



## Immigration Insider

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News from the Alliance of Business Immigration Lawyers  
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### Headlines:

- **1. Special Alert: H-1B and EB Backlog Crisis** - ABIL has issued a special alert and call to action regarding H-1B cap and EB backlog problems.
- **2. Undocumented Workers Sue Wendy's Unit, Houston Law Firm** - Plaintiffs allege that permanent residence applications, for which money was deducted from their paychecks, were not filed on their behalf in time.
- **3. Judge Grants Class Action Status to Tyson Foods Lawsuit** - A federal judge granted class action status to a lawsuit alleging that Tyson Foods, Inc., held wages down by hiring undocumented workers.
- **4. USCIS Announces Extension of Returning Worker Exemption to H-2B Cap** - USCIS announced that the "returning worker" exemption to the H-2B cap has been extended for one year.
- **5. USCIS Announces Filing Change for Extensions or Changes of Nonimmigrant Status for Student Reinstatements** - USCIS announced that local USCIS offices are now forwarding any new filings to the California or Vermont Service Center, depending on where the student is engaged in study..
- **6. Labor Dept. Updates Labor Certification Procedures** - The Department of Labor recently released updates to its procedures on reductions in recruitment conversion extensions, the public disclosure system, and what to do when there has been no contact from a Backlog Elimination Center.
- **7. USCIS Transfers Cases Among Processing Locations** - USCIS has shifted benefit processing workloads among service centers.
- **8. State Dept. Proposes New Limited-Use Passport Card** - The Department of State proposes an alternative format passport designed for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda.

- **9. Unused H-1B1 Visas Available to Employers Who Filed H-1B Petitions on May 26, 2006** - USCIS has made available 89 H-1B1 visa numbers to employers whose FY 2007 H-1B petitions were received by USCIS on May 26, 2006.
- **10. Advocacy Group Files Second Suit Against Hazleton, PA** - The group seeks to put a stop to city laws that mandate stiff penalties for hiring or renting to undocumented individuals.

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## **Details...**

### **1. Special Alert: H-1B and EB Backlog Crisis**

The inability to hire H-1B workers and delays in obtaining employment-based (EB) green cards are hurting companies, hospitals, and other employers seeking access to the best and brightest global talent. There are no normal H-1B visa numbers available until October 1, 2007. The H-1B visa cap was filled by May 26, 2006, a full 16 months before the end of the next fiscal year. There are also increasing delays in obtaining EB green cards from some countries. As a result, crucial research and development projects in critical industries are being disrupted, and the lives of talented professionals are being put on hold. In many cases, they simply tire of waiting and leave the U.S. to put their knowledge and skills to use in other countries eager to compete with the U.S.

The Alliance of Business Immigration Lawyers has issued a special alert and call to action regarding this crisis. Concerned corporate clients should contact their members of Congress by personalized letter, phone call, or personal meeting to let them know how the H-1B cap and EB backlog problems are hurting them. A model letter that client companies can personalize, formulated by the American Immigration Lawyers Association (AILA), is located at <http://capwiz.com/aila2/issues/alert/?alertid=9100046>.

Nearly 800 companies, universities, and other entities signed a similar letter last fall, when the H-1B cap last hit. ABIL hopes that even more will sign on this year to have a real impact on Congress during this crucial period.

Another way to help is to send examples of how the inability to hire H-1B workers and the EB green card delays are adversely affecting employers. E-mail any such examples to AILA at [H1Bhorror@aila.org](mailto:H1Bhorror@aila.org). If the company is willing to be named, that is ideal, but even examples without attribution will be helpful (e.g., "A manufacturing company in Pennsylvania was unable to

hire an H-1B researcher to start in October 2006 because of the H-1B cap. As a result, the company could not launch a new product in its xx division").

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## **2. Undocumented Workers Sue Wendy's Unit, Houston Law Firm**

Undocumented workers at a Dallas, Texas-area Café Express have sued the chain, which is a unit of Wendy's International, Inc., as well as the Houston law firm of Boyar & Miller, P.C. The nearly 100 workers allege that Café Express missed a filing deadline in 2001 for green card applications for them. Wendy's said the situation began before it acquired Café Express in February 2001. Wendy's subsequently hired new counsel specializing in immigration matters.

The plaintiffs claim that Café Express promised to file the applications for the employees, but Café Express sent a letter to the lead plaintiff and the other workers in July 2006, stating that their applications could not be completed successfully and that, if the workers could not prove they had submitted the applications themselves by the deadline, they would be fired. The workers alleged that they did not realize their applications had not been filed in time until they received the letter, despite the fact that the company charged them \$25 per week for legal expenses in connection with the applications for several years following the deadline. The workers seek damages for the money that was deducted from their paychecks, as well as lifetime wages and other legal fees. They also seek special damages because they have lost the opportunity to qualify for permanent residence.

