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Headlines:

Consular Visa/Passport System Crashes – The Department of State's Consular Consolidated Database, used to print and approve visas and passports, has been having significant problems, including outages. Backlogs have ensued.

August Visa Bulletin Shows Advances in China and 'Other Workers' EB-3 Preference Categories, India EB-2 Preference – Cut-off dates for the China-mainland born employment third preference, and third preference "Other Workers," have advanced for the month of August and could do so again for September. The India employment second preference cut-off date also has advanced very rapidly.

USCIS Issues Policy Memo on Adjudication of H-1B Petitions for Nursing Occupations – The memo, which supersedes prior guidance, assists USCIS officers in determining whether a nursing position meets the definition of a specialty occupation.

CBP Seeks Comments on International Travel Improvements, Closes Border Crossing – CBP seeks comments on proposed improvements in the entry process and airport-specific plans for international travelers to the United States. Also, as of August 21, 2014, CBP is closing the Jamieson Line, New York, border crossing in Burke.

ABIL Global: Peru – This article provides an update on visas in Peru for short-term assignments.

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Consular Visa/Passport System Crashes

According to reports, the Department of State's Consular Consolidated Database (CCD), used to print and approve visas and passports, has been having significant problems, including outages, since July 19, 2014. The CCD is back up and running in a limited capacity, the Department said, but the Bureau of Consular Affairs is still working through the resulting backlogs. The problems are worldwide and not confined to any particular category.

Marie Harf, deputy spokesperson, said, "We apologize to applicants and recognize this may cause hardship to applicants waiting on visas and passports." The database is one of the largest in the world with 100 million visa case records.

At a press briefing on July 24, Ms. Hart noted, "We do not believe there was any malicious action or anything untoward here. This was a technical issue, and again, we are working to correct it and should be fully operational again soon. We're operating at a little bit of limited capacity right now, though, so we're trying not to overload the system."

The press briefing transcript, which includes related information among other topics, is available at <http://www.state.gov/r/pa/prs/dpb/2014/07/229752.htm#DEPARTMENT>.

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August Visa Bulletin Shows Advances in China and 'Other Workers' EB-3 Preference Categories, India EB-2 Preference

The Department of State's Visa Bulletin for August 2014 notes that cut-off dates for the China-mainland born employment third preference, and third preference "Other Workers," categories have advanced for the month of August and could do so again for September.

The bulletin notes two reasons for this advance: (1) a decline during the past two months in heavy demand by applicants with priority dates significantly (years) earlier than the previous cut-off date, and (2) declining number use in the family preferences during May and June, combined with updated estimates of such number use through the end of the fiscal year. These developments have resulted in the availability of several hundred numbers for use in the China-mainland born employment third preference category.

During the past two months, the India employment second preference cut-off date also has advanced very rapidly based on the projected availability of "otherwise unused" numbers under the worldwide preference limit. The bulletin notes that it must not be assumed that this cut-off date will continue to advance at the same pace during the coming months. "A cut-off date does not mean that everyone with a priority date before such cut-off date has already been processed to conclusion. It remains to be seen how heavy the demand for visa numbers by applicants will be in the coming months, and what the priority dates of such applicants may be," the bulletin states. Heavy demand by applicants with priority dates significantly earlier than the established cut-off date is expected to materialize within the next several months, the bulletin notes, at which time the cut-off date is likely to retrogress significantly.

The Visa Bulletin for August 2014 is available at <http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2014/visa-bulletin-for-august-2014.html>.

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USCIS Issues Policy Memo on Adjudication of H-1B Petitions for Nursing Occupations

On July 11, 2014, U.S. Citizenship and Immigration Services (USCIS) issued a policy memorandum providing guidance on the adjudication of H-1B petitions for nursing positions. The memo assists USCIS officers in determining whether a nursing position meets the definition of a specialty occupation. The memo states that it supersedes any prior guidance on the subject and is binding on all USCIS employees unless specifically exempted. USCIS noted that about 12 years have passed since USCIS issued guidance on determining whether a nursing position is a specialty occupation. USCIS decided it was time to update this guidance.

As background, the memo notes that the H-1B visa classification allows a U.S. employer to petition for a temporary worker in a specialty occupation. Most registered nurse (RN) positions do not qualify as specialty occupations because they do not normally require a U.S. bachelor's or higher degree in nursing (or its equivalent) as the minimum for entry into those positions. In some situations, however, a petitioner may be able to show that a nursing position qualifies as a specialty occupation, the memo states. For example, certain advanced practice registered nurse (APRN) positions normally require a U.S. bachelor's or higher degree in a specialty as the minimum for entry.

