Employment Immigration

Planning for Change

Annual Spring 2007 Seminar

Klasko, Rulon, Stock & Seltzer, LLP

Philadelphia
1800 JFK Blvd. Suite 1700
Philadelphia, PA 19103
215.825.8600
www.klaskolaw.com

New York
317 Madison Ave. Suite 1518
New York, NY 10017
212.796.8840

H. Ronald Klasko, Esq.

- Ron Klasko is the Managing Partner of Klasko, Rulon, Stock & Seltzer, LLP and has been providing immigration assistance and solutions to individuals, multinational corporations, research institutions, hospitals, and leading universities for over 25 years.

- Ron is a former National President of the American Immigration Lawyers Association and served for 3 years as the bar association’s General Counsel. He is a past Chair of AILA’s Department of Labor National Liaison Committee, its Task Force on H and L Visas and Business Immigration Committee. Mr. Klasko is one of only two recipient of the American Immigration Lawyers Association Founders Award, bestowed upon the individual who has had the most positive impact on immigration law.

- Ron has been chosen as one of twelve top tier immigration lawyers in the U.S. by The Chambers Global Guide. He is selected annually for inclusion in Best Lawyers in America. The International Who’s Who of Business Lawyers 2007 Corporate Immigration Law edition selected Ron as the “Most Highly Regarded” business immigration lawyer in the world. He is a frequent author and lecturer on business-related immigration topics and is a former Adjunct Professor of Immigration Law at Villanova University Law School.

- Ron is a graduate of the University of Pennsylvania School of Law.

Klasko, Rulon, Stock & Seltzer, LLP
Richard R. Rulon, Esq.

- Rich Rulon has been practicing immigration law for more than 30 years. Rich is a member of the American Immigration Lawyers Association (AILA), is a former Chair of AILA’s Philadelphia Chapter, has served on the Board of Governors of AILA and the Immigration Reform Committee. He has also served on the Board of Trustees of the American Immigration Law Foundation (AILF) including six years as Chairman and was the recipient of AILF’s 2005 Honorary Fellow Award for lifelong service to the field of immigration and nationality law.

- Rich has been a lecturer at seminars on immigration law subjects and at AILA Annual Conferences; has authored numerous articles on immigration law topics and has played and continues to play an active role in helping to shape immigration reform legislation.

- Rich was selected for inclusion in The Best Lawyers in America and also as a “Pennsylvania Super Lawyer.”

- Rich is a graduate of the University of Pennsylvania Law School.

William A. Stock, Esq.

- William A. Stock is a founding partner of Klasko, Rulon, Stock & Seltzer, LLP. He handles all aspects of immigration law, including assisting companies and individuals in obtaining employment- and family-based visas; resolving citizenship issues and obtaining naturalization; and defending clients in DHS and Department of Labor enforcement proceedings.

- Bill is featured in The Chambers Global Guide, The Best Lawyers in America, Pennsylvania Super Lawyers, and Who’s Who of Business Lawyers. He currently serves as Chair of the Philadelphia Chapter of AILA and is a member of AILA’s National Board of Governors. Bill is a Senior Editor of AILA’s annual Immigration & Nationality Law Handbook, and is co-author of the “J Visa Guidebook” from Matthew Bender. He received AILA’s Joseph Minsky Award, given to a lawyer under age 35 who has made the most outstanding contributions to the field of immigration law, in 2000.

- Bill is a graduate of the University of Minnesota Law School and currently is an Adjunct Faculty Member at Villanova University School of Law.
Suzanne B. Seltzer, Esq.

- Suzanne B. Seltzer is a founding partner of Klasko, Rulon, Stock & Seltzer, LLP, and manages the New York office. She handles a wide range of business immigration matters, with an emphasis on universities, pharmaceutical companies, clinical physicians, and research scientists.

- Suzanne is a member of the National Coalition for Access to Healthcare, Co-Chair of AILA’s NY District Director Liaison Committee, and Co-Chair of the NYC Anti-Trafficking Network’s legal subcommittee. Suzanne is a frequent speaker on immigration options available to international medical graduates and research scientists, and is the author of several articles.

