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Headlines:

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– The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices released do's and don'ts for employers facing ICE audits.

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– Between October and mid-January, 2,364 EB-5 green cards were issued. At that rate, over 9,000 EB-5 visas might be issued this fiscal year, which is very close to the statutory cap of 10,000.

New York City's Newest Full-Service Immigration Office Opens in Queens

– The new office, located at 27-35 Jackson Avenue, includes an Application Support Center, a naturalization ceremony room, and interview and file rooms. The hours are 7 a.m. to 3:30 p.m.

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– In addition to the 53 countries currently on the list, Haiti, Iceland, Montenegro, Spain, and Switzerland were designated for the first time this year.

DHS Extends TPS Designation for El Salvador

– The 18-month extension will remain in effect through September 9, 2013. The 60-day re-registration period began January 9, 2012, and will remain in effect until March 9, 2012.

DOS Launches 90-Day Pilot Program Allowing Online Passport Card Applications

– The U.S. passport card costs \$30 for current passport book holders, and is valid for land and sea travel to and from Canada, Mexico, the Caribbean, and Bermuda. It is not valid for international air travel.

AAO Denies RC Application to Build Resort Suites

– The AAO found that the applicant's proposal was a marketing strategy to attract buyers for vacation suites rather than investors of capital in a new commercial enterprise.

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DOJ's Office of Special Counsel Lists Employer Best Practices During Worksite Enforcement Audits

The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices has released the following do's and don'ts for employers facing audits by U.S. Immigration and Customs Enforcement (ICE):

DO:

- Develop a transparent process for interacting with employees during the audit, including communicating with employees that the employer is subject to an ICE audit.
- Provide all workers with a reasonable amount of time to correct discrepancies in their records identified by ICE. Treat all workers in the same manner during the audit, without regard to national origin or citizenship status. This means that all workers with like discrepancies who are asked to present additional documents are provided with the same timeframes and the same choice of Form I-9 documents to present.
- If your workers are represented by a union, inform the union of the ICE audit and determine whether a collective bargaining agreement triggers any obligations.
- Inform employees from whom you seek specific information that you are seeking this information in response to an ICE audit.
- Communicate in writing with employees from whom you seek information, and describe the specific basis for the discrepancy and/or what information you need from them. Follow the instructions on the ICE notice and the instructions for the Form I-9 when seeking to correct Form I-9 defects, including the Lists of Acceptable Documents and the anti-discrimination notice.

DON'T:

- Selectively verify the employment eligibility of certain employees based on their national origin or citizenship status based on the receipt of an ICE Notice of Inspection.
- Terminate or suspend employees without providing them with notice and a reasonable opportunity to present valid Form I-9 documents.
- Require employees to provide additional evidence of employment eligibility or more documents than ICE is requiring you to obtain.
- Limit the range of documents that employees are allowed to present for purposes of the Form I-9.
- Treat employees differently at any point during the audit because they look or sound foreign, or based on assumptions about whether they are authorized to work in the U.S.

The list is available at

http://www.justice.gov/crt/about/osc/pdf/publications/worksite_enforcement.pdf.

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USCIS Announces Several Thousand EB-5 Green Cards Issued So Far in First Quarter of FY 2012, Releases Latest Stats

The Department of State issued 2,364 EB-5 green cards between October 1, 2011, and mid-January 2012. U.S. Citizenship and Immigration Services (USCIS) announced at its quarterly EB-5 stakeholders meeting on January 23, 2012. At that rate, over 9,000 EB-5 visas might be issued this federal fiscal year, which is very close to the statutory cap of 10,000.

USCIS refused to discuss what it would do about pending EB-5 petitions if Congress fails to renew the regional center pilot program by September 30, 2012. Approximately 92 percent of I-526 petitions (Immigrant Petition by Alien Entrepreneur) filed each year are filed by investors in regional centers. Historically, about 80 to 85 percent of I-526 and I-829 EB-5 petitions are approved each year. The California Service Center (CSC) now has four teams of EB-5 adjudicators, an increase from one team a year ago. Despite the increased staffing, case adjudication times have not improved because of the increase in case filings.

