



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

- **1. DOS Discusses Upcoming Employment Visa Number Priority Cut-Off Dates** - It is unlikely that any cut-off dates will be set in the employment first preference during the coming months.
- **2. USCIS Issues Reminder on New Fees, Q&A on New Fee Schedule; Makes Corrections, Clarifications** - The new fee schedule for immigration-related applications and petitions took effect on November 23, 2010.
- **3. Do's and Don'ts, Tips on SSN "No-Matches" Released** - The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices issued do's and don'ts for employers and employees on Social Security Number "no-matches"
- **4. USCIS Revises I-129 Petition Form; Imposes New Export Control Certification** - The new version includes fee increases.
- **5. DOL Hits H-2A Employer With \$1.3 Million in Back Wages, \$136,500 in Fines** - The Department of Labor's Wage and Hour Division assessed the fines against a Georgia company for violating provisions of the H-2A temporary agricultural worker program.
- **6. ABIL Global: Belgian Corporate Immigration** - A fast-track work permit can be obtained for, among others, highly skilled personnel and executive-level personnel earning a yearly gross salary exceeding a threshold, adapted on a yearly basis.

Also in this issue:

[New Publications and Items of Interest](#)

[Member News](#)

[Government Agency Links](#)

Details...

1. DOS Discusses Upcoming Employment Visa Number Priority Cut-Off Dates

The Department of State's Visa Bulletin for December 2010 notes that it is unlikely that any cut-off dates will be set in the employment first preference during the coming months. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the second

preference category. Cut-off dates continue to apply to the China and India employment second preference categories due to heavy demand.

Based on current indications of demand, the Department said the "best case scenarios" for cut-off date movement each month are:

Employment Second:

- China: none to two weeks
- India: no movement

Employment Third:

- Worldwide: three to six weeks
- China: one to three weeks
- India: none to two weeks
- Mexico: although continued forward movement is expected, no specific projections are possible now
- Philippines: three to six weeks

The Department noted that the above ranges are estimates based on current demand patterns, and will be subject to possible fluctuations during the coming months.

The December 2010 Visa Bulletin is available at http://travel.state.gov/visa/bulletin/bulletin_5197.html.

[Back to Top](#)

2. USCIS Issues Q&A on New Fee Schedule; Makes Corrections, Clarifications

The new [fee schedule](#) for immigration-related applications and petitions took effect on November 23, 2010. Applications or petitions postmarked or otherwise filed on or after this date must include the new fee or they will be rejected.

USCIS published the new fee schedule in the Federal Register on September 24, 2010, following a review of public comments received after publication of the proposed rule this past summer. The new fee schedule increases application and petition fees by an average of about 10 percent but does not increase the naturalization application fee.

USCIS issued a related Q&A that notes, among other things, that if mailed through a courier service, the date the item is entered into the courier's service system is considered the postmark date.

Meanwhile, the American Immigration Lawyers Association (AILA) reported on November 19, 2010, that USCIS has confirmed that a receipt notice from a courier service or overnight mailing service will be considered a "postmark" for fee determination purposes.

USCIS has also corrected the new fee for refugee travel documents. As discussed in the preamble to the final rule, the agency had determined that the fee for a refugee travel document for an adult age 16 or older should match the fee charged for the issuance of a passport to a U.S. citizen (\$110 plus a \$25 execution fee). Accordingly, USCIS intended to reduce the fee for filing an Application for Travel Document, Form I-131, for refugees to \$135 for an adult age 16 or older. The final rule inadvertently listed a fee of \$165 for the I-131 refugee travel document for an adult age 16 or older. No other changes were made under this correction.

The Q&A is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=67b73dc5cb93b210VgnVCM100000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD>. The

USCIS alert is available at

<http://www.aila.org/content/default.aspx?docid=33665>. The correction

notice is available at <http://edocket.access.gpo.gov/2010/pdf/2010-28719.pdf>. A table listing the old and new fees is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=92c5e116de9eb210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The final rule is available at <http://edocket.access.gpo.gov/2010/pdf/2010-23725.pdf>.