- Suzanne was honored with the Cornerstone Award by the Lawyers Alliance for New York in recognition of her outstanding contributions to pro bono work on behalf of non-profit agencies, and the Samuel E. Klein Pro Bono Award for her work on behalf of victims of human trafficking.

- Suzanne obtained her JD from Georgetown University Law Center.

Chambers Global: The World’s Leading Lawyers for Business selects Klasko, Rulon, Stock & Seltzer, LLP as One of the Six Top Immigration Firms in the US

**KRSS named as a top tier immigration firm for two consecutive years.**

- “The Firm provides a comprehensive array of inbound immigration services to a broad range of corporate clients...ranging from large multinationals to small business in just about every industry sector.”

- “For many sources, the firm is the strongest in the country when it comes to representing clients in the university research and medical sectors. It is also respected for its efficient handling of referrals from institutions seeking complex visa applications particularly those relating to people of extraordinary ability and national interest.”

- Ron Klasko is regarded as “a leading national practitioner who really does it all.” “Literally on the cutting edge” when it comes to immigration policy and legislative issues, peers find it “fascinating to see how creative he is” in this arena. Ron is “adept at coming up with unique arguments that can save a client.” The “young and brilliant” partner Bill Stock was described as an “emerging star who is admired for his creative lawyering” and also received strong recommendation from interviewees for the quality of his practice and his expertise in J-1 visas.
Agenda

- Legislative Update
- Service Center and Bispecialization Update
- PERM and BEC Update
- Policy Changes and Hot Topics
- Portability Roundtable
- Workplace Enforcement Roundtable
- Q & A

Legislative Update

Prospects for Immigration Legislation in 2007

Richard R. Rulon, Esq.
4 Key Components Needed for Immigration Reform

- Restoration of legal flow and control of our nation’s borders
- A NEW temporary worker program that is responsive to labor shortages and that guarantees full labor protections for both native and temporary immigrant workers
- Reunification of families separated by extensive backlogs, artificially low caps, and lengthy processing delays
- A path to earned permanent legal status for the 12 million undocumented immigrants living in the US

This Year’s Comprehensive Immigration Reform Debate

- During the beginning of the 110th Congress, all matters dealing with immigration legislation will be steered towards a CIR package.
- It will be critical for anyone concerned about the current need of high-skill visa reform to make sure that these issues are made part of the larger debate.
Provisions that are critical in helping to alleviate the high-skilled worker shortage:

- Exempt U.S. Educated Professionals (Master’s degree or higher) from accredited US universities and those who have been awarded a medical specialty certification based on post-doctoral training and experience in the US from the Temp. Visa (H-1B) cap;
- Exempt U.S.-educated professionals with advanced degrees and those who have been awarded a medical specialty certification based on post-doctoral training and experience in the US from the green card cap;
- Raise the H-1B cap from 65,000 to 115,000 – create a flexible system that adjusts with the market;
- Allow foreign workers who have started the green card process, but who are subject to green card backlogs, to pay a $500.00 supplemental fee to file an application to adjust status.

Provisions that are critical in helping to alleviate the high-skilled worker shortage (cont’d)

- Allow employer to start the green card process while the foreign worker is on a student visa (F-1) during Optional Practical Training (OPT) and allows U.S. educated foreign students to work in their field for up to two years after graduation;
- Creation of a pre-certification program that streamlines the adjudication process, and reduces paperwork burdens, for established employers who file multiple applications and who have no history of fraud or abuse;
- Extend L-1 visas (used to facilitate intra-company executive transfers) beyond the fifth or seventh year if the individual has a green card application pending and is simply caught in the green card backlog;
- Eliminate procedural delays in labor certification process by clarifying DOL’s process in providing prevailing wage determinations.
Key Immediate Short Term Relief Provisions would include:

- **Retaining** talent is critical, therefore Employment Based visa cap relief is critical:
  - Exempt STEM masters degrees + or 3 years work experience;
  - Exempt US masters + and physicians in training (20 ~ 35,000);
  - Exempt shortage occupations (nurses and PT’s);
  - Allow EB’s who have started the green card process, but who are subject to green card backlogs, to pay a $500.00 supplemental fee to file an application to adjust status;
  - And to get backlog relief, increase cap to 290,000 or recapture 90,000 unused visa numbers or exempt derivatives (spouse and children).

