



**News from the Alliance of Business Immigration Lawyers  
Vol. 7, No. 2B - February 15, 2011**

**Headlines:**

- **1. USCIS Issues Work Authorization and Advance Parole on Single Card for Adjustment Applicants** - The card will serve as both an employment authorization and advance parole document.
- **2. Export Controls Attestation Requirement Starts February 20** - As of February 20, 2011, employers must fill out the export controls attestation in Part 6 of the new edition of the Petition for a Nonimmigrant Worker (Form I-129).
- **3. Labor Dept. Board Rules Against Company for Failing to Pay H-1B Worker for Travel Time** - A company policy against paying for travel is not among the exceptions to an H-1B employer's obligation to pay H-1B nonimmigrant workers their wages, the ARB said.
- **4. DHS, DOS Establish Annotated B-1 Visa for Foreign Maritime Workers Applying for ID Program** - The new process will apply to the approximately 4,000 to 6,000 foreign workers in U.S. ports who must have a "TWIC" ID for the performance of their official duties.

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**Details...**

**1. USCIS Issues Work Authorization and Advance Parole on Single Card for Adjustment Applicants**

U.S. Citizenship and Immigration Services (USCIS) announced that it is now issuing employment and travel authorization on a single card for certain applicants filing an Application to Register Permanent Residence or Adjust Status (Form I-485). USCIS said the new card "represents a significant improvement from the current practice of issuing paper Advance Parole documents."

The card appears similar to the current Employment Authorization Document (EAD) but includes text that reads, "Serves as I-512 Advance Parole." A card

with this text serves as both an employment authorization and advance parole document.

An applicant may receive this card when he or she files an Application for Employment Authorization (Form I-765) and an Application for Travel Document (Form I-131) concurrently with or after filing the I-485. USCIS said it will continue to issue separate EAD and advance parole documents when warranted. Employers may accept the new card as a List A document when completing the Employment Eligibility Verification (Form I-9).

USCIS noted that as with the current advance parole document, obtaining the combined card allows an adjustment applicant to travel abroad and return to the U.S. without abandoning the pending adjustment application. Upon returning to the U.S., the applicant must present the card to request parole through the port-of-entry, and the decision to parole the individual is made at the port-of-entry. Those who have been unlawfully present in the U.S. and subsequently depart and seek re-entry through a grant of parole may be inadmissible and ineligible to adjust their status, USCIS warned.

The USCIS notice, released on February 11, 2011, is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=44028bcbf851e210VgnVCM100000082ca60aRCRD&vgnnextchannel=c94e6d26d17df110VgnVCM1000004718190aRCRD>.

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## **2. Export Controls Attestation Requirement Starts February 20**

As of February 20, 2011, employers must fill out the export controls attestation in Part 6 of the new edition of the Petition for a Nonimmigrant Worker (Form I-129). The form is used to file nonimmigrant petitions for employees in categories such as H-1B, L-1 and O-1. The new edition has a revision date of November 23, 2010.

The employer must certify, with respect to any technology to which the employee will have access on the job, that a license from the Departments of Commerce or State is not required to release the technology to the foreign national (or, in the rare case that a license is required, the employer will restrict the beneficiary's access to the technology until a license is obtained). To properly complete the new I-129 form, an employer must first classify the technology or technical data that will be released to or be accessed by a prospective foreign national employee to determine whether an export license may be required.

For advice on the new I-129 and deemed export attestations, contact your local Alliance of Business Immigration Lawyers (ABIL) attorney. To locate an ABIL attorney, go to <http://www.abil.com/> and click on "ABIL Attorneys" or "Global Attorneys."

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### **3. Labor Dept. Board Rules Against Company for Failing to Pay H-1B Worker for Travel Time**

The Department of Labor's Administrative Review Board (ARB) ruled on January 31, 2011, against a medical software company, Integrated Informatics, Inc., for failing to pay an H-1B nonimmigrant computer programmer for two days of traveling for a work project. The ARB rejected the company's argument that it had a policy of withholding payment for travel. "Even accepting as true that Integrated's policy is not to compensate its employees for travel time, a company policy is not among the exceptions to an H-1B employer's obligation to pay H-1B nonimmigrant workers their wages," the ARB said.