USCIS also announced that it would defer to state determinations on what constitutes a targeted employment area (TEA) for EB-5 purposes. The agency will check the data behind states' methodology, however. USCIS did not say whether a single census tract may qualify as a geographic area. USCIS said that would be covered in written materials not yet available publicly, and referred stakeholders to its December 2009 memorandum for further details (available at

http://www.uscis.gov/USCIS/Laws/Memoranda/Static%20Files%20Memoranda/Adjudicating%20of%20EB-5_121109.pdf).

USCIS acknowledged that many regional center applications are being held up at headquarters pending resolution of economic methodology issues. The USCIS hopes to resolve those issues soon. USCIS is analyzing all the I-924A forms submitted by regional centers and will draft a report that includes regional center-specific information sometime this year. The USCIS acknowledged growing pains in determining what constitutes a "shovel-ready" project for EB-5 purposes. It hopes to address this issue later this year when it revises the I-924 form to provide greater consistency.

USCIS also released its latest data on EB-5 filings and regional centers (RCs):

- RC approvals continue to increase. As of January 28, 2012, there are 217 approved RCs operating in 40 states, including the District of Columbia and Guam.
- The agency reported 41 initial RC proposal filings in the first quarter of fiscal year (FY) 2012, compared to 192 initial filings in all of FY 2011 and 110 initial filings in all of FY 2010. The number of amended RC proposal filings was 17 by the end of the first quarter; there were 86 filings received for all of FY 2011 and 42 filings received for all of FY 2010.
- In the first quarter of FY 2012, the agency approved 14 of the 41 initial RC proposals and denied 22, an approval rate of 39 percent. In FY 2011, when USCIS approved 80 and denied 51, an approval rate of 61 percent. The approval rate of amended RC proposals in the first quarter of FY 2012 was 57 percent, with 4 approvals and 3 denials. By comparison, in FY 2011 USCIS approved 43 amended RC proposals and denied 7, an approval rate of 86 percent.
- USCIS also reported significant increases in individual I-526s and I-829s (Petition by Entrepreneur to Remove Conditions). In the first quarter of FY 2012, USCIS received 1,293 I-526 petitions, compared to 3,805 for all of FY 2011. USCIS received 250 I-829 petitions in the first quarter of 2012. By comparison, USCIS received 2,345 I-829 petitions in all of FY 2011.

- In the first quarter of FY 2012, the agency approved 1,076 I-526 petitions and denied 222, an approval rate of 83 percent, while in all of FY 2011 USCIS approved 1,563 and denied 11, an approval rate of 93 percent. USCIS approved 1,067 I-829 petitions and denied 46 in all of FY 2011, an approval rate of 96 percent.

The full list of RCs by state is available at <http://www.uscis.gov/eb-5centers/>.

The next USCIS stakeholder engagement meetings are scheduled for May 1, 2012 (general EB-5 discussion); July 26, 2012 (regional center discussion); and October 18, 2012 (general EB-5 discussion). See

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=e0138e0732344310VgnVCM100000082ca60aRCRD&vgnnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD> for additional details on the engagement meetings.

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New York City's Newest Full-Service Immigration Office Opens in Queens

On January 20, 2012, U.S. Citizenship and Immigration Services (USCIS) opened its newest immigration field office in Queens, New York.

The new office, located at 27-35 Jackson Avenue, includes an Application Support Center (which offers fingerprinting and photographic services as part of the application process), a naturalization ceremony room, and interview and file rooms. The hours are 7 a.m. to 3:30 p.m. The Queens office is expected to serve about 500 people each business day.

Approximately 100 employees were transferred to the Queens office from the now-closed Garden City, Long Island, office. USCIS recently opened an additional office in Holtsville, Long Island.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=3ad54c23397f4310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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USCIS Announces 58 Countries Whose Nationals Are Eligible for H-2A and H-2B Participation

U.S. Citizenship and Immigration Services (USCIS) announced that the Department of Homeland Security (DHS), in consultation with the Department of State, has identified 58 countries whose nationals are eligible to participate in the H-2A (temporary agricultural) and H-2B (temporary nonagricultural) programs for the coming year. Each country's designation is valid for one year from the date of publication.