Here’s the Bad News

- Increased employer sanctions
- Expanded deportability
- Decreased due process
- Building a fence
Service Center and Bi-specialization Update

Suzanne B. Seltzer, Esq.
AILA Vermont Service Center Liaison Committee

Bi-specialization Overview

- Filing and adjudication system introduced April 1, 2006
- 4 regional service centers
  - California Service Center (CSC)
  - Nebraska Service Center (NSC)
  - Vermont Service Center (VSC)
  - Texas Service Center (TSC)
Bi-specialization Overview (cont’d)

- Bi-Specialization changed filing based on geography to filings based on petition type
- Stated Purpose of Bi-Specialization:
  - Reduce Processing Times
  - Improve Quality of Adjudications
  - Improve Case Management
  - Improve Customer Service

Bi-specialization Phases

- Phase I (petition type)
  - All I-140s to NSC, shared workload TSC
  - All I-129s to VSC, shared workload CSC
- Phase II (petition type)
  - All ‘stand-alone’ I-485s to NSC
  - J-1 Waivers divided between CSC & VSC
    - Hardship/persecution at CSC
    - All others from Dept of State to VSC
  - “Unofficially” allowing direct filing to TSC
Bi-specialization Phases (cont’d)

- Phase III (shifting to geographical divide)
  - Cap subject H-1bs filed at CSC or VSC based on location of job site
  - Pending I-485s transferred
    - CSC to NSC
    - VSC to TSC
  - I-140s to be similarly divided (anticipated)

Bi-specialization Phases

How It May End

- Geographical divide & bi-specialization
  - Non-immigrant petitions
    - previously filed with CSC and NSC will be filed at the CSC;
    - previously filed with VSC and TSC will be filed at the VSC.
  - Immigrant petitions and Adjustments of Status
    - previously filed with CSC and NSC will be filed at NSC
    - previously filed with VSC and TSC will be filed at TSC
Bi-specialization Phases
How It May End *(cont’d)*

- Some petition types may be limited to one Service Center
  - Religious Workers to CSC
  - Major League Sports to VSC
  - TNs, H-1b1 Chile/Singapore, E-3 to VSC

---

Bi-Specialization:
Why So Many Changes?

- Confusion At Service Centers
  - Lack of training/expertise
  - Lack of resources
  - Backlogs Increasing

- “Re-Aligning Resources”
  - July 2006 – 5000 cap subject H-1bs transferred to TSC
  - July 2006 – I-130 Immediate Relative Petitions transferred to CSC
  - September 2006 – VSC advises delays in TNs, Ls, I-612 waivers
  - March 2007 – I-485s transferred to NSC & TSC
  - March 2007 – Cap subject H-1bs divided between VSC/CSC
Predicting Service Center Processing Times

- Change in Posted Processing Times
  - Past: date posted represented “no older than” date
  - Present: date posted represents “no newer than” date
  - Except: limiting posted commitment
    - Non-immigrant visas: 3 months
    - Immigrant Visas: 6 months
  - Result: No clear estimations of processing times

USCIS backlog - not gone, just redefined
- Retrogression & Security Clearances
- Transfers among Service Centers
  - Now the “other guys” problem
PERM and BEC Update

William A. Stock, Esq.
AILA DOL Liaison Committee

Backlog Center Processing: Progress

- 364,000 Cases as of March 25, 2005
- 94,000 Cases as of March 18, 2007
- On Target for September 30, 2007 Completion
- Philadelphia and Dallas May Remain Active After 9/30/2007
Backlog Center Processing: Cases Left

