



# IMMIGRATION INSIDER

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## Headlines:

**H-1B Filing for FY 2014 Starts April 1; USCIS Will Begin Premium Processing for H-1B Cap Cases on April 15** – Companies should file H-1B petitions now, and evaluate their anticipated hiring needs for H-1B professionals for the 12-month period beginning on October 1, 2013. USCIS will begin premium processing for H-1B cap cases on April 15.

**No Wages Due If H-1B Employee Is Voluntarily Nonproductive, ALJ Finds** – An arts school did not owe an H-1B nonimmigrant employee back pay for voluntarily nonproductive "work" time.

**Deferred Enforced Departure Extended for Liberians** – USCIS announced that it is automatically extending EADs through September 30, 2013, for Liberian nationals covered under DED. The automatic EAD extension followed President Barack Obama's decision to extend DED through September 30, 2014.

**Donald Trump Proposes Granting U.S. Citizenship to President Obama** – At a press conference on April 1, 2013, Donald Trump announced that he would be open to the idea of granting U.S. citizenship to President Barack Obama.

**ABIL Global: Belgium** – New sanctions and measures against employers of unauthorized workers have been implemented, as has a new legal framework for enhanced inspection coordination relating to the employment of foreign nationals. Also, the administrative fees for residence permits have increased.

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## **H-1B Filing for FY 2014 Starts April 1; USCIS Will Begin Premium Processing for H-1B Cap Cases on April 15**

The Alliance of Business Immigration Lawyers (ABIL) reminds clients that H-1B filing for fiscal year 2014 starts on April 1, 2013. To facilitate the prioritized data entry of cap-subject petitions requesting premium processing, USCIS will begin premium processing for H-1B cap cases on April 15, 2013.

Companies should file H-1B petitions now, and evaluate their anticipated hiring needs for H-1B professionals (specifically, those requiring initial H-1B visas) for the 12-month period beginning

on October 1, 2013. That is the date on which new H-1B visas become available under the annual cap. Employers can file H-1B petitions no earlier than six months in advance of the anticipated start date, so April 1, 2013, signals the start of what has become an annual race to get petitions filed as early as possible to ensure acceptance before the cap of 85,000 visas is reached. The 85,000 cap includes the basic cap of 65,000, plus an additional 20,000 H-1B visas available to foreign nationals who have earned an advanced degree (master's or higher) from a U.S. university.

The H-1B cap for fiscal year 2013 was reached in June 2012. The pace of hiring this year means that the demand for new H-1B workers could result in the new cap being reached in early April. As in past years, some foreign nationals are not subject to the H-1B cap, including individuals who already have been counted toward the cap in a previous year and have not been outside the United States subsequently for one year or more. Also, certain employers, such as universities, government-funded research organizations, and some nonprofit entities are exempt from the H-1B cap. All other employers should be aware of the H-1B cap.

ABIL recommends that clients keep their ABIL attorney apprised of all new hires needing H-1B status before October 1, 2014. Examples would include F-1 students hired with optional practical training that expires before April 1, 2014, or current L-1B nonimmigrants who will have spent five years in that status as of any date before October 1, 2014.

U.S. Citizenship and Immigration Services (USCIS) said it anticipates receiving more petitions than the H-1B cap between April 1 and April 5, 2013. If USCIS receives more petitions than it can accept, it will use a lottery system to randomly select the number of petitions filed during that period to reach the numerical limit. The agency will reject petitions that are subject to the cap but not selected, as well as petitions received after it has the necessary number of petitions needed to meet the cap. The lottery for the H-1B cap was last used in April 2008.

USCIS noted that filers of H-1B cap cases may continue to request premium processing concurrently. Due to "historic" premium processing levels, combined with the possibility that the H-1B cap will be met quickly, USCIS said it has temporarily adjusted its current premium processing practice. As noted above, to facilitate the prioritized data entry of cap-subject petitions requesting premium processing, USCIS will begin premium processing for H-1B cap cases on April 15, 2013, even if they are filed earlier.

USCIS' announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=f537eff29cb6d310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. A related announcement on premium processing for H-1B cap-

subject petitions is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=7b63eff29cb6d310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

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### **No Wages Due If H-1B Employee Is Voluntarily Nonproductive, ALJ Finds**

The Department of Labor's Office of Administrative Law Judges recently found that North Shore School for the Arts (NSSA) did not owe an H-1B nonimmigrant employee back pay for voluntarily nonproductive "work" time. NSSA had employed Natsuko Imai as a piano/music teacher for 20 hours per week at a wage rate of \$40 per hour.

Among other things, an NSSA representative stated that Ms. Imai took some students into her own private studio rather than continuing to work with them as NSSA students, which was against NSSA policy. The representative also stated that Ms. Imai was uncooperative in working to get more students. The representative made suggestions for doing so that Ms. Imai rejected. Despite claims to the contrary, Ms. Imai was trying to get into graduate school and spent much of her time practicing piano rather than teaching or performing related outreach duties.

