



IMMIGRATION INSIDER

Vol. 9, No. 8B • August 15, 2013

Headlines:

USCIS To Conduct I-9 Form Study – Following a study to be conducted in September, USCIS plans to propose a revised I-9 form and invite public comment.

State Dept. Releases Cable, FAQ on DOMA – The Department of State recently released a FAQ and a cable to the field, "Next Steps on DOMA—Guidance for Posts."

USCIS Transfers Some Casework Within and Among Service Centers – USCIS recently began transferring some casework within and among service centers to balance workload processing capacity.

CBP Expands Global Entry to Republic of Korea, Germany, Qatar, United Kingdom – Global Entry kiosks are available at 34 U.S. airports and 10 CBP preclearance locations in Ireland and Canada that serve 98 percent of all incoming air travelers.

ICE SEVP No Longer Mailing Notices of Action for SEVIS Fee Payments – Payment confirmations the user can print from the fee website will replace the I-797C.

Eighth Circuit Finds Undocumented Workers Covered Under FLSA – Employers may not exploit undocumented workers' status or profit from hiring such workers in violation of federal law.

India Second Preference Visa Cut-Off Date Advances; Significant New India Demand Expected in Coming Months – The India second preference cut-off date has advanced by more than three years.

State Dept. Revises B-2 Nonimmigrant Reciprocity Schedule for Cuba – The Department of State has revised the visa reciprocity schedule for Cuba for B-2 nonimmigrants, changing the validity from 6 months to 60 months.

Also in this issue:

[New Publications and Items of Interest](#)

[Member News](#)

[Government Agency Links](#)

[Back to Top](#)

USCIS To Conduct I-9 Form Study

U.S. Citizenship and Immigration Services (USCIS) is developing a new version of the I-9 employment eligibility verification form. USCIS plans to propose the revised form and invite public comment. The agency is selecting nine employers for a study to determine how much time it takes employers to complete the revised form.

The study will be administered at USCIS offices in Washington, DC, on September 3, 2013; September 5, 2013; or September 6, 2013, between 8 a.m. and 5 p.m. USCIS announced on August 5, 2013, that interested employers, large and small, were invited to submit a request by August 15, 2013, to volunteer to participate in the study. USCIS said it would randomly selected four large employers and five small employers from all submissions received by the deadline.

USCIS said it will contact the selected employers by August 23, 2013, to schedule an appointment to participate in the study. At the study, the point of contact for the employer will be requested to play the role of an employer completing Section 2 and/or Section 3 of the Form I-9.

Additional information is available at <http://content.govdelivery.com/bulletins/gd/USDHSCIS-858773>.

[Back to Top](#)

State Dept. Releases Cable, FAQ on DOMA

The Department of State recently released a FAQ and a cable to the field, "Next Steps on DOMA—Guidance for Posts." The cable notes that beginning immediately, consular officers should review visa applications filed by same-sex spouses in the same manner as those filed by opposite-sex spouses, "unless a specific provision of the federal immigration laws requires a different approach."

The cable notes that the Visa Office deleted a provision in the *Foreign Affairs Manual* that defined "marriage" for immigration purposes to mean "only a legal union between one man and one woman as husband and wife," and the word "spouse" to mean only "a person of the opposite sex who is a husband or a wife." A same-sex marriage is now valid for immigration purposes "as long as the marriage is recognized in the 'place of celebration,'" the cable states. Such marriages are valid for immigration purposes "even if the couple intends ultimately to reside in one of the 37 states that do not recognize same-sex marriages. Same-sex marriages are valid "even if the applicant is applying in a country in which same-sex marriage is illegal."

The Department is asking consular sections to identify what types of marriages are available for same-sex couples in-country and to update the visa reciprocity tables.

Also, the cable notes that beginning "immediately," same-sex spouses and their children are equally eligible for nonimmigrant derivative visas. Same-sex spouses and their children ("stepchildren of the primary applicant when the marriage takes place before the child turns 18") can qualify as derivatives where the law permits issuance of the visa to a spouse or stepchild without being named on a petition (or if a petition is not required). This includes Diplomat (A), Commonwealth of the Northern Mariana Islands transitional worker (CW), treaty trader/investor (E), international organization employee (G), temporary worker (H), information media representative (I), intracompany transferee (L), North Atlantic Treaty Organization (NATO), extraordinary ability (O), entertainer and athlete (P), religious worker (R), and North American Free Trade Agreement (TN – Trade National) visa categories. If an applicant is otherwise qualified, the cable states, "he/she may be issued a derivative visa starting now."