[Back to Top](#)

3. Do's and Don'ts, Tips on SSN "No-Matches" Released

The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices recently issued the following do's and don'ts for employers on Social Security Number "no-match" letters. These are letters issued by the Social Security Administration (SSA) to employers stating that information supplied to the SSA does not match SSA records.

DO:

1. Recognize that name/SSN no-matches can result because of simple administrative errors.

2. Check the reported no-match information against your personnel records.
3. Inform the employee of the no-match notice.
4. Ask the employee to confirm his/her name/SSN reflected in your personnel records.
5. Advise the employee to contact the SSA to correct and/or update his or her SSA records.
6. Give the employee a reasonable period of time to address a reported no-match with the local SSA office.
7. Follow the same procedures for all employees regardless of citizenship status or national origin.
8. Periodically meet with or otherwise contact the employee to learn and document the status of the employee's efforts to address and resolve the no-match.
9. Submit any employer or employee corrections to the SSA.

DON'T:

1. Assume the no-match conveys information regarding the employee's immigration status or actual work authority.
2. Use the receipt of a no-match notice alone as a basis to terminate, suspend or take other adverse action against the employee.
3. Attempt to immediately reverify the employee's employment eligibility by requesting the completion of a new Form I-9 based solely on the no-match notice.
4. Follow different procedures for different classes of employees based on national origin or citizenship status.
5. Require the employee to produce specific documents to address the no-match.
6. Ask the employee to provide a written report of SSA verification.

The document is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/Employers.pdf>. A

similar document for employees is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/Employees.pdf>. A

related FAQ is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/FAQs.pdf>.

Also, the National Employment Law Project issued "Top 10 Tips for Employers" on Social Security no-match letters. The tips are available at http://www.nilc.org/immsemplymnt/ssa-nm_toolkit/top_ten_tips_11-07-07.pdf, and are linked to a National Immigration Law Center "No-Match Letter Toolkit" available at http://www.nilc.org/immsemplymnt/ssa-nm_toolkit/index.htm.

[Back to Top](#)

4. USCIS Revises I-129 Petition Form; Imposes New Export Control Certification

U.S. Citizenship and Immigration Services (USCIS) has issued a new version of the Petition for a Nonimmigrant Worker (Form I-129) to include the new fee increases. USCIS will accept previous versions of the form until December 22, 2010. Beginning on December 23, 2010, USCIS will only accept the revised form and will reject previous versions.

Among other changes, the revised I-129 form requires employers who are sponsoring foreign nationals for certain work visas to certify that they have made an export licensing determination regarding each employee sponsored. More specifically, employers must certify that they have evaluated the applicable export control regulations and have determined whether the employee will require an export license to perform the job.

Under the Department of Commerce's export control regulations, the release of technical information to a foreign national is deemed an "export" to that person's country of origin. That remains true even if the foreign national is lawfully employed. Compliance with this "deemed export rule" can be complex. Consult your Alliance of Business Immigration Lawyers attorney to determine how to comply.

Instructions and a link to the revised form (<http://www.uscis.gov/files/form/i-129.pdf>) are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=f56e4154d7b3d010VgnVCM10000048f3d6a1RCRD>.

[Back to Top](#)

5. DOL Hits H-2A Employer With \$1.3 Million in Back Wages, \$136,500 in Fines

The Department of Labor's Wage and Hour Division (WHD) is assessing J&R Baker Farms LLC of Ellenton, Georgia, \$1,311,644 in back wages owed to 244 workers and \$136,500 in fines for violating provisions of the H-2A temporary agricultural worker program.

WHD found that the vegetable farm allegedly failed to provide at least 75 percent of the hours promised in the work contract. WHD is asking an administrative law judge to order the farm to pay \$1,311,644 in back wages to 148 U.S. workers and 96 H-2A workers and pay a fine of \$122,000.

The investigation also discovered that the farm failed to provide a copy of the H-2A work contract at the time of recruitment to 29 U.S. workers who

performed the same type of work as the H-2A workers. The Department is recommending a fine of \$14,500 for that offense.