Administrative Law Judge (ALJ) Stephen M. Reilly noted that wages are to be paid for nonproductive time if the employee is "ready, willing, and able" to work and the nonproductive time resulted from a decision of the employer. He found Ms. Imai's testimony "rife with evasiveness, equivocation and forgetfulness." He said that her demeanor during testimony "raised questions regarding her truthfulness." He also found her disregard of the law "troubling" because she admitted to working while on an F-1 student visa and also to working outside NSSA while she was in H-1B status, which are violations. She further admitted that she did not report income for tax purposes. She said she knew these actions were against the law when she did them. ALJ Reilly gave her testimony "little weight" because of these factors and her evasive answers. For example, the ALJ noted that she said that obtaining a doctoral degree was not her plan, but acknowledged that she had applied to doctoral programs and sought and obtained several recommendations for that purpose.

ALJ Reilly also noted that although Ms. Imai spent long hours at the school, her focus was on practicing the piano, not teaching or performing her job duties. He found that Ms. Imai did not make herself available to perform her job duties and thus was not ready, willing, and able to work. The ALJ did not hold the NSSA's representative blameless either, stating that she was "blinded to reality." ALJ Reilly found the employer responsible for back pay for work performed (74.5 hours plus interest, for a total of \$2,980), but not for the hours in dispute during which Ms. Imai was not performing work.

The case is available at

[http://www.oalj.dol.gov/Decisions/ALJ/LCA/2012/WAGE\\_and\\_HOUR\\_DIVISI\\_v\\_NORTH\\_SHORE\\_SCHOOL\\_F\\_2012LCA00039\\_\(JAN\\_18\\_2013\)\\_102855\\_CADEC\\_SD.PDF](http://www.oalj.dol.gov/Decisions/ALJ/LCA/2012/WAGE_and_HOUR_DIVISI_v_NORTH_SHORE_SCHOOL_F_2012LCA00039_(JAN_18_2013)_102855_CADEC_SD.PDF).

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### **Deferred Enforced Departure Extended for Liberians**

U.S. Citizenship and Immigration Services (USCIS) recently announced that it is automatically extending employment authorization documents (EADs) through September 30, 2013, for Liberian nationals covered under deferred enforced departure (DED). The automatic EAD extension followed a memorandum announcing President Barack Obama's decision to extend DED through September 30, 2014, for qualified Liberians and those persons without nationality who last habitually resided in Liberia. USCIS said the six-month extension of existing EADs will permit eligible Liberians to continue working in the United States while they file their applications for new EADs that will cover the full 18 months of the DED extension.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0beebe0548f6d310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. A related Federal Register notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-03-21/html/2013-06519.htm>. The Presidential Memorandum is available at <http://m.whitehouse.gov/the-press-office/2013/03/15/presidential-memorandum-deferred-enforced-departure-liberians>.

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## Donald Trump Proposes Granting U.S. Citizenship to President Obama

At a press conference on April 1, 2013, Donald Trump announced that he would be open to the idea of granting U.S. citizenship to President Barack Obama, either as part of comprehensive immigration reform or under a private bill. Mr. Trump explained that his position on this thorny issue has evolved quickly along with the rest of the nation's. "Listen, I can see the handwriting on the wall as well as the next guy. I think something like nine states have legalized him already, and the Supreme Court is on the verge of allowing it, right?"

Mr. Trump added one caveat: "This is if, and only if, he agrees to wait in line like everyone else." The real estate mogul and reality TV star then whipped out an application that he had smuggled in under his puffy, generous mane. The journalists snapped photos while his personal assistant, formerly a groomer for the famous race horse Secretariat, patted it back down.

He also added that he would " personally finance late-night snacks for congressional staff while they hammer out the details, the application fees for the President, his shoe-shine for the ceremony, a high-end suit, a photographer, whatever he needs. That way, he'll finally be legalized and regularized in style, and I will personally be at the ceremony to congratulate him."

When a journalist expressed surprise at Mr. Trump's change of heart and reminded him that President Obama already has citizenship, Mr. Trump said, "Well, maybe he does according to whatever they call it in Kenya, but this makes it legal here in the United States. I think even the Pope would approve. In fact, I had lunch with him last week when I was in Italy visiting some properties I own over there, and he said he might be okay with a civil ceremony even if it doesn't get the full stamp of approval from the Vatican. He's a nice man, very humble."

Mr. Trump also proposed hosting a "national conversation" on this issue for the last 10 minutes of each episode of "Celebrity Apprentice." Almost as an afterthought, he added, "Happy April Fool's Day!"