The company stated that only 19 workers have been fired; 25 are still in the application process, another 22 have shown they are work-authorized, and 12 left the company on their own volition.

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## **3. Judge Grants Class Action Status to Tyson Foods Lawsuit**

A federal judge has granted class action status to a lawsuit alleging that Tyson Foods, Inc., one of the largest meat producers in the world, held wages down by hiring undocumented workers at eight of its plants in Alabama, Indiana, Missouri, Tennessee, Texas, and Virginia. An attorney for the workers said this will allow thousands of workers to seek damages, instead of the four original plaintiffs. A Tyson spokesperson said the ruling was "procedural...and not based on the merits of this case." A trial date is expected to be set on January 29, 2007.

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#### **4. USCIS Announces Extension of Returning Worker Exemption to H-2B Cap**

U.S. Citizenship and Immigration Services (USCIS) announced on October 23, 2006, that the "returning worker" exemption to the H-2B numerical limitation has been extended for one year, until September 30, 2007. Petitions filed for returning H-2B workers do not count toward the semiannual H-2B cap. To qualify, the returning worker must have been counted previously against the H-2B numerical cap in one of the three fiscal years preceding the current year (between October 1, 2003, and September 30, 2006). Any worker not certified as a returning worker is subject to the cap for the relevant fiscal year. Petitions received after the "final receipt date" that contain a combination of returning workers and those subject to the current H-2B cap will be rejected with respect to non-returning workers, and petitioning employers will receive partial approvals for those who qualify as returning workers if otherwise approvable.

USCIS said it will continue to process petitions filed to extend the stay of a current H-2B worker in the U.S.; change the terms of employment for current H-2B workers and extend their stay; allow current H-2B workers to change or add employers and extend their stay; or request eligible H-2B returning workers.

The announcement is available at

<http://www.uscis.gov/graphics/publicaffairs/newsrels/H2Bextension102306.pdf>.

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#### **5. USCIS Announces Filing Change for Extensions or Changes of Nonimmigrant Status for Student Reinstatements**

U.S. Citizenship and Immigration Services (USCIS) announced that local USCIS offices are now forwarding any new filings for an Application to Extend/Change Nonimmigrant Status (Form I-539) for F-1 and M-1 student reinstatement to the California Service Center (CSC) or the Vermont Service Center (VSC), depending on where the student is engaged in study.

The CSC will receive F-1 and M-1 reinstatement applications from USCIS district and suboffices located in the following states and territories: AK, AZ, CA, CO, GU, HI, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, ND, OH, OR, SD, UT, WA, WI, and WY.

The VSC will receive F-1 and M-1 reinstatement applications from USCIS district and suboffices located in the following states and territories: AL, AR,

CT, DE, DC, FL, GA, KY, LA, MA, MD, ME, MS, NH, NJ, NM, NY, NC, SC, OK, PA, PR, RI, TN, TX, VA, VI, VT, and WV.

Those applying for student reinstatement will receive a receipt notice from the service center that will process their case. USCIS district offices will continue to process student reinstatement cases received before October 30, 2006, using existing procedures. Local USCIS offices will continue to accept the I-539 for the purpose of student reinstatement until provisions are in place to allow for direct mail filing.

USCIS said it is not necessary for those who previously filed an application at a local USCIS office to file a new application because of this change of procedure.

The announcement is available at

<http://www.uscis.gov/graphics/publicaffairs/statements/FilingChange102506.pdf>.

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## **6. Labor Dept. Updates Labor Certification Procedures**

The Department of Labor (DOL) recently released the following updates to its labor certification procedures:

RIR conversion extension. Because the Reduction in Recruitment (RIR) application processing takes significantly less time than traditional recruitment (TR), the Department of Labor (DOL) previously encouraged employers to convert TR applications to RIR. The Office of Foreign Labor Certification (OFLC) announced recently that it is extending the application date for employers who wish to convert their TR applications to RIR applications. Any TR application (excluding those for schedule B occupations) submitted to a state workforce agency with a postmark dated on or before March 28, 2005, may request conversion to RIR by following the established process. For additional information, see the frequently asked questions (FAQ) at [http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog\\_faqs\\_10-06-06.pdf](http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_10-06-06.pdf).

Public disclosure system. The OFLC has received many requests from employers, attorneys, and workers regarding the status of applications being processed as part of the backlog elimination effort. To provide basic case status information on specific cases, OFLC has introduced the Backlog Public Disclosure System (PDS). The purpose of the PDS is to provide a way for employers, attorneys, agents, and workers to determine the status of an application filed at a Backlog Elimination Center (BEC). Users can access the

PDS at <http://pds.pbls.doleta.gov/> or by clicking on the "Check Backlog Case Status" link on DOL's Backlog Centers' Web page (<http://workforcesecurity.doleta.gov/foreign/times.asp>).

