at wstock@klaskolaw.com.

Elise was a speaker at Lehigh University for a program hosted by the Global Village for Future Leaders of Business and Industry on July 20, 2012. The Global Village is a cross cultural program bringing together future leaders from over forty different countries. In her presentation, Elise discussed immigration laws and regulations affecting students, scholars, employees, business people and investors. For more information about this program, write to Elise at efialkowski@klaskolaw.com.

On July 12, 2012, Ron discussed "Creative Capital and Financing: EB5 and CDFIs – Know the Codes!" at the New York & New Jersey Minority Supplier Development Council Annual MBE Meeting in New York on July 12, 2012.

Elise was a speaker at the Philadelphia Bar Association International Business Initiative's Seminar regarding Immigration for International Businesses on July 12, 2012.



Ron, Bill, Suzanne and Elise all spoke at the 2012 AILA Annual Conference in Nashville, TN from June 13–16.

Ron served as discussion leader for “Creating and Representing Regional Centers”. This session focused on immigration law services provided to U.S. businesses intending to raise EB-5 investor capital. The panel discussed the disclosures and risks attendant to the EB-5 application process and examined the “pre-approval” or exemplar procedure. The panel also covered the various avenues for use of EB-5 capital, including the creation of a regional center, what is required for a regional center designation, and ongoing regional center compliance. For more information on the EB-5 investor visa, visit www.eb5immigration.com.

Elise was a panel member for “Must Know Taxation Issues.” This session addressed tax issues for immigration practitioners including, for example, affidavit of support issues, residency for taxation purposes, as well as issues under the HEART Act and the impact of immigration status on taxation.

Suzanne participated in “Kazarian: The Next Generation” and discussed the Kazarian decision and the recent publication of the USCIS Interim Policy Memo “Evaluation of Evidentiary Criteria in Certain Form I-140 Petitions” and how the USCIS adjudications of EB-1 Extraordinary Ability and EB-1 Outstanding Researcher are proceeding under a two-part approach. This panel also discussed what is extraordinary or outstanding “enough” under the final merits determination.

Suzanne, in her capacity as USCIS Liaison Committee Chair, also led the “U.S. Citizenship and Immigration Services (USCIS) Open Forum” featuring Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services; Stephen H. Legomsky, Chief Counsel, USCIS; Donald Neufeld, Associate Director, Service Center Operations Directorate, USCIS and Donald J. Monica, Acting Associate Director, Field Operations Directorate, USCIS.

Bill was a panelist on “PERM Denials: Now What Do I Do?” Challenging a labor certification denial or revocation may require filing an appeal with BALCA. This advanced panel went beyond the regulations and discussed advanced strategies and solutions for when a client receives a PERM denial.

Recent Publications

Jen published a chapter entitled, “I-829 Practice Pointer: Removing Your Investor’s Conditions” in [The EB-5 Book](#) published by [ILW.com](#), a leading immigration law publisher. [Daniel B. Lundy](#) also contributed “The Future of the EB-5 Immigrant Investor Program from the Perspective of an Immigration Lawyer, or Past Performance is Not Indicative of Future Results.” The book is a comprehensive guide to the EB-5 program. It is available for purchase at <http://www.ilw.com/books/theeb5book.shtm>.

Elise authored “Pa. Mandates E-Verify for State Public Works Contractors” which was published in the September 6, 2012 issue of *The Legal Intelligencer*. This article discussed not only the new Pennsylvania law but also the growing number of other state worksite enforcement laws as well as increased worksite enforcement by the federal government.



[Matthew T. Galati](#) (Matt) published “*USCIS Implements New Policy Involving Transgendered Persons*” in the May 16, 2012 issue of *The Legal Intelligencer*. In this article, Matt reviewed USCIS’s Interim Policy Memo PM-602-0061, which is effective immediately. The Policy Memo reflects more favorable treatment of transgendered individuals in the immigration process and the inapplicability of the Defense of Marriage Act. In particular, USCIS will no longer request evidence of sexual reassignment surgery as a prerequisite to bestowing immigration benefits. Moreover, USCIS will now presume the validity of marriages involving transgendered individuals, absent state/local laws prohibiting or placing conditions on that marriage. Matt discussed how this Policy Memo is a significant step forward and will serve to keep families together. For a copy of this article, write to Matt at mgalati@klaskolaw.com.

In conjunction with the AILA Annual Conference in June 2012, Suzanne co-authored the practice pointer “How Do You Solve A Problem Like Kazarian.” Since the publication of *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), (hereinafter “*Kazarian*”), EB-1 immigration practice both for aliens with extraordinary ability and – to a lesser extent – outstanding professors and researchers has changed dramatically. USCIS has attempted to assist practitioners and petitioners by issuing a variety of guidance memoranda, AFM updates and RFE templates, but the bottom line remains that getting these cases approved has become more difficult and unpredictable than ever. This practice pointer is intended to point out some of the key deficiencies of the current guidance and adjudicatory practices and give practitioners suggestions for addressing them.

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