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## ABIL Global: Belgium

*New sanctions and measures against employers of unauthorized workers have been implemented, as has a new legal framework for enhanced inspection coordination relating to the employment of foreign nationals. Also, the administrative fees for residence permits have increased.*

### **New Sanctions/Measures**

The Belgian Act, dated February 11, 2013, provides for sanctions and measures against employers of third-country nationals without authorization. The law implements European Directive 2009/52.

Under the new rules, in addition to already existing sanctions, an employer who employs third-country nationals staying in Belgium without authorization can be sanctioned financially (for example, back payment of remunerations, taxes, and social security contributions).

A potential employer of a third-country national also is subject to a threefold "information obligation." The employer must: (1) verify before the start of employment whether the third-country national holds a valid residence permit or other authorization of stay; (2) keep available for inspection a copy or record of the residence permit or other authorization to stay; and (3) notify the authorities of the start and termination of employment under the applicable rules. Infringement of these rules, including document fraud of which the employer was aware, is considered a serious infringement under the Code on Labor and Social Security Criminal Law.

The Belgian Act also provides sanctions and, to some extent, potential liability with regard to a portion of wages for parties who work, directly or indirectly, as a contractor or subcontractor, with employers of unauthorized third-country nationals.

These new provisions took effect March 4, 2013.

### **Legal Framework for Enhanced Inspection Coordination**

Inspections for compliance relating to the employment of foreign nationals in Belgium is a responsibility at both the federal and regional levels (Brussels, Flanders, and Walloon Regions, and the German-speaking community).

On June 11, 2011, the Belgian federal authorities entered into a cooperation agreement with these regional authorities. The agreement will enhance inspections related to the employment of foreign nationals in Belgium by coordinating inspections and facilitating the exchange of information between the inspection services.

The Belgian federal authorities have approved the cooperation agreement by an Act dated March 1, 2013, which took effect March 31, 2013.

### **Increase in Administrative Fees for Residence Permits**

Belgian residence permits are electronic identification cards, issued by the municipal authorities but produced by an external company. The Belgian Ministry of Interior Affairs recently decided to slightly increase (from 3 to 5 EUR) the fees that are charged to municipalities for these electronic ID cards. The overall fees charged to applicants also will increase.

A Royal Decree dated March 15, 2013, that took effect on April 1 determines the new fees chargeable to the municipal authorities:

- The fee for "regular" processing (3 to 5 weeks) of an electronic residence permit is now 15 EUR;
- If transport of the permits is handled exclusively by an external company, the fees for "very urgent" processing (2 working days) and "urgent" processing (3 working days) are 180 and 116 EUR, respectively. If the municipality is also involved in the transport of the permits, these fees may be 86 or 57 EUR, respectively.

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## **New Publications and Items of Interest**

[2012 statistics on U.S. legal permanent residents](#). The Department of Homeland Security has released "U.S. Legal Permanent Residents: 2012." The report notes that in 2012, a total of 1,031,631 persons became legal permanent residents (LPRs) of the United States. The majority (53 percent) already lived in the country when they were granted lawful permanent resident status. Nearly 66 percent received it based on a family relationship with a U.S. citizen or LPR. The leading countries of birth of new LPRs were Mexico (14 percent), China (7.9 percent), and India (6.4 percent). The report is available at [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

[Report on guestworker programs](#). Southern Poverty Law Center (SPLC) has published "Close to Slavery: Guestworker Programs in the United States." The report finds that the current H-2 program for temporary farmworkers and non-farm laborers is "rife with labor and human rights violations" and "harms the interests of U.S. workers." The report notes that employers brought about 106,000 guestworkers into the United States in 2011, including approximately 55,000 for agricultural work and another 51,000 for jobs in forestry, seafood processing, landscaping,

construction, and other non-agricultural industries. Among other things, the report charges that guestworkers are routinely cheated out of wages, held virtually captive, subjected to human trafficking and debt servitude, forced to live in squalid conditions, and denied medical benefits for on-the-job injuries. SPLC recommends an overhaul of the program if it is continued, and says that it should not be expanded or used as a model for immigration reform.

The report is available at [http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states?utm\\_source=WhatCounts+Publicaster+Edition&utm\\_medium=email&utm\\_campaign=SP+LC+Report+%27Close+to+Slavery%27&utm\\_content=Close+to+Slavery](http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states?utm_source=WhatCounts+Publicaster+Edition&utm_medium=email&utm_campaign=SP+LC+Report+%27Close+to+Slavery%27&utm_content=Close+to+Slavery).

Several ABIL members co-authored and edited the *Global Business Immigration Practice Guide*, released by LexisNexis. The *Practice Guide* is a one-stop resource for dealing with questions related to business immigration issues in immigration hotspots around the world.

This comprehensive guide is designed to be used by:

- Human resources professionals and in-house attorneys who need to instruct, understand, and liaise with immigration lawyers licensed in other countries;
- Business immigration attorneys who regularly work with multinational corporations and their employees and HR professionals; and
- Attorneys interested in expanding their practice to include global business immigration services.