USCIS generally may only approve H-2A and H-2B petitions for nationals of countries the Secretary of Homeland Security has designated as eligible to participate in the programs. USCIS may approve H-2A and H-2B petitions for nationals of countries not on the list if it is determined to be in the interest of the United States.

In addition to the 53 countries currently on the list, Haiti, Iceland, Montenegro, Spain, and Switzerland were designated for the first time this year.

Effective January 18, 2012, nationals of the following 58 countries are eligible to participate in the H-2A and H-2B programs: Argentina, Australia, Barbados, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Jamaica, Japan, Kiribati, Latvia, Lithuania, Macedonia, Mexico, Moldova, Montenegro, Nauru, the Netherlands, Nicaragua, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Samoa, Serbia, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Spain, Switzerland, Tonga, Turkey, Tuvalu, Ukraine, United Kingdom, Uruguay and Vanuatu.

This new list does not immediately affect the status of beneficiaries who are currently in the United States in H-2A or H-2B status, unless they apply to change or extend their status.

The notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-01-18/pdf/2012-870.pdf>.

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DHS Extends TPS Designation for El Salvador

The Department of Homeland Security (DHS) has extended the designation of El Salvador for temporary protected status (TPS) for 18 months from its current expiration date of March 9, 2012. The 18-month extension of the TPS designation of El Salvador is effective March 10, 2012, and will remain in effect through September 9, 2013. The 60-day re-registration period began January 9, 2012, and will remain in effect until March 9, 2012.

DHS determined that an extension is warranted because the conditions in El Salvador that prompted the TPS designation continue to be met. There continues to be a "substantial, but temporary," disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador "remains unable, temporarily, to handle adequately the return of its nationals."

The notice sets forth procedures necessary for nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) (Forms I-766) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who previously registered for TPS under the designation of El Salvador and whose applications have been granted or remain pending. Certain nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

USCIS said it will issue new EADs with a September 9, 2013, expiration date to eligible Salvadoran TPS beneficiaries who timely re-register and apply for EADs under this extension. DHS recognizes that all re-registrants may not receive new EADs until after their current EADs expire on March 9, 2012. Accordingly, the notice automatically extends the validity of EADs issued under the TPS designation of El Salvador for six months, through September 9, 2012, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the I-9 and E-Verify process.

The notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-01-11/pdf/2012-143.pdf>.

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DOS Launches 90-Day Pilot Program Allowing Online Passport Card Applications

On January 24, 2012, the Department of State's Office of Passport Services launched a 90-day pilot program allowing adult U.S. citizens living in the United States and Canada to apply for a passport card online. Those applying online are not required to mail in their current passport

book. The wallet-sized U.S. passport card costs \$30 for current passport book holders, and is valid for land and sea travel to and from Canada, Mexico, the Caribbean, and Bermuda. It is not valid for international air travel.

To participate in the program, applicants must currently possess a valid 10-year U.S. passport book with at least 12 months of validity remaining, upload an acceptable digital photograph, and make an online payment in U.S. dollars via Pay.gov. Applications accepted through the program will be subject to the same adjudication standards as in-person or mail-in applications.

The Department of State began producing the passport card in 2008 in response to travel document requirements imposed by the Western Hemisphere Travel Initiative. Since then, more than 4.5 million cards have been issued.

The notice is available at <http://www.state.gov/r/pa/prs/ps/2012/01/182345.htm>. To apply for the passport card using the online application, go to http://travel.state.gov/passport/ppt_card/ppt_card_5648.html.

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AAO Denies RC Application to Build Resort Suites

U.S. Citizenship and Immigration Services (USCIS) recently published an Administrative Appeals Office (AAO) decision affirming denial of a proposal for a regional center designation. The AAO found that the applicant's proposal was a "marketing strategy to attract buyers for vacation suites rather than investors of capital in a new commercial enterprise."