A press release announcing the findings is available at <http://www.dol.gov/opa/media/press/whd/WHD20101532.htm>.

[Back to Top](#)

6. ABIL Global: Belgian Corporate Immigration

Since September 2009 when the last update on Belgian corporate immigration was published in the *ABIL Immigration Insider*, Belgian regulations regarding corporate immigration have not been subject to many changes, and the global economic crisis has not led to a change in Belgian corporate immigration legislation.

The rules on the most common work permit, particularly the fast-track work permit B for non EEA¹ highly skilled and executive-level personnel, are summarized below.

1. A fast-track work permit (meaning no resident labor is required) can still be obtained for, among others, highly skilled personnel and executive-level personnel earning a yearly gross salary exceeding a threshold, adapted on a yearly basis:
 - To be considered highly skilled, a foreign employee must have received higher education resulting in a degree, and the yearly gross salary must exceed EUR 36,355 (amount for 2010)/EUR 36,604 (amount for 2011);
 - Executive-level is legally² defined as "*the people in charge of the daily management of the company, who are authorised to represent and to bind the employer, as well as personnel, immediately under the authority of the people in charge of daily management, if they also carry out tasks of daily management.*" The yearly gross salary must exceed EUR 60,654 (amount for 2010)/EUR 61,071 (amount for 2011).

¹ EEA = European Economic Area, consisting of the 27 Member States of the European Union, Iceland, Liechtenstein and Norway. EEA nationals (apart from, until December 31, 2011, Bulgarian and Romanian nationals) are exempt: they can work without a Belgian work permit.

² Act of 4 December 2007 with regard to the labor representative elections in 2008.

This fast-track work permit, valid for one year and renewable, is available for employees who meet the above conditions, regardless of whether they are seconded.

It is important to determine what is considered salary:

- Pursuant to Belgian labor law rules, all amounts (e.g., gross wages, commissions, bonuses, premium at the end of the year, single and double holiday pay) paid in consideration for the employee's work are considered salary;
- Cost-of-living allowances (COLA) (allowances to compensate costs of life in Belgium and/or allowances that aim to reimburse exceptional disbursements, not foreseeable in the employment contract, such as moving costs or school costs) are not considered salary because they do not enrich the employee.

The processing time may vary depending on the place of employment in Belgium (Brussels, Flanders or Wallonia). However, the fast-track work permit can be processed within a short period. Unless the authorities decide they need additional information and/or documentation, the average processing time is two to three weeks. There are no filing fees.

2. Dependents can join a non-EEA work permit holder in Belgium. Spouses and children under 18 are entitled to residence in Belgium. Common-law partners of work permit holders also may be eligible to join their partner in Belgium:

- A "registered partnership, equivalent to marriage in Belgium" entitles a partner to residence in Belgium. The age threshold is 21 or, exceptionally, 18 years. At present, only registered partnerships from Denmark, Finland, Germany, Iceland, Norway, Sweden, and the United Kingdom qualify;
- Non-EEA common law partners may also cohabit in Belgium provided (i) they enter into a registered partnership in Belgium, (ii) they have a "duly documented durable and stable relationship" for at least one year, (iii) they are both older than 21 (or 18) years, and (iv) they are both neither married nor involved in a durable relationship with another person.

The durability/stability of a relationship may be established as follows:

- The partners can prove they have been living together, prior to the application, for at least one year (i) uninterrupted, (ii) legally, and (iii) in Belgium or abroad; or

- The partners can prove they (i) have known one another for at least one year, (ii) have had frequent contact (by phone, mail, or e-mail), and (iii) have met at least three times before filing the application and that these meetings, all together, took at least 45 days; or
- The partners have a child together.

Proof of sufficient housing in Belgium (registered lease contract or proof of ownership of the house) as well as comprehensive health insurance are required to be entitled to residence as a non-EEA common-law partner.

3. If a common-law partner is entitled to join his or her partner who holds a Belgian work permit, he or she is eligible for a fast-track work permit, as are spouses.