The updated guidance notes that the private sector "is increasingly showing a preference for more highly educated nurses." Among other influences, the American Nurses Credentialing Center's (ANCC) Magnet Recognition Program recognizes health-care organizations that advance nursing excellence and leadership. Achieving Magnet status indicates that an institution's nursing workforce has attained a number of high standards, with an emphasis on bachelor's degrees.

The memo lists some of the nursing positions that may qualify as specialty occupations. The memo notes that having a bachelor's degree is not, by itself, sufficient to qualify for H-1B classification. A critical factor, the memo states, is whether a bachelor's or higher degree is normally required for the position. A beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. USCIS noted that it must "follow long-standing legal standards and determine whether the proffered position qualifies as a specialty occupation, and whether a beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed."

Among other things, the memo notes that if a state requires at least a bachelor's degree in nursing to obtain a nursing license, a registered nurse position in that state would generally be considered a specialty occupation. No state currently requires a bachelor's degree in nursing for licensure, the memo notes.

The memo outlines the evidence needed to establish that a position qualifies as a specialty occupation under the "preponderance of the evidence" standard. Among other things, documentation submitted by petitioners often includes the nature of the petitioner's business; industry practices; a detailed description of the duties to be performed; advanced certification requirements; ANCC "Magnet Recognized" status; clinical experience requirements; training in the specialty requirements; and wage rate relative to others within the occupation.

USCIS recognizes the Department of Labor's *Occupational Outlook Handbook* (OOH) as an authoritative source on duties and educational requirements. However, the memo notes that it is not always determinative and other authoritative and/or persuasive sources provided by the petitioner will also be considered.

The new guidance memo is available at http://www.uscis.gov/sites/default/files/files/natedocuments/2014-0711_EIR_Nursing_PM_Effective.pdf. Information on registered nurses is available at

<http://www.bls.gov/ooh/healthcare/registered-nurses.htm>. The guidance indicates that advanced practice nursing positions include nurse anesthetists, nurse midwives, and nurse practitioners. Further information on these specialties is available at <http://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm>.

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CBP Seeks Comments on International Travel Improvements, Closes Border Crossing

The following are recent developments from the U.S. Customs and Border Patrol (CBP):

International travel improvements. CBP seeks comments by August 15, 2014, on proposed improvements in the entry process and airport-specific plans for international travelers to the United States. On May 22, 2014, President Obama directed the Secretaries of Commerce and Homeland Security to lead an interagency team over the next 120 days, in close partnership with industry, to develop a national goal and airport-specific plans to enhance the entry process for international travelers to the United States. The measures the administration is taking to expedite the arrivals process are intended to enhance security by focusing officer time on the highest-risk passengers and facilitating the process for the vast majority of legitimate travelers. The notice seeks comments on a list of questions. The questions ask for suggestions for improvement in the international arrival experience, technology, passport and baggage inspections, and related issues.

Jamieson Line, New York, border crossing closes. As of August 21, 2014, CBP is closing the Jamieson Line, New York, border crossing in Burke. CBP said the primary reason was the Canada Border Services Agency's closing of the adjacent port of entry in Québec, Canada. Other factors included very limited usage (less than six privately owned vehicles per day); alternative ports located at Trout River, New York, and Chateaugay, New York; lack of sufficient infrastructure at the border; and the cost of renovations if the port were to remain open.

The Federal Register notice announcing the proposed improvements in international travel is available at <https://www.federalregister.gov/articles/2014/07/22/2014-17215/opportunity-to-comment-on-presidential-memorandum-calling-for-improving-the-entry-process-and>. The Federal Register notice announcing the closure is available at <https://www.federalregister.gov/articles/2014/07/22/2014-17190/closing-of-the-jamieson-line-new-york-border-crossing#h-7>.

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ABIL Global: Peru

This article provides an update on visas in Peru for short-term assignments.

The Peruvian immigration authority (MIGRACIONES) has no specific visa that may be obtained quickly for short-term assignments. When technical workers, for example, are coming to work in Peru, they must obtain work permits, which take approximately 30 to 45 days. The work permit may be either a temporary worker visa (for foreign workers on a local company's payroll) or an appointed worker temporary visa (for workers who are not staff of the local company).

Appointed workers are those who come to Peru with no intention of establishing a residence to carry out labor activities assigned by their foreign employers for limited and defined terms to perform specific tasks or duties, or to perform work that requires professional, commercial, or technical knowledge or any other type of highly specialized knowledge. This category applies to

consultants or advisors. Although they are paid by a company abroad, they must pay taxes in Peru.

