



# IMMIGRATION INSIDER

Vol. 8, No. 8A • August 1, 2012

## Headlines:

**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.

**DOL Reaches Agreement Resulting in Record Back Wage Amount for H-2A Temporary Agricultural Workers** – Peri & Sons, a Nevada-based onion grower, has agreed to pay a record total of \$2,338,700 in back wages to 1,365 workers, along with a civil money penalty of \$500,000, for violations under the H-2A program.

**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.

**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.

**ABIL Global: Turkey** – Turkey moves toward stricter employer qualifications to sponsor work permits.

## Also in this issue:

[New Publications and Items of Interest](#)

[Member News](#)

[Government Agency Links](#)

[Back to Top](#)

## **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. Also, USCIS released the latest third-quarter statistics on its stakeholder call in late 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. Highlights of the latest developments are included below.

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. The office will be led by a new Chief of Immigrant Investor Programs. The position opening was announced the same day.

Director 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." Interest in the EB-5 program has grown exponentially in recent years, he noted, 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 3,000 Form I-526 (Immigrant Petition by Alien Entrepreneur) petitions. Director Mayorkas said this was more than triple the number approved in all of FY 2009. "Since 2009, we have 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.

The announcement is available at <http://www.laborimmigration.com/wp-content/uploads/2012/07/Message+from+the+Director+07.18.2012.pdf>.

Third-quarter statistics. USCIS said it has approved over 3,000 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 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 (Immigrant Petition by Alien Entrepreneur) petitions and had approved 3,002 and denied 775 so far. This was a 79 percent approval rating, compared to an 81 percent approval rating for all of FY 2011 and an 89 percent approval rating for all of FY 2010. As of the third quarter of FY 2012, USCIS had received 546 I-829 (Petition by Entrepreneur to Remove Conditions) petitions and had approved 639 and denied 42 so far. This was a 94 percent approval rating, nearly matching a 96 percent approval rating for all of FY 2011 and exceeding an 83 percent approval rating for FY 2010.

USCIS approved 209 regional centers as of the third quarter. The full list of RCs by state is available at <http://www.uscis.gov/eb-5centers/>.

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

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e0138e0732344310VgnVCM100000082ca60aRCRD&vgnnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD> for additional details on the engagement meetings.

Summary of May 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](http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/May%202012/May_2012_Quarterly_EB5_Engagement_Executive_Summary.pdf).

[Back to Top](#)

## **DOL Reaches Agreement Resulting in Record Back Wage Amount for H-2A Temporary Agricultural Workers**

Peri & Sons, a Nevada-based onion grower, has agreed to pay a record total of \$2,338,700 in back wages to 1,365 workers, along with a civil money penalty of \$500,000, for violations under the H-2A temporary agricultural worker program.

An investigation by the Department of Labor's Wage and Hour Division determined that workers employed by Peri & Sons involved in irrigation, as well as in harvesting, packing, and shipping onions sold in grocery stores nationwide, were not paid properly for work performed. All of the workers came to the United States from Mexico under the H-2A temporary agricultural worker visa program. In most cases, their earnings fell below the hourly wage required by the program, as well as below the federal minimum wage of \$7.25 per hour for a brief period of time. Investigators also found that workers were not paid for time spent in mandatory pesticide training or reimbursed for subsistence expenses while traveling to and from the United States. Additionally, their return transportation costs at the end of the contract period were not paid as required.

A fact sheet on H-2A requirements is available at <http://www.dol.gov/whd/regs/compliance/whdfs26a.htm>. The press release announcing the agreement is available at <http://www.dol.gov/opa/media/press/whd/WHD20121352.htm>.

[Back to Top](#)

## **Senate Holds Hearing on Student Visa System**

The Senate's Subcommittee on Immigration, Refugees and Border Security held a hearing on July 24, 2012, on "Strengthening the Integrity of the Student Visa System by Preventing and Detecting Sham Educational Institutions." Witnesses 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. In addition, 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, among other things, 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 said that ICE has already made progress in implementing the GAO's recommendations. He 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 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."