The decision is available at [http://op.bna.com/dlrcases.nsf/id/jaca-8dupbr/\\$File/Integrated.pdf](http://op.bna.com/dlrcases.nsf/id/jaca-8dupbr/$File/Integrated.pdf).

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### **4. DHS, DOS Establish Annotated B-1 Visa for Foreign Maritime Workers Applying for ID Program**

The Departments of Homeland Security (DHS) and State (DOS) have announced the creation of an annotated version of the B-1 visa that will make foreign maritime workers eligible to apply for a Transportation Worker Identification Credential (TWIC). The TWIC is a tamper-resistant biometric identification card that maritime workers must obtain to gain unrestricted access to secure areas of maritime facilities.

Under this process, foreign maritime workers who need to acquire a TWIC for the performance of their official duties must provide notice of their need for the TWIC to DOS upon applying for a B-1 visa, and a letter from their employer stating that the worker must perform service in secure port areas. Upon receipt of the new TWIC-annotated B-1 visa, each individual will apply separately for a TWIC. The new process will apply to the approximately 4,000 to 6,000 foreign workers in U.S. ports who must have a TWIC for the performance of their official duties.

The Transportation Security Administration (TSA) published a TWIC final rule in January 2007 allowing noncitizens to apply for a TWIC provided that they meet one of TSA's eligible categories. Following input from maritime industry stakeholders, DHS and DOS collaborated to create the new process.

The DHS announcement is available at [http://www.dhs.gov/ynews/releases/pr\\_1297280840745.shtm](http://www.dhs.gov/ynews/releases/pr_1297280840745.shtm).

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## **New Publications and Items of Interest**

[USCIS survey on E-Verify](#). U.S. Citizenship and Immigration Services (USCIS) reported that a customer satisfaction survey found that E-Verify received an overall score of 82 out of 100. CFI Group, a consulting firm specializing in customer satisfaction measurements, developed the survey last July and questioned more than 4,500 random employers using E-Verify. Respondents included new and current users and federal contractors required to use the system.

USCIS also reported on a recent U.S. Government Accountability Office (GAO) report, stating that the GAO "cites improvements in the reduction of mismatch rates, ensuring employer compliance, and establishing better safeguards for employees' personal information." The GAO report also noted, however, that E-Verify errors persist and are difficult to correct.

The customer satisfaction survey results report is available at <http://www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-satisfaction-report-10-15-10.pdf>. USCIS's announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=a6adb46adba9d210VgnVCM100000082ca60aRCRD&vgnnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD>. The GAO report is available at <http://www.gao.gov/new.items/d11146.pdf>.

[Migration Policy Institute on E-Verify](#). The Migration Policy Institute has released a new report, "E-Verify: Strengths, Weaknesses, and Proposals for Reform," which examines E-Verify's implementation, improvements over time, and continuing challenges, and sketches a way forward for effective employment verification. Because any new E-Verify mandate runs a risk of adverse unintended consequences, the report recommends that changes be phased in gradually and evaluated against performance benchmarks. In the longer term, the report suggests, the most promising strategy for successful expansion of E-Verify will be to link new employment verification mandates to a targeted or comprehensive immigration reform effort. Only then would

both employers and current undocumented workers have positive incentives to use the program and comply with its requirements. The report is available at <http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf>.

Immigration and High-Tech Entrepreneurship. The Center for Technology Innovation at Brookings has released a study showing that the founding teams of about 16 percent of a nationally representative sample of high-impact, high-technology companies include at least one immigrant. About 77 percent of those are U.S. citizens. Most are well-educated and have substantial professional experience. The study outlines three policy options that could expand the pool of potential high-impact, high-tech immigrant entrepreneurs over the long term: clearing the green card (permanent residence) backlog, easing the pathway from student visa to work visa to green card, and creating a "point system" for a limited number of unsponsored green card applicants. The study is available at [http://www.brookings.edu/papers/2011/02\\_immigration\\_hart\\_acs.aspx](http://www.brookings.edu/papers/2011/02_immigration_hart_acs.aspx).