- Reduction in Recruitment: 19,000 cases
- Targeted to Be Completed by June, 2007
- Traditional Recruitment: 75,000 cases
- Recruitment for Traditional: Done by June 30, 2007
- Only 5000 cases sought “Conversion” from TR to RIR

Backlog Center Processing: Issues

- Priority Date Errors: 30 days after Certification to Correct
- Lost Certifications: Must File I-140 without it (no Premium Processing)
- Amendments Not Stamped by DOL
- Delays in “45 day” letter requesting recruitment results
PERM Processing: Progress

- DOL Receives 1900-2100 cases per week
- 10-13% are “mail in” cases – mostly from East Coast lawyers
- About 22% denial rate (down since system validation implemented)
- Audit Rate: DOL will not reveal, but less than 5% currently

PERM Processing: Case Processing Times

- 10-11,000 cases “in process” at any given time
- 50% decided in 30 days, 70% by 60 days
- In process cases: 20% “audit review,” 40% “appeal/reconsideration”
- Appeal/Audit processing time: Up to One Year
PERM Processing: Issues

- Correcting Errors After Filing: Withdraw and Refile
- Correcting Errors After Filing: “Same SOC” analyst review
- Withdrawal After Audit: Must Provide Audit File
- Need Guidance on “Telecommuters”

PERM Processing: The Future

- President’s FY ’08 Budget Requests Fee for Labor Certifications
- Building Capacity for H-2Bs, More Audits, CIR (at BECs?)
- Possibility of Longitudinal Studies
- Reengineering Form by April 2008
Policy Changes and Hot Topics

H & L Visas, I-140s, Adjustment of Status and Security Clearances

H. Ronald Klasko, Esq.

---

H-1B Cap Issues

- Prediction when cap will be reached
- Where to file?
- When to file?
- How to file?
  - Premium processing?
- Dates of employment
  - Labor Condition Application
  - H-1B petition
H-1B Cap Issues (cont’d)

- Processing times
  - H-1Bs?
  - Other cases?
- Cap gap issues
  - File extension or change of status?
- Student issues
  - Strategies for students completing Masters or Ph.D. in May or June
  - Strategies for students completing Bachelors in May or June
  - Strategies for students completing OPT in May to July

H-1B Cap Issues (cont’d)

- Travel issues (March 30 to October 1)
  - Best: no international travel
  - Issues if must travel internationally
    - Need visa?
    - Change of status nullified
    - Travel again and return with H-1B
    - Consul processing instead of change of status
H-1B Cap Issues (cont’d)

- Cap exemption issues
  - Who is exempt from cap?
    - Employers?
    - Foreign nationals?
  - Portability (cap exempt to cap subject employer)
    - Portability during cap gap
    - Portability after approval
    - Distinguish with legal status
  - Strategies for capped-out H-1B

- H-1Bs who left U.S. for one year

Other Hot H-1B Issues

- H-1B extensions
  - H-4 (and L-2) time does not count
  - 7th year H-1B does not have to be extension
  - 7th year extension for H-1B spouse who is not beneficiary of labor certification or I-140

- Termination of H-1Bs
  - LCA withdrawal
  - I-129 termination
  - Notification to employee
I-140 Issues

- Premium processing
- Where to file?
- 3 year degree issues
- Importance of moving up the EB ladder
  - Quota predictions
  - Getting into EB-1
    - Extraordinary
    - Multinational manager

I-140 Issues (cont’d)

- Getting into EB-2
  - Master’s or Bachelors plus 5 years post-bachelors progressive experience required
  - Exceptional ability
  - National interest waiver

- Getting into EB-3 (skilled)
  - Bachelors or 2 years experience required
**Portability Roundtable**
Planning for Changes in Position, Location or Employer

**H-1B Portability**

- General requirements
  - Present or prior H-1B
  - Period of stay authorized
  - No unauthorized employment
  - Need LCA per DOL
- Compare portability with extendability
- Compare portability with legal status
- Cap-exempt to cap-subject employment
  - Portability during cap gap
  - Portability after approval
  - Distinguish legal status
H-1B Portability (cont’d)

- Portability with same employer
- Traveling with portability
- Policy issues
  - Use portability…or not
  - Premium processing or portability
  - Wait for receipt notice…or not
- I-9 issues for portable aliens

H-1B Portability Hypotheticals


**H-1B Portability Hypotheticals (cont’d)**

- F-1 D/S is a former H-1B with a cap-exempt employer. He has OPT, which expires June 20, 2007. Cap-subject employer files H-1B petition for him.

