



IMMIGRATION INSIDER

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Headlines:

States, Governors File Suit Against President's Executive Actions on Immigration – The lawsuit singles out a directive on expanding deferred action for childhood arrivals for certain individuals who came to the United States as children and creating a new deferred action program for certain parents of U.S. citizens or permanent residents.

USCIS Reminds EB-5 Regional Centers of December 29 Deadline To File I-924As – USCIS reminded approved EB-5 regional centers with designation letters dated on or before September 30, 2014, that they must file Form I-924A for fiscal year 2014 by December 29, 2014.

DOL Discontinues H-2B Prevailing Wage Determinations Based on Employer-Provided Wage Surveys – DOL is no longer issuing prevailing wage determinations in the H-2B program based on employer-provided wage surveys, in response to a court order.

USDA Releases 2014 Farm Labor Survey, Used for H-2A Adverse Effect Wage Rates – Farm operators paid their hired workers an average wage of \$12.12 per hour during the October 2014 reference week, up 1 percent from a year earlier.

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States, Governors File Suit Against President's Executive Actions on Immigration

Various states and four governors filed suit on December 3, 2014, challenging several of President Barack Obama's recent executive actions on immigration, announced on November 20 and detailed in Department of Homeland Security (DHS) memoranda. The lawsuit singles out a DHS directive on expanding deferred action for childhood arrivals (DACA) for certain individuals who came to the United States as children and creating a new deferred action program for certain parents of U.S. citizens or permanent residents. The lawsuit claims that the directive constitutes a "unilateral suspension of the Nation's immigration laws [that] is unlawful."

The lawsuit contains numerous quotations from President Obama stating that he can't change laws himself and needs Congress to pass immigration reform. The suit notes that later, however, he expanded DACA and said, "I just took an action to change the law." White House spokeswoman Brandi Hoffine responded, "The Supreme Court and Congress have made clear that federal officials can set priorities in enforcing our immigration laws, and we are confident that the president's executive actions are well within his legal authorities."

Shortly after the mid-term elections in November 2014, President Barack Obama initiated various executive actions on immigration. The actions challenged in the lawsuit include:

- Expanding DACA to encompass a broader class of children. DACA eligibility had been limited to those who were under 31 years of age on June 15, 2012, who entered the United States before June 15, 2007, and who were under 16 years old when they entered. Under President Obama's executive action, DACA eligibility is expanded to cover all undocumented immigrants who entered the United States before the age of 16, not just those born after June 15, 1981. The entry date is adjusted from June 15, 2007 to January 1, 2010. The relief (including work authorization) will now last for three years rather than two. The memo explaining this action is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
- Extending eligibility for deferred action to parents of U.S. citizens and lawful permanent residents. This new program, called Deferred Action for Parental Accountability (DAPA), includes individuals who (i) are not removal priorities under the new policy, (ii) have been in the United States at least five years, (iii) have children who on the date of the announcement (November 20, 2014) were U.S. citizens or lawful permanent residents, and (iv) present no other factors that would make a grant of deferred action inappropriate. These individuals will be assessed for eligibility for deferred action on a case-by-case basis. They may then apply for work authorization, provided they pay a fee. Each individual will undergo a background check of relevant national security and criminal databases, including DHS and FBI databases. The memo explaining this action is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.

A letter transmitted by 136 law professors to the White House on November 20, 2014, and updated on November 25, supports President Obama's legal authority to expand the DACA program and to establish the DAPA program. It is available at <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/executive-action-law-prof-letter.pdf>.

The full text of the states/governors lawsuit is available at <http://www.scribd.com/doc/249082004/17-State-Lawsuit-Over-President-Obama-s-Immigration-Executive-Order>.

The memoranda summarized above, along with the White House address announcing the actions and related USCIS and ICE info, are available at <http://www.dhs.gov/immigration-action>.

Additional memoranda are available at <http://www.whitehouse.gov/the-press-office/2014/11/21/presidential-memorandum-modernizing-and-streamlining-us-immigrant-visa-s> (modernizing and streamlining the U.S. visa system) and <http://www.whitehouse.gov/the-press-office/2014/11/21/presidential-memorandum-creating-welcoming-communities-and-fully-integra> (establishing a White House Task Force on New Americans).

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USCIS Reminds EB-5 Regional Centers of December 29 Deadline To File I-924As

USCIS recently issued a reminder to all approved EB-5 regional centers with designation letters dated on or before September 30, 2014, that they must file Form I-924A, Supplement to Form I-924, for fiscal year 2014 by December 29, 2014.

If a regional center fails to file the I-924A, USCIS will issue a notice of intent to terminate participation in the EB-5 Immigrant Investor Program. If a regional center files an incomplete Form I-924A, USCIS may issue a notice of intent to terminate participation.

The notice is available at <http://www.uscis.gov/news/eb-5-regional-centers-must-file-form-i-924a-december-29#.VIB1evRhobo.email>. A related Q&A is available at <http://www.uscis.gov/forms/questions-and-answers-form-i-924a>.

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DOL Discontinues H-2B Prevailing Wage Determinations Based on Employer-Provided Wage Surveys

The Department of Labor's Office of Foreign Labor Certification recently announced that effective December 8, 2014, the Department is no longer issuing prevailing wage determinations (PWDs) in the H-2B program based on employer-provided wage surveys. The Department took this action in response to a court order entered December 5, 2014, in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, No. 14-3557 (3d Cir.). The court's order vacated a portion of the H-2B wage rule (20 CFR § 655.10(f)) and 2009 wage guidance permitting the use of such surveys.