Once the PDS Web page is open, users enter the 10-digit case number, which begins with a "D" if the case is located in the Dallas BEC or "P" if the case is in the Philadelphia BEC. (Some cases may have had case numbers starting with "T" before data entry was completed at a BEC. All such cases have since been converted and now begin with either "D" or "P," which should be used for case status checks on the PDS.) After entering the case number, the search results show the current case status. Case status definitions are provided at the bottom of the PDS Web page.

A FAQ about PDS is available at [http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog\\_faqs\\_09-11-06\\_pds.pdf](http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_pds.pdf).

Those who discover problems with the status of their cases (e.g., the case has been closed or withdrawn erroneously) may e-mail information and documentation to [info@dal.dflc.us](mailto:info@dal.dflc.us) or [info@phi.dflc.us](mailto:info@phi.dflc.us).

Sources note that, beginning in November, the DOL plans to issue monthly updates of BEC TR case processing dates. The DOL reportedly is currently working on cases with an April 2001 filing date and does not expect that date to advance any time soon.

No contact from BEC. The OFLC has developed a process for an employer or attorney who believes an application should be pending at a Backlog Elimination Center (BEC) but for which no contact (i.e., no 45-Day Center Receipt Notification Letter (CRNL), case closed letter, or other correspondence about the case) from the BECs has been received.

To provide such employers with the opportunity to have their applications processed while also guarding against potential fraud, OFLC has established steps for employers or their attorneys to follow, outlined in the FAQ at [http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog\\_faqs\\_09-11-06\\_nobec.pdf](http://www.workforcesecurity.doleta.gov/foreign/pdf/backlog_faqs_09-11-06_nobec.pdf).

This process is only intended for cases where the employer or attorney has received no contact whatsoever from the BEC about the case, not for status checks or other case inquiries. Also, this process is only intended for employers or their designated attorneys. Beneficiaries of labor certification applications are not authorized to use this process.

The full text of the DOL's updates is available at <http://www.workforcesecurity.doleta.gov/foreign/> (scroll down to "What's New").

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## **7. USCIS Transfers Cases Among Processing Locations**

U.S. Citizenship and Immigration Services (USCIS) periodically shifts benefit processing workloads from one agency service center to another. Most recently, USCIS made the following changes:

Form I-129: Because of unusually high workload surges over the past several months, the Vermont Service Center (VSC) transferred nearly 20,000 H-1B petitions subject to the fiscal year 2007 annual numerical cap to the Texas Service Center (TSC) and 6,000 cap-subject H-1B petitions to the Nebraska Service Center (NSC), rather than to its "sister" service center (California Service Center (CSC)) under USCIS's bispecialization initiative.

Form I-360: The VSC, TSC, and NSC transferred all pending petitions requesting classification as a special immigrant religious worker to the CSC. In addition, all new I-360 religious worker filings received at a service center other than the CSC are being transferred to the CSC.

Form I-130: Over the past several months, the VSC transferred approximately 20,000 green card petitions for alien relatives to the CSC.

Affected applicants will receive a transfer notice from USCIS. Applicants should direct inquiries to the service center where the case is currently located.

USCIS also noted that Requests for Premium Processing Services (Forms I-907) should be filed with the service center where the case is currently pending.

The notice announcing the transfers is available at

[http://www.uscis.gov/graphics/publicaffairs/statements/CaseTrans\\_092906PN.pdf](http://www.uscis.gov/graphics/publicaffairs/statements/CaseTrans_092906PN.pdf).

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## **8. State Dept. Proposes New Limited-Use Passport Card**

The Department of State (DOS) issued a proposed rule on October 17, 2006, proposing an alternative format passport designed for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda. Under the proposed rule, passport cards, like passport books, would be issued for a 10-year validity period for U.S. citizens 16 years of age and older, and for a five-year validity period for U.S. citizens under 16 years of age. The DOS proposes to use the same application procedures and adjudication standards for the passport book and card and to permit U.S. citizens to hold both a book and a card simultaneously. In addition, if a passport applicant holds a valid passport book, the applicant may apply for a passport card as a renewal and pay the lower renewal fee rate. The DOS

said the passport card is designed to address the needs and travel patterns of U.S. citizens who live in land border communities and frequently cross the border in their day-to-day activities. The passport card will not be usable globally but only in the situations set forth above.

The DOS will accept public comments until December 18, 2006. The full text of the proposed rule is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-17237.pdf>.