As a matter of fact, a spouse of a non-EEA national who holds a Belgian work permit is eligible for a fast-track work permit. Circular Letter of 17 December 2008 clarifies that the reference to "spouse" also includes "registered partners," who are entitled to reside in Belgium.

[Back to Top](#)

New Publications and Items of Interest

Foreign student enrollment increases; mostly from China. The Institute of International Education, with support from the Department of State, released *Open Doors Report on International Educational Exchange 2010*, which notes that foreign student enrollments in the U.S. increased by 3 percent, to 690,923 students, during the 2009-2010 academic year. This year's growth was primarily driven by a 30% increase in Chinese student enrollment in the United States to a total of nearly 128,000 students, or more than 18% of the total international student population. This makes China the leading sending country, the report said. Students from India increased by 2% to a total of nearly 105,000. Indian students represent 15% of all international students in U.S. higher education. The most notable decline was in Japanese students.

California was the top host state, and New York City was the top host city. Business and management, and engineering, remained the top two fields of study.

NAFSA: Association of International Educators and several other entities recently conducted a "snapshot" online survey on related issues. The survey asked educators to indicate whether they had seen a change in new enrollments from selected sending countries. The results indicate that new enrollments from China are increasing significantly, with 58% of institutions reporting increases and only 14% reporting declines (the rest reported level enrollments).

A press release that includes a discussion of the results, and related links, is available at <http://www.iie.org/en/Who-We-Are/News-and-Events/Press-Center/Press-Releases/2010/2010-11-15-Open-Doors-International-Students-In-The-US>.

[Back to Top](#)

Member News

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) was interviewed on Fox Atlanta's Immigration Hour, on November 15, 2010. Mr. Kuck noted that states can't afford to solve immigration issues on their own. A video of the interview is available at http://www.myfoxatlanta.com/dpp/news/newsmaker-georgia-immigration-reform-111510?CMP=201011_emailshare.

Sharon Mehlman (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>) is speaking on December 1, 2010, at the 13th Annual American Immigration Lawyers Association's New York Chapter Symposium in New York City. The panel is "RFEs – Engaging the Service Centers."

Cyrus Mehta's (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) latest blog entry, "BALCA's New Decision in *Denzil Gunnels* Opens the Door to Submit More Evidence Following a Labor Certification Denial," is available at <http://cyrusmehta.blogspot.com/2010/11/balcas-new-decision-in-denzil-gunnels.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) recently spoke, along with Immigration Judge Denise Slavin, at the Berkeley Institute of Journalism on the issue of labor shortages and skills mismatches, including the "misguided approach to labor market testing adopted by the DOL requiring the employer to prove a negative" (the unavailability of able, qualified, and willing U.S. workers) and the need instead for the Department of Labor to declare additional labor shortage occupations on Schedule A of its PERM regulations. Information on the seminar, "The Changing Face of America: Going Beyond the Rhetoric on Immigration," is available at <http://journalism.berkeley.edu/conf/2010/immigration/>.

Mr. Paparelli also released two new blog entries: "Do Touch the Immigration Junk - And Turn It Into DREAMs," available at <http://www.nationofimmigrators.com/?p=370>, and "Two Sides of Immigration Exceptionalism: Of WikiLeaks and DREAMers," available at <http://www.nationofimmigrators.com/?p=371>.

Bernard Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) was quoted in the *Wall Street Journal* on November 22, 2010, in an article about the diversity visa lottery. "It shows that the U.S. immigration system doesn't make sense," he said. "We are allocating visas based on luck instead of knowledge."

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm>) spoke at the National Press Club in Washington, DC, on November 15, 2010, about the prospects for immigration reform in the next two years. A podcast of the talk is available at <http://www.lexisnexis.com/COMMUNITY/EMERGINGISSUES/blogs/focusonimmigration/archive/2010/11/19/mired-in-immigration-misery-can-the-brand-new-congress-create-fair-law.aspx>.

[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

[Back to Top](#)

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 150 member attorneys and their 400+ staff. Corporate counsel, human resource professionals, in-house immigration managers and other corporate decision-makers turn to ABIL attorneys 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:
<http://www.abil.com/>.*

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[Back to Top](#)
