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ICE Issues Memo on Next Steps in Prosecutorial Discretion and Immigration Enforcement – Over the course of six weeks, an intra-agency team of attorneys will review cases on the non-detained dockets in the Denver and Baltimore immigration courts.

State Dept. Announces Forward Movement in China-Mainland Born and India EB-2 Categories – USCIS reported that the rate of new filings is currently far below that which they had anticipated, prompting an aggressive movement of the cut-off date for January and possibly beyond.

Labor Dept. Issues Round 4 FAQ on H-2A Final Rule – Among other things, the FAQ notes that the results of a background check or drug test may not be used to automatically reject a U.S. worker for agricultural work.

ABIL Issues Tips for Travelers – For those who are planning international trips soon, ABIL offers tips.

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State Dept. Implements Fee Increases for Certain Consular Services

On December 6, 2011, the Department of State will implement changes to the Schedule of Fees for Consular Services. Affected services include nonimmigrant visas and border crossing cards.

The final rule on fees changes from \$131 to \$140 the fee charged for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new tiers of the application fee for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas. Finally, the rule increases the BCC fee charged to Mexican citizens under age 15 who apply in Mexico and whose parent or guardian already has a BCC or is applying for one, from \$13 to \$14.

The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-12-06/pdf/2011-31175.pdf>.

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Sen. Grassley Puts 'Hold' on Per-Country Limits Legislation

Despite the fact that on November 29, 2011, the U.S. House of Representatives voted 389-15 in favor of ending per-country numerical limits (caps) on employment-based visas and the Senate was expected to take action also, Sen. Charles Grassley (R-Iowa) has placed a hold on the bill.

Sen. Grassley said that he has "concerns about the impact of this bill on future immigration flows, and am concerned that it does nothing to better protect Americans at home who seek high-skilled jobs during this time of record high unemployment." The bill would eliminate a current provision stating that employment-based visas issued cannot exceed seven percent of the total for any one country. The measure was expected to benefit skilled Indian and Chinese workers and high-tech companies in the United States.

A hold is an informal practice and the majority leader need not follow it, but a hold indicates that the opposing senator may filibuster any motion to proceed.

For the text of the House-passed bill, H.R. 3012, see <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3012rh/pdf/BILLS-112hr3012rh.pdf>. The companion Senate bill, introduced by Sen. Mike Lee (R-Utah), is S. 1857.

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Senate Judiciary Committee Holds Hearing on EB-5 Regional Center Program

The Senate Judiciary Committee held a hearing on December 7, 2011, on "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities." Witnesses included Bill Stenger, President and CEO, Jay Peak Resort; David North, Fellow, Center for Immigration Studies; and Robert C. Divine, Shareholder, Baker, Donelson, Bearman Caldwell & Berkowitz, P.C. Sens. Patrick Leahy (D-VT) and Charles Schumer (D-NY) issued related statements.

Sen. Leahy noted that current authorization for the EB-5 regional center pilot program, which has been in existence for 18 years, expires at the end of September 2012. He advocated enactment of permanent authorization legislation that he introduced in March 2011 (S. 642). Sen. Leahy noted that in 2011, the EB-5 program is expected to have created an estimated 25,000 jobs and provided direct investments in U.S. communities of \$1.25 billion. He said that if the full number of visas allocated to the program are used, based on investment and job creation requirements, the program "has the potential to create or preserve 100,000 jobs per year, with contributions of \$5 billion in foreign capital investment. And these benefits come at no cost to American taxpayers."

Sen. Leahy noted that in addition to administrative efforts by U.S. Citizenship and Immigration Services (USCIS), he has been working for months with interested parties and USCIS "to put together a legislative framework to make significant improvements to the overall program." He said the framework would "provide USCIS with additional authorities to ensure that this important program maintains the highest level of integrity and efficiency." He added, "It is time for a permanent authorization to provide investors with the certainty and predictability they need to invest and conduct business with confidence."