This publication provides:

- An overview of the immigration law requirements and procedures for over 20 countries;
- Practical information and tips for obtaining visas, work permits, resident status, naturalization, and other nonimmigrant and immigrant pathways to conducting business, investing, and working in those countries;
- A general overview of the appropriate options for a particular employee; and
- Information on how an employee can obtain and maintain authorization to work in a target country.

Each chapter follows a similar format, making it easy to compare practices and procedures from country to country. Useful links to additional resources and forms are included. Collected in this Practice Guide, the expertise of ABIL's attorney members across the globe will serve as an ideal starting point in your research into global business immigration issues.

Order at:

<http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&core=&parent=&catId=31&prodId=70836>. International customers who do not want to order through the bookstore can order through Nicole Hahn at (518) 487-3004 or [Nicole.hahn@lexisnexis.com](mailto:Nicole.hahn@lexisnexis.com).

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

*Green Card Stories* 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. The writer, Saundra Amrhein, was nominated as a finalist on the short list for the 2011 Santa Fe Writers Project Literary Awards. *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 more information, e-mail Lauren Anderson at [lauren@greencardstories.com](mailto:lauren@greencardstories.com).

See also <http://www.greencardstories.com/>.

ABIL on Twitter. The Alliance of Business Immigration Lawyers is now available on Twitter: @ABILImmigration. Recent ABIL member blogs are available at <http://www.abilblog.com/>.

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## Member News

**Several ABIL members and firms** were listed in Chambers Global 2013:

**FosterQuan, LLP**

(Robert Loughran, bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>)

**Ivener & Fullmer LLP**

(Mark Ivener, bio: <http://www.abil.com/lawyers/lawyers-ivener.cfm?c=US>)

**Klasko Rulon Stock & Seltzer**

(H. Ronald Klasko, bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm?c=US>)

**Pearl Law Group**

(Julie Pearl, bio: <http://www.abil.com/lawyers/lawyers-pearl.cfm?c=US>)

**Seyfarth Shaw LLP**

(Angelo Paparelli, bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>)

**Wolfsdorf Immigration Law Group**

(Bernard Wolfsdorf, bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm?c=US>)

Other Notable Practitioners:

**Francis Chin** (bio: <http://www.abil.com/lawyers/lawyers-chin.cfm?c=US>)

**Charles Kuck** (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>)

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>)

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>)

For more information, see

[http://www.chambersandpartners.com/Global/Editorial/253346#per\\_267174](http://www.chambersandpartners.com/Global/Editorial/253346#per_267174).

**Klasko, Rulon, Stock & Seltzer, LLP** will hold its Annual Spring Seminar on April 23, 2013, at the Radisson Plaza-Warwick Hotel in Philadelphia, Pennsylvania. Topics will include legislation, USCIS policies and practices, CBP programs, J-1 waivers, university/hospital roundtable, corporate roundtable, employment eligibility verification, travel issues, prevailing wage issues, and more. **Mr. Klasko** will be speaking. For more information or to register, see <http://www.klaskolaw.com/images/email/2013/email.html>.

**Mr. Kuck** has published a new blog entry. "USCIS and Why You Need an Immigration Attorney" is available at <http://musingsonimmigration.blogspot.com/2013/03/uscis-and-why-you-need-immigration.html>.

**Mr. Loughran** organized and moderated a full-day EB-5 Immigrant Investor Summit for Attorneys and Developers in Dallas, Texas, on March 15, 2013. The event was sponsored by ILW. Mr. Loughran independently presented on "source of funds issues" in Form I-526, Immigrant Petition by Alien Entrepreneur.

**Mr. Paparelli** has published several new blog entries. "Rethinking Immigration: If America Will Welcome More Entrepreneurs, Why Not More Creatives?" is available at <http://ow.ly/j7540>. "Will the New Labor-Business Accord Produce an Immigration Death Panel?" is available at <http://ow.ly/i0AxE>.

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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 online:**  
<https://egov.uscis.gov/cris/processTimesDisplay.do>

**Department of Labor processing times and information on backlogs:**  
<http://www.foreignlaborcert.doleta.gov/times.cfm>

**Department of State Visa Bulletin:** [http://travel.state.gov/visa/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/bulletin/bulletin_1360.html)

**Visa application wait times for any post:** [http://travel.state.gov/visa/temp/wait/wait\\_4638.html](http://travel.state.gov/visa/temp/wait/wait_4638.html)

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## About ABIL

*The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 400 member lawyers and their 1,000 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.*

*The Alliance of Business Immigration Lawyers' Web site is at <http://www.abil.com/>. ABIL is also available on Twitter: @ABILImmigration.*

## Disclaimer/Reminder

*This e-mail does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.*

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