Ms. Gambler's testimony is available in "Student and Exchange Visitor Program: DHS Needs to Take Actions to Strengthen Monitoring of Schools" at <http://www.judiciary.senate.gov/pdf/12-7-24GamblerTestimony.pdf>. Mr. Woods' testimony is available at <http://www.judiciary.senate.gov/pdf/12-7-24WoodsTestimony.pdf>. The main hearing page, which includes a link to a webcast of the hearing, is available at <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=2b53f9fbe82f752c41d78bced00d6e3c>.

[Back to Top](#)

## **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.

GOES is available at <https://goes-app.cbp.dhs.gov/main/goes>. The announcement is available at [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/07262012\\_2.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/07262012_2.xml).

[Back to Top](#)

## **ABIL Global: Turkey**

*Turkey moves toward stricter employer qualifications to sponsor work permits.*

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 current exchange rate is 1.8 TL to 1 USD.

The 5:1 ratio has been particularly burdensome to employers. This is 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) **Founder/investor** of a newly established legal entity: If such a founder/investor owns at least 20% (but amounting to at least 40,000 TL) worth of shares of the entity, and within 6 months, the five employee criteria can be met, the founder/investor is exempt.
- 2) **Technical specialists**: 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) **Government involvement**: When 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.

[Back to Top](#)

## New Publications and Items of Interest

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/>.

USCIS multilingual resources. U.S. Citizenship and Immigration Services (USCIS) has launched an online Multilingual Resource Center, which provides a central location for USCIS resources in a variety of languages, including Haitian Creole, Polish, and Vietnamese. Materials are available in 22 languages, including information on USCIS application processes and frequently asked questions. The site includes a new Spanish translation of *The Handbook for Employers: Instructions for Completing Form I-9*. Another feature of the new site is the introduction of 13 newly translated *How Do I...* guides in Chinese. The announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e72952d4be3c8310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The Multilingual Resource Center is available at <http://www.uscis.gov/multilingual>.

Several ABIL members co-authored and edited the new publication, *Global Business Immigration Practice Guide*, recently 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. *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 or to order, visit <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/>.

[Back to Top](#)

## Member News

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) was quoted by NDTV in an article on the Infosys whistleblower case and related visa issues. Mr. Mehta discussed the B-1 in lieu of H-1B visa program and the ambiguity in the law concerning B-1 visas. The article is available at <http://www.ndtv.com/article/india/infosys-visa-issues-will-the-case-hold-in-us-court-247712>.

**Mr. Mehta** recently published a new blog entry. "Crime Without Punishment: Have You Ever Committed a Crime For Which You Have Not Been Arrested?" is available at [http://blog.cyrusmehta.com/2012/07/crime-without-punishment-have-you-ever\\_29.html](http://blog.cyrusmehta.com/2012/07/crime-without-punishment-have-you-ever_29.html).

**Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) was named a Top Labor & Employment Attorney by the Los Angeles and San Francisco *Daily Journal*, for the second consecutive year. Mr. Paparelli told the *Daily Journal* that his mission is to "help American people see that the cornerstone of our exceptionalism is our willingness to accept immigrants as equal human beings and allow them to contribute and become citizens and achieve the American dream while they help us to achieve the American dream." He cautioned, however, that, "we need to protect the borders and make sure we have intelligent policies in place that let the right people in and keep the wrong people out."

**Mr. Paparelli** also recently co-wrote "Foreigners on U.S. Soil: To Know Your Rights Is To Know Very Little." The article was published by the *New York Law Journal* and is available at [http://www.seyfarth.com/dir\\_docs/publications/ForeignersonUSSoilToKnowYourRightsIstoKnowVeryLittle.pdf](http://www.seyfarth.com/dir_docs/publications/ForeignersonUSSoilToKnowYourRightsIstoKnowVeryLittle.pdf).

**Mr. Paparelli** recently published a new blog entry. "Immigration's Mad Men (and Women)" is available at <http://www.nationofimmigrants.com/immigration-reform/immigrations-mad-men-and-women/index.html>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in the *Atlanta Journal-Constitution* on July 26, 2012, in the article, "Investors Can Earn Shot at Green Card." Mr. Yale-Loehr said the EB-5 investor program "creates jobs for U.S. workers at no expense to the taxpayer, so it will be renewed." He founded the Association to Invest in the USA, which represents regional centers that organize EB-5 investment projects.

[Back to Top](#)

## 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)

[Back to Top](#)

## 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.*

*Copyright © 2012 Alliance of Business Immigration Lawyers. All rights reserved.*