Sen. Schumer outlined several examples of USCIS-approved "job-creating" regional center projects in New York:

- Steiner Studios, a film production studio in Brooklyn, which received \$65 million in EB-5 funding to assist with expansion;
- Global Vascular Institute, on the Buffalo Niagara Medical Campus, where EB-5 funding helped support development of the new institute, creating jobs and improving health care access for the people of Buffalo;
- Acadia Realty Trust, which received \$200 million in EB-5 funding to assist with the construction of the City Point project in downtown Brooklyn;
- SJM Company, which received \$72 million in EB-5 funding to assist with the redevelopment of the George Washington Bridge Bus Station; and
- Dermot Company and Harry's Restaurant, which received \$96 million in EB-5 funding to assist with the redevelopment of the Battery Maritime Building and Pier A in Lower Manhattan.

Sen. Schumer said he was proud to co-sponsor S. 642 with Sen. Leahy to permanently authorize the program.

Mr. Stenger testified that the region where Jay Peak Resort is located has the most significant unemployment and economic challenge of any region in Vermont. He said that since 2005, Jay Peak has developed several EB-5 projects, creating over 2,000 jobs in the region, and that the EB-5 investments are expected to create that many jobs again over the next two years. "We are seeing this employment creation at Jay Peak and our surrounding communities in this terribly troubled economy solely because of the EB-5 foreign investor program," he said.

The statements of Sens. Leahy and Schumer, along with the witnesses' written testimony, are available at http://www.judiciary.senate.gov/hearings/testimony.cfm?id=9b6937d5e931a0b792d258d9b365f21d&wit_id=9b6937d5e931a0b792d258d9b365f21d-0-5.

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USCIS Seeks Business Experts for 'Entrepreneurs in Residence' Initiative

U.S. Citizenship and Immigration Services (USCIS) has begun accepting applications from business experts to serve on its "Entrepreneurs in Residence" tactical team. The purpose of the tactical team, USCIS said, is "to bring business experts in-house to work alongside USCIS staff to ensure that current immigration laws' potential to attract foreign entrepreneurial talent is fully realized. The tactical team will help us develop policy guidance and training tools that support our decision-makers."

USCIS said it will hire business experts via the Department of Homeland Security's Loaned Executive Program. The application period ends on December 31, 2011.

The job announcement is available at <http://www.dhs.gov/xabout/careers/loaned-executive-business-expert-uscis.shtm>. Information on Entrepreneurs in Residence is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bd537158910e2310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. Information on the Loaned Executive Program is available at http://www.dhs.gov/xabout/careers/gc_1298902132679.shtm.

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Transition Period for N-Form Processing Changes Ends

U.S. Citizenship and Immigration Services (USCIS) has centralized intake of Forms N-336, N-600, and N-600K to the Phoenix Lockbox facility. The Dallas Lockbox facility will handle the Form N-300. USCIS said this change "streamlines the way forms are processed, accelerates the collection and deposit of fees and improves the consistency of our intake process."

USCIS issued a reminder noting that affected forms received at local and district offices after December 2, 2011, will no longer be forwarded to the appropriate USCIS Lockbox facility. Beginning December 5, affected forms received locally will be returned to the individual with instructions on how to re-file at a designated USCIS Lockbox facility.

The reminder is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b895ced0371f3310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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White House Announces U.S.-Canada 'Beyond the Border' and 'Regulatory Cooperation Council' Action Plans

On December 7, 2011, the White House announced details of the Beyond the Border (BTB) and Regulatory Cooperation Council (RCC) Action Plans. The BTB Action plan sets joint priorities between the United States and Canada for achieving a new long-term security partnership, including (1) addressing threats early; (2) promoting trade facilitation, economic growth, and jobs; (3) strengthening cross-border law enforcement; and (4) protecting shared critical infrastructure.

The BTB Executive Steering Committee (ESC) will hold annual meetings to advance shared border management efforts and identify areas for further progress. To ensure continued transparency and accountability, the BTB ESC will generate a joint, public "Beyond the Border Implementation Report" to summarize BTB cooperation annually. Implementation of the BTB Action Plan will be carried out in close consultation with interested stakeholders through

appropriate lead agencies and will be subject to normal regulatory, legislative, and appropriations processes.

The BTB Action Plan includes, among other things, developing harmonized commercial passenger and cargo screening processes that will expedite the secure passage of people and goods; enhancing trusted traveler and trader programs "by aligning requirements, enhancing member benefits, and providing applicants with the opportunity to submit one application to be enrolled in multiple programs." The White House said the U.S. and Canada "strive to facilitate business travel across our border, provide a single "window" for importers to submit information needed to comply with customs and other regulations, promote supply chain connectivity by harmonizing low-value shipment processes, and increase public transparency regarding application of border fees, with a view to providing greater accountability for costs to businesses and promoting trade competitiveness."