Specifically, the AAO said that the evidence incontrovertibly established that the applicant proposed that "investors" would purchase a vacation suite as either a "primary residence," "second home," or "investment property." The AAO affirmed the California Service Center director's determination that such a real estate purchase of a private residence, even if still under construction, "is not an at-risk investment of capital that can be credited with direct or indirect job creation." The purchase of individual residential suites by alien "investors," even if concentrated in one resort complex, is also not the type of "pooled investment" concept Congress envisioned for the regional center program, the AAO noted. In summary, the AAO said:

[T]he applicant has proposed an investment plan whereby alien investors would make independent, passive, personal real estate investments that garner them no equity ownership in a new commercial enterprise. Instead of presenting a plan for a pooled equity investment of capital into a new commercial enterprise, the applicant has merely put forth a marketing strategy to attract sufficient buyers to fund later phases of development. This plan does not meet the letter or spirit of [the law and regulations] designed to encourage pooled investments in a new commercial enterprise benefitting a geographic region.

The April 26, 2011, decision is available at http://www.uscis.gov/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2011/Apr262011_01K1610.pdf.

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New Publications and Items of Interest

[USCIS Ombudsman teleconference on L-1B "specialized knowledge" worker petitions.](#) This teleconference on February 7, 2012, from 2 to 3 p.m. EST, presents an opportunity to learn about the experiences of employers filing L-1B nonimmigrant petitions with USCIS. The L-1B classification allows an employer to petition for an employee who has "specialized knowledge" of the employer's products, services, research, equipment, techniques, management, or other

interests and its application in international markets, or expertise in the employer's processes and procedures, from a qualified affiliated entity outside the United States. The Ombudsman's Office says it would like to hear about employers' experiences with USCIS adjudications of "specialized knowledge" filings. Participants are encouraged to join this discussion by anonymously sharing their experiences during the teleconference. To register, RSVP to cisombudsman.publicaffairs@dhs.gov and reference "L-1B Telecon" in the subject line of your e-mail. Participation in these teleconferences is anonymous. Comments, questions, materials, or suggestions regarding this topic should be directed via email to the Ombudsman's Office at cisombudsman.publicaffairs@dhs.gov. The notice, along with links to "recaps" from recent teleconferences, is available at http://www.dhs.gov/files/programs/gc_1171038701035.shtm.

CRS reports: numerical limits on employment-based immigration, temporary protected status, free trade agreements, globalization and worker insecurity, Visa Waiver Program. The Congressional Research Service has released several new reports:

- "Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings" notes that the overwhelming number of approved employment-based legal permanent resident (LPR) visas pending at the National Visa Center at the close of FY 2010 were those of professional and skilled workers—102,395. There were also 16,788 approved visas pending for unskilled workers. Another 6,738 visas were pending for those with advanced degrees. There were also 2,961 approved visas pending in the "extraordinary" category. Most of the approved I-485 petitions pending are for professional, skilled, and unskilled workers (114,442). There were 7,545 approved I-485 petitions pending in the "extraordinary" category and 45,573 approved I-485 petitions pending in the "advanced degree" category. The extent that these two sets of data overlap—and thus may be counting the same petitions twice—is not known, but substantial duplication is presumed to exist.

The report lists the top four countries in both the National Visa Center and USCIS data sets (in rank order): India, the Philippines, the Peoples' Republic of China, and Mexico. The data analyses suggest that the vast number of Indians may be waiting to adjust status in the United States, while the vast number of Filipinos may be waiting to immigrate from abroad. Those with approved pending cases from China seem to be more evenly split among new arrivals and those seeking to adjust status.

Some argue that the per-country ceilings are arbitrary, the report notes, and that employability has nothing to do with country of birth. Others maintain that the statutory per-country ceilings restrain the dominance of high-demand countries and preserve the diversity of the immigrant flows.

Legislation (H.R. 3012) to revise the per-country ceilings on LPRs passed the House on November 29, 2011.

The report is available at <http://www.fas.org/sgp/crs/homesec/R42048.pdf>.