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## **9. Unused H-1B1 Visas Available to Employers Who Filed H-1B Petitions on May 26, 2006**

According to sources, U.S. Citizenship and Immigration Services (USCIS) has made available an additional 89 H-1B1 visa numbers that are available only to citizens of Chile or Singapore but were not used in fiscal year (FY) 2006. Any unused H-1B1 numbers from a given fiscal year are added to the next year's pool of H-1B visa numbers. The 89 visa numbers will be available to employers whose FY 2007 H-1B petitions were received by USCIS on the "final receipt date" for FY 2007 (May 26, 2006) but were not selected by the random lottery that USCIS conducted to determine which of the cases received on that date would be applied toward the FY 2007 cap. USCIS plans to send a letter or e-mail to affected employers and/or their attorneys outlining the procedures to be followed. Employers with cases submitted on May 26 who do not receive a letter by November 8, 2006, may send an e-mail to USCIS at: [vsc.h1bcaphelpdesk@dhs.gov](mailto:vsc.h1bcaphelpdesk@dhs.gov). USCIS also would like employers in this category who are not pursuing the H-1B petition to send an e-mail to the same address.

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## **10. Advocacy Group Files Second Suit Against Hazleton, PA**

On October 30, 2006, the Hazleton Hispanic Business Association, several undocumented individuals, and a businessman filed a second lawsuit against Hazleton, Pennsylvania. The group seeks to put a stop to city laws that, among other things, require landlords who rent to undocumented individuals to pay heavy fines, require tenants to register their contact information, and require tenants to pay fees to obtain rental permits. The laws previously were revised following suits filed by the American Civil Liberties Union of Pennsylvania and the Puerto Rican Legal Defense and Education Fund.

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## Recent News from ABIL Members

Angelo A. Paparelli (<http://www.entertheusa.com/>) will participate in a panel on workplace enforcement pitfalls for employers at Northwestern University School of Law's upcoming symposium, "What You Should Know About Workplace Enforcement and Immigration," to be held on November 20, 2006, from 8:30 a.m. to 5:30 p.m. in Thorne Auditorium, Arthur Rubloff Building. The symposium is co-sponsored by the Federal Bar Association and the Immigration Policy Center. The panel's topics will include in-house audits, special rules and risks for subcontractors, and mergers and acquisitions. Other symposium topics include I-9 audits; Social Security numbers and no-match letters; the future of workplace immigration compliance; labor and employment issues (including basic employer obligations, common violations, and remedies for worker exploitation); a shift in Immigration and Customs Enforcement's strategy in favor of pursuing egregious employer violators; and representing the targeted employer, executives and managers.

For more information on symposium content, contact: Margaret H. McCormick, phone: (312) 427-6163; e-mail: [mmccormick@mmhpc.com](mailto:mmccormick@mmhpc.com). To register, contact: Immigration Policy Center, American Immigration Law Foundation, 918 F Street, NW, Washington, DC 20004; phone: (202) 742-5600; e-mail: [info@ailf.org](mailto:info@ailf.org).

Vincent Lau, Senior Associate at Flynn & Clark, P.C., will be participating once again as a guest speaker at the Immigration Law Seminar sponsored by Massachusetts Continuing Legal Education. The seminar spans two days, November 14 and 15, and covers both employment-based and family-based immigrant and nonimmigrant matters. Vince will be speaking on visas for visitors for business or pleasure, TN status for Canadian professional occupations, and the Visa Waiver Pilot Program. For more information, see [http://www.mcle.org/MCLE\\_Web/scriptcontent/custom/UpcomingProg/upcmngprg\\_dtl.cfm?meetingcode=2070055P01&desc=S](http://www.mcle.org/MCLE_Web/scriptcontent/custom/UpcomingProg/upcmngprg_dtl.cfm?meetingcode=2070055P01&desc=S)

Steve Clark, Shareholder at Flynn & Clark, P.C., will be a guest speaker at a meeting of the American Immigration Lawyers Association in Worcester, Massachusetts, on November 1. Steve will speak on recent developments in PERM labor certifications and procedures to expedite cases at the Backlog Elimination Centers.

Klasko, Rulon, Stock & Seltzer's annual Fall Seminar, "*Get Ready for Changes to Immigration Laws*," examined employment-based immigration issues affecting hospitals, universities, and research institutions. It was held on October 25, 2006, at the Union League in Philadelphia, Pennsylvania. This year's seminar featured a special session for newcomers to the field:

"Fundamentals of Immigration Law." This year's seminar was Klasko, Rulon, Stock & Seltzer's most successful ever, with a record turnout.

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## Government Agency Links

*Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:*

USCIS Service Center processing times and case status online:

<https://egov.immigration.gov/cris/jsps/index.jsp>

Department of Labor processing times and information on backlogs:

<http://www.ows.doleta.gov/foreign/times.asp>

Department of State Visa Bulletin:

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

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*The Alliance of Business Immigration Lawyers' website is: <http://www.abil.com/>.*

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