The White House also said it "will enhance and expand the work of the twenty land border Binational Port Operations Committees established in 2011, coordinate our border infrastructure investment at key border crossings and at small and remote ports of entry to, where possible, align hours of operation and co-manage facilities."

Regarding the RCC Action Plan, the White House said that "greater alignment and better mutual reliance on our regulatory approaches will lead to lower costs for consumers and businesses, create more efficient supply chains, increase trade and investment, generate new export opportunities, and create jobs on both sides of the border."

The announcement is available at <http://www.whitehouse.gov/the-press-office/2011/12/07/fact-sheet-us-canada-beyond-border-and-regulatory-cooperation-council-in>. The BTB Action Plan is available at http://www.whitehouse.gov/sites/default/files/us-canada_btb_action_plan3.pdf. The RCC Action Plan is available at http://www.whitehouse.gov/sites/default/files/us-canada_rcc_joint_action_plan3.pdf.

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ICE Issues Memo on Next Steps in Prosecutorial Discretion and Immigration Enforcement

U.S. Immigration and Customs Enforcement (ICE) recently released a memorandum on next steps in the implementation of prosecutorial discretion and immigration enforcement priorities.

ICE said it has launched a comprehensive training program on the appropriate use of the June 2011 Prosecutorial Discretion Memorandum. Also, beginning in November, ICE agents nationwide are reviewing all incoming cases in immigration courts. ICE said that the reviews are designed to identify the cases most clearly eligible or ineligible for a favorable exercise of discretion and are focused on cases appearing on the master calendar and cases that have not yet been filed in immigration court. The initial "test run" of this review of cases will end on January 13, 2012.

Also, beginning on December 4, 2011, ICE and the Department of Justice (DOJ) will launch pilot programs in two jurisdictions to test-run a process for reviewing all cases pending in immigration courts. Over the course of six weeks, an intra-agency team of attorneys from ICE, U.S. Citizenship and Immigration Services, and U.S. Customs and Border Patrol will review the cases on the non-detained dockets in the Denver and Baltimore immigration courts based on the Prosecutorial Discretion Memorandum and guided by a set of more focused criteria. During that time, DOJ's Executive Office for Immigration Review (EOIR) has agreed to shift judges from the non-detained docket in those jurisdictions to hear detained cases, to enhance processing of the latter.

At the end of the period, DHS will promptly review that data and other implementation outcomes and, where appropriate, consult with DOJ to determine, on an expedited basis, the best methods to implement these processes on an ongoing basis nationwide.

The announcement is available at <http://www.ice.gov/doclib/about/offices/ero/pdf/pros-discretion-next-steps.pdf>. The June 2011 Prosecutorial Discretion Memorandum is available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

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State Dept. Announces Forward Movement in China-Mainland Born and India EB-2 Categories

The Department of State's Visa Bulletin for January 2012 notes that the China and India employment second preference cut-off date has advanced at a rapid rate in recent months. The bulletin says this action was intended to generate significant levels of new filings for adjustment of status at U.S. Citizenship and Immigration Services (USCIS) offices. The bulletin notes that USCIS has reported that the rate of new filings "is currently far below that which they had anticipated, prompting an even more aggressive movement of the cut-off date for January and possibly beyond." While this action increases the potential for an eventual retrogression of the cut-off at some point during the year, it also provides the best opportunity to use all numbers available under the annual limit, the bulletin says.

The bulletin for January 2012 is available at http://www.travel.state.gov/visa/bulletin/bulletin_5630.html.

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Labor Dept. Issues Round 4 FAQ on H-2A Final Rule

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released Round 4 of frequently asked questions (FAQ) on the H-2A temporary agricultural foreign labor certification program, based on the 2010 final rule.

Topics include job offers, assurances, and obligations, including job qualifications and requirements, and the contract impossibility provision; and H-2A labor contractors and surety bonds.