- "Temporary Protected Status: Current Immigration Policy and Issues" provides an overview of TPS and other forms of blanket relief. The report notes that the United States currently provides TPS or deferred enforced departure (DED) to over 300,000 foreign nationals from seven countries: El Salvador, Haiti, Honduras, Liberia, Nicaragua, Somalia, and Sudan. Liberians have had relief from removal for the longest period, first receiving TPS in March 1991 following the outbreak of civil war. The report is available at <http://fpc.state.gov/c41253.htm>.
- "Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy" says that free trade agreements (FTAs) raise important policy issues: Do FTAs serve or impede U.S. long-term national interests and trade policy objectives? Which type of an

FTA arrangement meets U.S. national interests? What should U.S. criteria be in choosing FTA partners? Are FTAs a substitute for or a complement to U.S. commitments and interests in promoting a multilateral trading system via the World Trade Organization (WTO)? What effect will the expiration of the Trade Promotion Authority have on the future of FTAs as a trade policy strategy? The report discusses pending and possible proposals for U.S. FTAs, relevant legislation, and other congressional interest in U.S. FTAs. The report is available at <http://fpc.state.gov/documents/organization/179550.pdf>.

- "Globalization, Worker Insecurity, and Policy Approaches" notes that globalization facilitated by the information technology revolution expands international trade in a wider range of services, but also subjects an increasing number of U.S. "white-collar" jobs to outsourcing and international competition. The current wave of globalization is supported by three broad trends, the report states: (1) technology, which has sharply reduced the cost of communication and transportation that previously divided markets; (2) a dramatic increase in the world supply of labor engaged in international trade; and (3) government policies that have reduced barriers to trade and investment. Recent research examines whether these trends are creating new vulnerabilities for workers. Because the relationship between globalization and worker insecurity is complicated and uncertain, a number of different approaches may be considered if the goal is to bolster public support for U.S. trade policies, globalization, and an open world economy, the report notes. Policies involving adjustment assistance, education, tax, and trade are most commonly proposed. The report points out the view of many economists that policies that inhibit the dynamism of labor and capital markets or erect barriers to international trade and investment would not be helpful because technology and trade are critical sources of overall economic growth and increases in the U.S. living standard. The report is available at <http://fpc.state.gov/documents/organization/180691.pdf>.
- "Visa Waiver Program" provides an overview of the requirements for eligibility and the history and current state of the Visa Waiver Program (VWP). The report also explains why several countries have been removed from the list of VWP countries, including Argentina and Uruguay, or placed on provisional (probationary) status, such as Belgium (which was placed on provisional status in 2003 but restored in 2005). The report is available at <http://www.fas.org/sgp/crs/homsec/RL32221.pdf>.

DOJ webinars on employment verification. The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices has announced upcoming monthly webinars on employment verification issues. Workers and worker advocates may join the monthly worker/advocate track webinar, and employers/HR professionals may join the monthly employer track webinar. The employer/HR webinars are scheduled for February 22, March 21, and April 30, 2012. The worker/advocate webinars are scheduled for February 9, March 13, and April 17, 2012. For more information or to register, see <http://www.justice.gov/crt/about/osc/webinars.php>.

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. Recent ABIL member blogs are available at <http://www.abilblog.com/>.

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Member News

Cyrus Mehta has published several new blog entries. "Drugs and Inadmissibility" is available at <http://blog.cyrusmehta.com/2012/01/drugs-and-inadmissibility.html>. "State Department's Visa Office Takes Broader View of 'Sought to Acquire' Provision Under the Child Status Protection Act" is available at <http://blog.cyrusmehta.com/2012/01/state-departments-visa-office-takes.html>. "Edge Says Indian 2-Year Master's Degree Following 4-Year Bachelor's Is Not Equivalent to U.S. Master's Degree" is available at <http://blog.cyrusmehta.com/2012/01/edge-says-indian-4-year-bachelors.html>.

Angelo Paparelli has published several new blog entries. "I Hate [Bleep]ing Immigration Law" - Whenever I Get an Unjust Request for Evidence" is available at <http://www.nationofimmigrators.com/uscis/i-hate-bleeping-immigration-law----whenever-i-get-an-unjust-request-for-evidence/>. "Powdered Wig Immigration With the Lawyer as Potted Plant" is available at <http://www.nationofimmigrators.com/2012/01/>. "The DHS Inspector General Report on Fraud Detection at USCIS: Pious Immigration Baloney" is available at <http://www.nationofimmigrators.com/2012/01/>.

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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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