Among other things, the cable also notes that many same-sex couples live abroad in countries where they are unable to marry. Starting immediately, same-sex partners of U.S. citizens may apply for fiancé(e) nonimmigrant K-1 visas to wed in the United States, the cable states. Once the union is contracted in a state permitting same-sex marriage, the foreign spouse may apply for adjustment to legal permanent resident status through U.S. Citizenship and Immigration Services (USCIS), or the U.S. citizen may file an I-130 with USCIS. A significant portion of same-sex partners intending to immigrate to the United States may use fiancé(e) visas, the cable notes.

The cable, which also includes talking points for posts responding to public and media inquiries, is available at http://travel.state.gov/pdf/Next_Steps_On_DOMA_Guidance_For_Posts_August_2013.pdf. The FAQ is available at http://travel.state.gov/visa/frvi/frvi_6036.html.

[Back to Top](#)

USCIS Transfers Some Casework Within and Among Service Centers

U.S. Citizenship and Immigration Services (USCIS) recently began transferring some casework within and among service centers "to balance workload processing capacity." The affected casework includes, among others, the I-821D, Consideration of Deferred Action for Childhood Arrivals (with accompanying Form I-765, Application for Employment Authorization); I-751, Petition to Remove the Conditions on Residence; I-130, Petition for Alien Relative (F2A category for spouses and children of permanent residents); and I-129F, Petition for Alien Fiancé(e).

USCIS will send a notice to those whose cases were transferred listing the transfer date and where the case will be processed. The original receipt number will not change. When making any case status inquiries, affected persons should reference the original receipt number and indicate that the case was transferred to a new location.

USCIS noted, "If you have filed one of the affected form types and you receive a request for evidence or any other type of communication from USCIS, please read the notice carefully to ensure that you respond to the same service center that sent you the notice."

Also, starting the week of July 29, 2013, USCIS began redirecting all newly filed I-129F forms from the Vermont Service Center to the Texas Service Center (TSC). The receipt notices will bear a TSC receipt number beginning with "SRC." These cases will be processed by the TSC. The California Service Center will continue receiving I-129F forms.

The notice is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=405247ce85e50410VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

[Back to Top](#)

CBP Expands Global Entry to Republic of Korea, Germany, Qatar, United Kingdom

U.S. Customs and Border Protection published a Federal Register notice on August 9, 2013, expanding eligibility for participation in Global Entry to citizens from the Republic of Korea, Germany, Qatar, and the United Kingdom. Those participating in Korea's Smart Entry System (SES), Germany's Automated and Biometrics-Supported Border Controls (ABG) Plus, and select Qatar and United Kingdom citizens may be able to receive Global Entry benefits.

Additionally, the Federal Register notice announces the ability for current U.S. Global Entry members to apply for membership in the Republic of Korea's SES program, and for a limited number to apply for Germany's ABG Plus program.

Global Entry kiosks are available at 34 U.S. airports and 10 CBP preclearance locations in Ireland and Canada that serve 98 percent of all incoming air travelers. To become a member of Global Entry, interested individuals must fill out an online application, pay the \$100 application fee, undergo a background investigation, and complete an interview with a CBP officer at a Trusted Traveler enrollment center, which includes submission of fingerprints. Upon approval, membership is valid for five years.

CBP noted that Global Entry "allows pre-approved, low-risk travelers the ability to bypass traditional CBP screening and use an automated kiosk to complete their entry into the U.S. upon arrival."

The notice is available at http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/08092013_3.xml. The Federal Register notice is available at <https://www.federalregister.gov/articles/2013/08/09/2013-18775/expansion-of-global-entry-eligibility-to-certain-citizens-of-the-republic-of-korea-the-federal>.

[Back to Top](#)

ICE SEVP No Longer Mailing Notices of Action for SEVIS Fee Payments

U.S. Immigration and Customs Enforcement announced that as of July 31, 2013, the Student and Exchange Visitor Program (SEVP) is no longer mailing the Form I-797C, Notice of Action, for I-901 SEVIS (Student and Exchange Visitor Information System) fee payments. Payment confirmations the user can print from the fee website (<https://www.fmjfee.com/i901fee/index.jsp>) will replace the I-797C. ICE said that the printed confirmation "will serve as proof of payment for the I-901 SEVIS fee."