Among other things, the FAQ notes that employers may not use the results of a background check or drug test to automatically reject a U.S. worker for agricultural work. Rather, the results of the background check or drug test may be used to reject a worker only if the employer provides a lawful job-related reason to do so. For example, while a sex offense conviction may be a lawful job-related reason to reject a worker who is applying to work at a "pick-your-own" fruit farm, a Driving Under the Influence (DUI) conviction is very unlikely to be, the FAQ states. An employer requiring a background check or drug test should be prepared to provide documentation, if requested by the State Workforce Agency or the OFLC Certifying Officer, establishing the nexus between the background check or drug test to be conducted and the nature of the job opportunity.

The FAQ further notes that if an employer chooses to disclose in the job order that it will be conducting a criminal background check, the employer's job order must also identify the specific criminal issue(s) for which the employer could lawfully reject an applicant due to the nature of the job opportunity. "A general statement about conducting a criminal background check without any further explanation is unacceptable, as it fails to adequately apprise U.S. workers of the job opportunity and applicable conditions of employment," the FAQ states.

The FAQ is available at http://www.foreignlaborcert.doleta.gov/pdf/h-2a_faq_round4.pdf.

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ABIL Issues Tips for Travelers

For those who are planning international trips soon, the Alliance of Business Immigration Lawyers (ABIL) offers the following tips:

- Review travel documentation to ensure that re-entry to the United States will go smoothly
- Plan in advance for visa application appointments; prepare all necessary documentation; apply early
- Obtain advance parole (for adjustment of status applicants) but check with your ABIL attorney in advance of applying to ensure that international travel does not bar readmission
- Apply ASAP via the Electronic System for Travel Authorization (for Visa Waiver Program travelers)

Contact your ABIL attorney for advice in specific situations.

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New Publications and Items of Interest

ABIL Global Comparative Investment & Immigration Options Webinar. The Alliance of Business Immigration Lawyers (ABIL) will present a webinar, "ABIL Global Comparative Investment & Immigration Options," on January 12, 2012, at 12 a.m. EST/5 a.m. GMT. This webinar will help guide investors and entrepreneurs who are looking for options in various countries. ABIL will cover the immigration options through investment in Australia, Canada, the United Kingdom, and the United States. All participants will receive a file with the PowerPoint presentation, relevant articles, and resources before the webinar, as well as a recording of the webinar afterwards. The cost is \$50 to participate live or to receive the recorded version of the webinar. Register at https://securec9.ezhostingserver.com/abil-com/abil_global_comparative_webinar_signup.cfm. For more information, contact Lauren Anderson at lauren@abil.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.

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.

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Member News

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>) and **Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) spoke on ethics on an American Immigration Lawyers Association webinar, "Advising Your Clients Without 'Aiding and Abetting' " on December 13, 2011. A recording of the webinar may be purchased at <http://www.aila.org/content/default.aspx?docid=36746>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has published a new blog entry. "How Fair Is The Fairness For High-Skilled Immigrants Act?" is available at <http://cyrusmehta.blogspot.com/2011/12/how-fair-is-fairness-for-high-skilled.html>.

John Nahajzer (bio: <http://www.abil.com/lawyers/lawyers-nahajzer.cfm?c=US>) was listed in the *Washingtonian* as a top immigration lawyer in Washington, DC. His firm, Maggio & Kattar, was listed in Chambers US.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) has published several new blog entries. "The Immigration Appeaser-in-Chief Should Try Some New Ammunition" is available at <http://bit.ly/tfjcvH>. "Immigration Governance Unmasked" is available at <http://bit.ly/tvSylM>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in the *Puget Sound Business Journal*. He noted that "the biggest thing fueling the growth of the [EB-5 investor] program has been the capital crisis in the United States." The article is available at <http://www.bizjournals.com/seattle/search/results?q=Stephen%20Yale-Loehr>.

The following ABIL members were listed in Chambers US:

Mark Ivener (bio: <http://www.abil.com/lawyers/lawyers-ivener.cfm?c=US>)
Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>)
Edward Litwin (bio: <http://www.abil.com/lawyers/lawyers-litwin.cfm?c=US>)
Sharon Mehlman (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm?c=US>)
Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>)
Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>)
Julie Pearl (bio: <http://www.abil.com/lawyers/lawyers-pearl.cfm?c=US>)
William Reich (bio: <http://www.abil.com/lawyers/lawyers-reich.cfm?c=US>)
Steve Trow (bio: <http://www.abil.com/lawyers/lawyers-trow.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?c=US>)

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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.

Disclaimer/Reminder

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