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## Member News

Steve Clark (bio: <http://www.abil.com/lawyers/lawyers-clark.cfm?c=US>) will address post-doctoral scholars on March 8, 2011, at the Massachusetts Institute of Technology (MIT) on their options to self-petition for permanent residence. The event is co-sponsored by the MIT International Scholars Office and Flynn and Clark, P.C.

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) recently debated on immigration issues in Georgia on NBC Atlanta (Channel 11). The video is available at <http://www.11alive.com/video/default.aspx?bctid=778584359001#/Debate%20On%20Immigration/778584359001>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has published a new blog entry, "The LCA in the Age of Telecommuting." The blog notes that telecommuting employees raise important questions and issues in the immigration context, especially with regard to the Labor Condition Application (LCA) required for H-1B nonimmigrant workers. Among those issues is whether a new LCA is required for each location where an employee teleworks. The blog is available at <http://cyrusmehta.blogspot.com/2011/02/lca-in-age-of-telecommuting.html>.

Steve Trow (bio: <http://www.abil.com/lawyers/lawyers-trow.cfm?c=US>) will speak on a panel on March 2, 2011, on "Landing in America: Help for

Foreign Nationals in Navigating the Sea of Immigration and Banking Issues," sponsored by the British-American Business Association (BABA) and the French-American Chamber of Commerce. The event will be held at HSBC's Premier Center in Washington, DC. for more information about the event, call BABA at (202) 293-0010.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has published several new blog entries. "What About 'Legal Immigration' Don't You Understand?" discusses a new bill Sen. Orrin Hatch is introducing. The blog is available at <http://www.nationofimmigrants.com/i-should-know-better-than/index.html>. "U.S. Immigration's Egyptian Moment," which likens the immigration situation in the U.S. to a pressure cooker and argues that the building energy will have to be released: "All of the essential requirements for an energized reaction are present. DREAMers have nowhere to go but to the street and to their smartphones. Spanish- and other foreign-language media will report growing resentment, anger and the desire for justice among their U.S. citizen and immigrant readers - reporting largely unnoticed in the Anglo mediascape." The blog is available at <http://blogs.ilw.com/angelopaparelli/>.

Steve Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in the February 2, 2011, edition of the Los Angeles *Daily Journal*. The article, "Shareholders Bring Novel Suits Over Workforce," discusses a securities fraud suit filed against American Apparel Inc. because its stock dropped following an immigration enforcement action that resulted in the firing of nearly a third of its factory workforce. "Certainly, this securities fraud action is the first opportunity that I know of for a jury to judge the immigration policies of a company," said Mr. Yale-Loehr. He noted that the case is especially interesting because American Apparel has taken a more liberal and publicized stance on immigration policies than other public companies. The company simultaneously asserted that it had tried to comply with immigration laws, he noted.

Mr. Paparelli and Mr. Yale-Loehr will co-present a Lexis Webinar on March 8, 2011, to guide corporate and tax attorneys who represent high net worth individuals. It will explain immigration options and offer practical real-world strategies for their clients. For more information on the Webinar, "U.S. Investment Visas and Green Cards for Foreign Clients – A Webinar for Corporate and Tax Lawyers," see <http://www.lexisnexis.com/COMMUNITY/TAXLAW/blogs/conferencesandevents/archive/2011/02/11/march-8-martindale-com-174-connected-presents-u-s-investment-visas-and-green-cards-for-foreign-clients-a-webinar-for-corporate-and-tax-lawyers.aspx>.

Mr. Yale-Loehr and other Alliance of Business Immigration Lawyers members will be speaking at the 2011 American Immigration Lawyers Association's EB-5 CLE Conference in Las Vegas, Nevada, on March 14, 2011. The comprehensive one-day program provides training in EB-5 investor law for practitioners at every level. For more information, see <http://www.aila.org/eb5conference>.

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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](http://travel.state.gov/visa/bulletin/bulletin_1360.html)

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*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/>.

## **Disclaimer/Reminder**

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