The paper I-901, which no longer contains a field for expedited receipt delivery, is available on the SEVP website at <http://www.ice.gov/doclib/sevis/pdf/I-901.pdf>. The notice is available at http://www.ice.gov/doclib/sevis/pdf/broadcast-msg_1307.pdf.

[Back to Top](#)

Eighth Circuit Finds Undocumented Workers Covered Under FLSA

The U.S. Court of Appeals for the Eighth Circuit recently found that employers may not exploit undocumented workers' status or profit from hiring such workers in violation of federal law.

For varying periods between June 2007 and March 2010, Elmer Lucas and five other undocumented workers toiled in the Jerusalem Café, some for less than minimum wage and all without receiving overtime wages. The workers sued the Café, and its then-owner Farid Azzeh and manager Adel Alazzeah, for willfully violating the Fair Labor Standards Act of 1938 (FLSA). A jury decided in the workers' favor, and the district court for the Western District of Missouri awarded the workers minimum and overtime wages, statutory liquidated damages, and legal fees. The district court denied the employers' motion for judgment as a matter of law, rejecting the argument that the workers, as noncitizens without work authorization, lacked standing to sue. The employers appealed, contending the FLSA does not apply to employers who illegally hire unauthorized workers.

The Eighth Circuit rejected the employer's argument, finding that the FLSA does not allow employers to exploit any employee's immigration status or to profit from hiring unauthorized workers in violation of federal law. The court acknowledged the principle that "breaking one law does not give license to ignore other generally applicable laws." Among other things, the court noted:

Congress's purposes in enacting the FLSA and the IRCA [Immigration Reform and Control Act of 1986] are in harmony. The IRCA unambiguously prohibits hiring unauthorized aliens, and the FLSA unambiguously requires that any unauthorized aliens—hired in violation of federal immigration law—be paid minimum and overtime wages. The IRCA and FLSA together promote dignified employment conditions for those working in this country, regardless of immigration status, while firmly discouraging the employment of individuals who lack work authorization. 'If an employer realizes that there will be no advantage under the' FLSA 'in preferring [unauthorized] aliens to legal resident workers, any incentive to hire such ... aliens is correspondingly lessened.' *Sure-Tan*, 467 U.S. at 893. Exempting unauthorized aliens from the FLSA would frustrate the purposes of the IRCA, for unauthorized workers' 'acceptance ... of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens.'" *De Canas v. Bica*, 424 U.S. 351, 356-57 (1976).

The opinion is available at <http://media.ca8.uscourts.gov/opndir/13/07/122170P.pdf>.

[Back to Top](#)

India Second Preference Visa Cut-Off Date Advances; Significant New India Demand Expected in Coming Months

The India second preference cut-off date has advanced by more than three years, to January 1, 2008. In July, it stood at September 1, 2004. The Department of State's Visa Bulletin for August 2013 notes that the advance is in an effort to fully use the numbers available under the overall employment second preference annual limit. "It is expected that such movement will generate a significant amount of new India demand during the coming months," the bulletin notes, adding that "some type of 'corrective' action will be required at some point during FY 2014 in an effort to maintain number use within the applicable annual limits. Such action would involve the establishment and retrogression of such cut-off dates, and could occur at any time."

The Visa Bulletin for August 2013 is available at http://www.travel.state.gov/visa/bulletin/bulletin_6028.html.

State Dept. Revises B-2 Nonimmigrant Reciprocity Schedule for Cuba

The Department of State has revised the visa reciprocity schedule for Cuba for B-2 nonimmigrants, changing the validity from 6 months to 60 months.

The updates are available at http://travel.state.gov/visa/fees/fees_3732.html. The full schedule of visa fees and validity periods is available at http://travel.state.gov/visa/fees/fees_3733.html.

[Back to Top](#)

New Publications and Items of Interest

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.

Latchi Delchev, a global mobility and immigration specialist for Boeing, called the guide "first-rate" and said the key strong point of the book is its "outstanding usability." She said she highly recommends the book and notes that it "is helpful even to seasoned professionals, as it provides a level of detail which is not easily gained from daily case management." Mireya Serra-Janer, head of European immigration for a multinational IT company, says she particularly likes "the fact that the [guide] focuses not just on each country's immigration law itself but also addresses related matters such as tax and social security issues." She noted that the India chapter "is particularly good. The immigration regulations in India have always been hard to understand. Having a clear explanation of the rules there helps us sort out many mobility challenges."