The Department said that PWD requests pending with the National Prevailing Wage Center (NPC) that seek to use employer-provided surveys will be given the appropriate Occupational Employment Statistics (OES) wage for the occupation. Employers who wish to use a Service Contract Act or Davis Bacon Act wage determination, or a wage based on a collective bargaining agreement, may request redetermination under 20 CFR § 655.10(g). Employers whose prevailing wage determination was based on an employer provided-wage survey, but whose H-2B applications for temporary employment certification have not yet resulted in a final determination by the Chicago NPC, will be notified of their new wage obligation along with their certification letters.

The notice is available at <http://www.foreignlaborcert.doleta.gov/>.

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USDA Releases 2014 Farm Labor Survey, Used for H-2A Adverse Effect Wage Rates

The U.S. Department of Agriculture (USDA) recently issued the Farm Labor Survey (FLS) report establishing the average annual wage rates, by region and the United States, for field and livestock workers. The Department of Labor relies on the average annual combined hourly wage

for field and livestock workers to establish the Adverse Effect Wage Rates (AEWRs) in the H-2A agricultural worker program. The AEWRs are the minimum hourly wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment, so that the wages of workers similarly employed in the United States will not be adversely affected.

The Department said it is reviewing the USDA FLS average annual wage rates for 2014 and will soon publish a notice in the Federal Register announcing new Adverse Effect Wage Rates (AEWRs) for each state. At that time the rates will become immediately effective.

The FLS report notes that farm operators paid their hired workers an average wage of \$12.12 per hour during the October 2014 reference week, up 1 percent from a year earlier. Field workers received an average of \$11.52 per hour, up 1 percent from a year earlier. Livestock workers earned \$11.29, up 3 percent. The field and livestock worker combined wage rate, at \$11.46 per hour, was up 19 cents from October 2013. Hired laborers worked an average of 41.3 hours during the October 2014 reference week, compared with 41.7 hours a year earlier.

The Department's announcement is available at <http://www.foreignlaborcert.doleta.gov/>. The latest USDA FLS report is available at <http://usda.mannlib.cornell.edu/usda/current/FarmLabo/FarmLabo-11-20-2014.pdf>.

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New Publications and Items of Interest

The latest 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 latest 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."

Charles Gould, Director-General of the International Co-operative Alliance, said the guide is "an invaluable resource for both legal practitioners and business professionals. The country-specific chapters are comprehensive and answer the vast majority of questions that arise in immigration practice. Its clear and easy-to-follow structure and format make it the one volume to keep close at hand."

This comprehensive guide is designed for:

- 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

Vince Lau (bio: <http://www.abil.com/lawyers/lawyers-lau.cfm>) was a panelist on an AILA National Webinar, "Recent BALCA Cases That May Impact Your Next PERM Application," held on Thursday, December 11, 2014.

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) spoke on November 14, 2014, on U.S. professional and investor visas at the UTSA Texas International Business Accelerator's foreign investor event, "Invirtiendo en Texas." The goal of the event was to educate potential foreign entrepreneurs on how to invest in a business in Texas.

Mr. Loughran appeared on Austin's KVUE on November 21, 2014, to discuss the human side of the president's executive action on immigration and what documents potential applicants should begin gathering. The interview can be viewed at <http://www.kvue.com/media/cinematic/video/19490179/human-side-to-presidents-immigration-reform/>.

Mr. Loughran was quoted in the *Houston Chronicle* on the procedural and substantive defects of the lawsuit filed by Texas Attorney General Greg Abbott against the president's executive action on immigration. The article is available by subscription at

<http://www.houstonchronicle.com/news/politics/texas/article/Abbott-leads-coalition-lawsuit-over-Obama-5933550.php>.

Mr. Loughran spoke on November 7, 2014, on the immigration implications of "Global Tax Planning for Multi-National Families: Coming and Going!," which focused on the income, estate, and gift tax implications (and planning opportunities) affecting U.S. and foreign persons who exit or enter the United States, at the Annual Meeting of the California Tax Bar and California Tax Policy Conference in Coronado, California.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has co-authored several new blog entries. "Let's Hope That's What It Really Means: Does Executive Initiative Really Provide For Early Adjustment of Status" is available at <http://blog.cyrusmehta.com/2014/12/lets-hope-thats-what-it-means-does.html>. "Justice, Justice Shall Thou Pursue: Why the Lawsuit Against the Immigration Accountability Executive Actions" Is a Waste of Time and Money" is available at <http://blog.cyrusmehta.com/2014/12/justice-justice-shall-thou-pursue-why.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has published a new blog post. "Worksite Harmony and the President's Executive Actions: It's All About Immigration Timing" is available at <http://www.nationofimmigrants.com/i-9s/worksite-harmony-its-all-about-immigration-timing/>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in an article in the *New York Times*, "Some of the Rich Collect Art. Others Collect Passports," about wealthy investors shopping for visas or citizenship, which was published on December 14, 2014. "I think that after 24 years, it's appropriate for Congress to consider adjusting that level [referring to the \$500,000 minimum for an EB-5 immigrant investor green card]." The article is available at <http://www.nytimes.com/2014/12/14/business/some-of-the-rich-collect-art-others-collect-passports.html>.

Mr. Yale-Loehr was quoted in the December 9, 2014, issue of *Bloomberg Businessweek* about the diversity green card lottery. According to Mr. Yale-Loehr, "[a] lottery is not a way to run an immigration system. It doesn't strengthen family ties, promote our economic interests, or rescue refugees. Congress should abolish the program." The article is available at <http://www.businessweek.com/articles/2014-12-09/why-congress-should-save-the-green-card-lottery>.

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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

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.

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