**Adjustment of Status Portability**

- General requirements
  - I-140 approved
  - I-485 pending 180 days
  - Same or similar occupation
Adjustment of Status
Portability (cont’d)

- Special issues
  - Prospective employment
  - Multinational managers
  - Consular immigrant visa processing

- Policy issues
  - Potential benefits and determents to employer
  - Concurrent filing…or not
  - Premium process I-140…or not
  - Commencing employment of portable alien
  - Notify CIS of change of employment?

Adjustment of Status
Hypotheticals

- I-485 pending 200 days; I-140 approved
- I-485 pending 200 days; I-140 not yet approved
- I-140 approved; I-485 pending 100 days
- I-140 not yet approved; I-485 pending 100 days
Workplace Enforcement Roundtable
Developing Employer Best Practices

Workplace Enforcement

- Recent government enforcement actions
- Distinguishing between civil and criminal violations
- Distinguishing between routine audits and enforcement actions
Workplace Enforcement (cont’d)

- Areas of possible enforcement
  - LCA violations
  - I-9 violations
  - Hiring of unauthorized aliens
  - Pattern or practice

- Government programs-voluntary
  - Basic Pilot Program
  - IMAGE Program
  - Choosing whether to participate

Workplace Enforcement (cont’d)

- Social security mismatch letters
  - What are they…and what aren’t they?
  - ICE proposed regulation
  - Developing employer policy

- Developing employer “best practices”
  - ICE “Best Hiring Practices”
  - KRSS recommendations
  - Balancing compliance with avoidance of discrimination
  - Importance of developing institutional policies/policy statements
DHS Proposed Amendment to Employment Eligibility Verification (EEV) Regulation

- Lowers threshold of “constructive knowledge” by adding two more examples of information available to employer indicating employee not authorized to work in U.S.
  - Receipt of SSA “no match” letter
  - Receipt of “no match” notice from DHS Employer advising that immigrant status and employment authorization documentation presented by alien in completing Form I-9 was assigned to another person or not assigned to anyone
- Provides a “Safe Harbor” from DHS finding of “constructive knowledge” that employee is not authorized to work in the U.S.
  - The 14-Day Safe Harbor
    - Check records and take other action to obtain SSA verification within 14 days of receipt of “no match” letter or notice.
  - The 60-Day Safe Harbor
    - Reverify alien’s work authorization and identify in a limited I-9-like procedure completed in 3 days if discrepancy is unresolved within 60 days of receipt of “no match” letter or notice

Amendment to (EEV) Regulation (cont’d)

- Where discrepancy referred to in “no match” letter unresolved and employee’s identity and work authorization cannot be verified employer must choose between
  - Terminating employee
  - Continuing to employ alien and face finding of violation of 8 USC§274A-unlawful employment of aliens.
Questions?

Speaker Contact Information

- **H. Ronald Klasko, Esq.**
  - Tele: 215.825.8608
  - Fax: 215.825.8699
  - E-mail: rklasko@klaskolaw.com

- **Richard R. Rulon, Esq.**
  - Tele: 215.825.8612
  - Fax: 215.825.8699
  - E-mail: rrulon@klaskolaw.com

- **William A. Stock, Esq.**
  - Tele: 215.825.8607
  - Fax: 215.825.8699
  - E-mail: wstock@klaskolaw.com

- **Suzanne B. Seltzer, Esq.**
  - Tele: 212.796.8846
  - Fax: 212.297.1799
  - E-mail: sseltzer@klaskolaw.com