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.

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.

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/>.

[Back to Top](#)

Member News

The following ABIL members were selected by their peers for inclusion in the 20th Edition of *The Best Lawyers in America* in the practice area of Immigration Law:

- **Laura Danielson** (bio: <http://www.abil.com/lawyers/lawyers-danielson.cfm?c=US>)
- **Steve Garfinkel** (bio: <http://www.abil.com/lawyers/lawyers-garfinkel.cfm>)
- **Kenneth Ing** (bio: <http://www.abil.com/lawyers/lawyers-ing.cfm>)
- **H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>)
- **Charles Kuck** (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>)
- **Sharon Mehlman** (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>)
- **John Nahajzer** (bio: <http://www.abil.com/lawyers/lawyers-nahajzer.cfm>)
- **Linda Rahal** (bio: <http://www.abil.com/lawyers/lawyers-rahall.cfm?c=US>)
- **Bernard Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm?c=US>)
- **Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm>)

The following ABIL members were recognized as Top Rated Lawyers for 2013 by Martindale-Hubbell and American Lawyer Media:

- **Rami Fakhoury** (bio: <http://www.abil.com/lawyers/lawyers-fakhoury.cfm>)
- **Mark Ivener** (bio: <http://www.abil.com/lawyers/lawyers-ivener.cfm>)
- **Bernard Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm?c=US>)

Robert Loughran spoke on August 8, 2013, at the West Texas Legislative Summit on the campus of Angelo State University on "Proposed Legislative and Procedural Changes to Immigration Law."

Mr. Loughran presented on August 2, 2013, on "Potential Changes to Immigration Law in the Second Obama Term and Implications for Employers"; "Strategizing Short-Term Assignments: Limitations for Visitors"; and "How To Turn Your Immigration Program Into a Key Retention Tool" at the Austin Human Resource Management Association's annual "Playbook for Success" conference in Austin, Texas.

Mr. Loughran spoke on July 11, 2013, on nonimmigrant visas and immigration basics at the Texas Association of School Personnel Administrators' 2013 conference in Austin, Texas. The presentation included an overview of employment-based immigration and its three-step process, including a look at the employer's role in sponsoring visas. More information is available at <https://m360.taspa.org/event.aspx?eventID=73044>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has published a new blog entry. "How California's AB 1159 Will Hurt Immigration Lawyers and Their Clients: A New York Immigration Lawyer's Perspective" is available at <http://blog.cyrusmehta.com/2013/08/how-californias-ab-1159-will-hurt.html>.

Angelo Paparelli was quoted in the *Washington Post* on August 3, 2013, in an article on how some employers help immigrants naturalize. Mr. Paparelli noted that although high-tech companies frequently sponsor foreign workers for visas or green cards, most companies have not gotten involved in the naturalization process. He said their involvement usually ends at getting work authorization, unless the employee needs to travel extensively overseas or obtain a national security clearance only available to a U.S. citizen. The article is available at http://articles.washingtonpost.com/2013-08-03/business/41019324_1_citizen-angelo-paparelli-immigrants.

Mr. Paparelli authored a new blog entry. "Immigration Mystery Revealed: The Occult Process Behind Nonimmigrant Visa Waivers" is available at <http://ow.ly/nPOGm>.

Mr. Wolfsdorf co-authored a blog entry, "8 Issues That Must Be Addressed When Documenting Source of Funds for Chinese EB-5 Cases" is available at <http://connect.wolfsdorf.com/?p=1649>.

Mr. Wolfsdorf moderated a panel, "EB-5—\$500,000/\$1M Investor Green Cards" at a conference on August 14, 2013. The session delved into the EB-5 immigrant investor landscape with a particular focus on hot topics and tips, and how to avoid pitfalls.

Mr. Yale-Loehr was interviewed on August 14, 2013, on the Kojo Nnamdi show on WAMU about the EB-5 immigrant investor green card program. The EB-5 program is now part of Virginia's gubernatorial race because Terry McAuliffe, the Democratic candidate for governor, is linked to a car company that made use of those visas to solicit foreign investment. A link to the interview is at <http://thekojonnamdishow.org/shows/2013-08-13/investment-immigration-and-virginia-politics>.

[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

Visa application wait times for any post: 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 © 2013 Alliance of Business Immigration Lawyers. All rights reserved.

[Back to Top](#)