To obtain this type of visa (*Visa Temporal de Trabajador Designado*), the following documents must be legalized by a Peruvian consulate abroad or certified by apostille abroad:

- A Service Agreement or Technical Service Agreement (TSA) executed by the foreign entity that will provide the services (Provider) and the local entity receiving the services (Beneficiary Company).
- An appointment letter issued by the Provider appointing the foreign consultant who will come to Peru under the Service Agreement.
- A letter from the Beneficiary Company confirming that it will be the recipient of the services that the foreign consultant will provide.
- A Certificate of Specialization of the foreign consultant issued by the Provider.
- The assignee's original passport in the case of in-country processing before MICRACIONES. If processing before a consul abroad, then a copy of the passport will be duly legalized by the Peruvian consulate abroad or certified by apostille and the consultant will remain abroad for processing.
- Other documentation of the assignee and the local company as required.

Translations of the documents must be made in Peru by an official public translator.

The processing time from the date of filing of the application with all required documents is 30 working days for "Obtaining Visa Proceeding," and 60 working days for in-country processing, according to the rules. At present, however, in-country processing is taking less time.

The holder of this type of visa cannot open a bank account in Peru, obtain a credit card, or obtain a driver's license, because he or she is not considered a resident.

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New Publications and Items of Interest

Employee-focused USCIS stakeholder engagement. U.S. Citizenship and Immigration Services will hold an employee-focused stakeholder engagement on Thursday, August 7, 2014, from 1:30 to 3 p.m. (Eastern). USCIS officials will provide an overview of USCIS programs and resources useful to workers, immigrants, and advocates. Topics will include employee rights and responsibilities in the E-Verify and Form I-9 verification processes; Deferred Action for Childhood Arrivals; unauthorized practice of immigration law; and USCIS multilingual materials and outreach. USCIS representatives will also answer questions.

For more information or to register, see

http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/Final_used-engagement_invite.pdf.

CRS report on the undocumented in the United States. The Congressional Research Service has released a report, "Unauthorized Aliens in the United States: Policy Discussion." The report, which includes statistics and a discussion of various legal options, is available at <http://fas.org/sgp/crs/homesec/R41207.pdf>.

Spanish-language E-Verify website redesigned. The Spanish-language version of the E-Verify website has been redesigned to match the upgraded E-Verify English website released in October 2013. The E-Verify Spanish website updates include new features, graphics, and more "plain language" content. New Customer Support and Federal Contractors sections have been added. E-Verify recommends that interested parties subscribe to the website to receive an alert when new information is posted to the "What's New" page. E-Verify also offers monthly webinars in Spanish.

The E-Verify Spanish website is available at <http://www.uscis.gov/es/e-verify>. The Foreign Language Resources page at <http://www.uscis.gov/e-verify/publications/foreign-language-resources> lists links to materials available in Spanish.

The 2014 edition of the *Global Business Immigration Practice Guide* has been released by LexisNexis. Dozens of members of the Alliance of Business Immigration Lawyers (ABIL) co-authored and edited the guide, which is a one-stop resource for dealing with questions related to business immigration issues in immigration hotspots around the world.

The 2014 edition adds a chapter on Singapore. Other chapters cover Australia, Belgium, Brazil, Canada, China, Costa Rica, the European Union, France, Germany, Hong Kong, India, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Nigeria, Russia, South Africa, Spain, Switzerland, Turkey, the United Kingdom, and the United States.

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.

The list price is \$299, but discounts are available. Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584; or go to <http://www.lexisnexis.com/store/promotions/promolanding.jsp?couponId=GLOBAL15>.

[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

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) presented to the University of Texas Club League of Business Leaders Luncheon on July 14, 2014. His presentation on immigration reform outlined current problems in the immigration system as well as developments in the unaccompanied minor crisis on the Texas border.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has authored a new blog entry. "Unaccompanied Child Migrants to the United States: Drop in the Bucket and So Much Hype" is available at <http://blog.cyrusmehta.com/2014/07/unaccompanied-child-migrants-to-united.html>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted on time.com. In an article on executive actions by President Obama, Mr. Yale-Loehr noted, "As a purely legal matter, the President does have wide discretion when it comes to immigration. Just as DACA [Deferred Action for Childhood Arrivals] was within the purview of the president's executive authority on immigration, so too would expanding DACA fall within the president's inherent immigration authority." The article is available at <http://time.com/3028637/obama-eyes-major-immigration-move/>.

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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

Visa application wait times for any post: 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.

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