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DHS OIG Report on EB-5 Regional Center Program Stirs Controversy – The Department of Homeland Security's Office of Inspector General has released a controversial new report on the EB-5 regional center program that includes four recommendations.

OSC Reiterates That Employers May Not Institute a Hiring Preference for U.S. Citizens Unless Required To Do So – The OSC encourages employers considering a restriction on hiring based on citizenship status to ensure that it is properly restricting the position. Not to do so is to risk the imposition of sanctions, penalty fines, reporting requirements, and back pay.

OSC Clarifies I-9 Verification for Refugees, Asylees – The OSC clarified the application of documentation requirements related to I-9 work authorization verification for refugees and asylees.

DOL Postpones Action on Decision Vacating Supplemental Prevailing Wage Determinations – The DOL is postponing action on a decision vacating supplemental prevailing wage determinations issued in light of an interim final H-2B wage rule.

Philippines Requests TPS Designation – The government of the Philippines has asked the Obama administration to designate the Philippines for temporary protected status in the wake of Typhoon Yolanda/Haiyan.

SSA Updates Operations Manual Re Same-Sex Marriages in Foreign Jurisdictions – The SSA issued new instructions for obtaining legal opinions on the validity of foreign same-sex marriages in light of the Supreme Court decision in *United States v. Windsor*. The new instructions include policy, process, and procedures for processing same-sex marriage cases.

DHS, USCIS Personnel Changes Announced – The U.S. Senate confirmed the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security; the Obama administration nominated Leon Rodriguez to lead USCIS.

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DHS OIG Report on EB-5 Regional Center Program Stirs Controversy

The Department of Homeland Security's Office of Inspector General (OIG) has released a controversial new report on the EB-5 regional center program that includes four recommendations.

OIG report highlights. As background, Congress enacted the employment-based fifth preference (EB-5) green card category in 1990 to stimulate the U.S. economy through direct job creation and capital investment by foreign investors. Congress added a regional center pilot program to the EB-5 category in 1992 to pool investor money in a defined industry and geographic area to create both direct and indirect jobs.

An EB-5 investor must invest \$500,000 if his or her investment is in a high unemployment area or a rural area. Otherwise the investor must invest \$1 million. Each foreign investor must create or preserve at least 10 full-time jobs for qualifying U.S. workers within 2 years.

The OIG report notes several conditions that prevent U.S. Citizenship and Immigration Services (USCIS) from administering and managing the EB-5 regional center program effectively. First, the laws and regulations governing the program do not give USCIS authority to deny or terminate a regional center's participation based on fraud or national security concerns; the program extends beyond the current USCIS mission. Second, USCIS is unable to demonstrate the benefits of foreign investment in the U.S. economy.

Additionally, the report notes, USCIS has difficulty ensuring the integrity of the regional center program. USCIS does not always ensure that regional centers meet all program eligibility requirements, and USCIS officials differently interpret and apply regulations and policies. Also, USCIS did not always document its decisions and responses to inquiries, making the program vulnerable to perceptions about internal and external influences.

As a result, the report states, USCIS is limited in its ability to prevent fraud and national security threats and cannot demonstrate that the program is improving the U.S. economy and creating jobs for U.S. citizens, as intended by Congress.

OIG recommends that USCIS: (1) update and clarify its regulations; (2) develop memoranda of understanding with the Departments of Commerce and Labor and the Securities and Exchange Commission to provide expertise and involvement in the adjudication of applications and petitions for the EB-5 regional center program; (3) conduct comprehensive reviews to determine how EB-5 funds have actually stimulated growth in the U.S. economy in accordance with the intent of the program; and (4) establish quality assurance steps to promote program integrity and ensure that regional centers comply with regulatory requirements.

Reaction. IIUSA, the industry trade association that represents over 130 EB-5 regional centers that serve over 40 states and territories and account for over 95% of the capital flowing through the EB-5 regional center program, said it was "puzzled" by the OIG's findings and conclusions. IIUSA said that many of the reforms the OIG identified as necessary were already underway, and that USCIS had refuted other criticisms in its response to the report.

For example, IIUSA noted that USCIS has created a new Immigrant Investor Program Office staffed by trained economists, experts in business and immigration law, and fraud and national security specialists, now led by a former director of the Treasury Department's Financial Crimes Enforcement Network. USCIS plans for all EB-5 related adjudications to be relocated to this office over the next six months. IIUSA also noted that USCIS has clarified its guidance for adjudicators in a comprehensive EB-5 policy memorandum and has strengthened interagency relationships.

IIUSA said these and other rebuttals in the USCIS response "should raise significant questions about the credibility of the report," which was "further undermined by the recent resignation of [Charles Edwards, DHS's Acting Inspector General], who himself was under investigation."

The OIG report notes that USCIS agreed with three of the four OIG recommendations. Details of the OIG's analysis and USCIS's response are included in the report, "United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program," OIG-14-19, available at http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf. IIUSA's statement in response to the report is available at <http://iiusablog.org/government-affairs/iiusa-statement-eb5-program-report-dhs-oig/>.

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OSC Reiterates That Employers May Not Institute a Hiring Preference for U.S. Citizens Unless Required To Do So

In response to a query, Alberto Ruisanchez, Acting Deputy Special Counsel of the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), reiterated that employers may not institute a hiring preference for U.S. citizens unless required to do so to comply with a law, regulation, executive order, or government contract. Individuals protected from citizenship status discrimination include U.S. citizens, lawful permanent residents, refugees, and asylees.

Mr. Ruisanchez said the OSC encourages employers considering a restriction on hiring based on citizenship status to ensure that it is properly restricting the position. Not to do so is to risk the imposition of sanctions, penalty fines, reporting requirements, and back pay.

Mr. Ruisanchez noted that the OSC cannot give an advisory opinion based on any particular set of facts. The query was from Gretta Rowold, Executive Director of Secure Research Operations for the University of Oklahoma's Office of Legal Counsel. She told the OSC that the university negotiates sponsored research agreements with non-university parties and periodically is asked to restrict participants to U.S. citizens only, and that the organizations sponsoring the research in some cases are unwilling or unable to provide justification for the requirement other than stating that the organization does sensitive work, or has a U.S. government customer who wouldn't like it if non-U.S. citizens were involved in their projects. She asked the OSC what exposure the university might have under the law, and what type of justification or documentation is appropriate to protect the university against liability.

The OSC's response letter, sent on November 20, 2013, is available at <http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2014/OSC000177.pdf>.

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OSC Clarifies I-9 Verification for Refugees, Asylees

In response to a query, Seema Nanda, Deputy Special Counsel of the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), clarified the application of documentation requirements related to Form I-9 work authorization verification for refugees and asylees. Eileen Scofield of Alston & Byrd asked what steps employers should take when an asylee or refugee worker presents for initial I-9 verification purposes a Form I-766, employment authorization document (EAD), that subsequently expires, considering the fact that asylees and refugees have unrestricted work authorization.

Ms. Nanda noted that when completing the I-9, a worker must select a box in Section 1 indicating his or her status. The selection applicable to "refugees and asylees—alien authorized to work" has a field that requests "expiration date, if applicable." The I-9 instructions provide that

refugees or asylees may write "N/A" in the space provided for the expiration date in Section 1. After employees complete Section 1, they must present documents evidencing identity and employment eligibility for the employer to complete Section 2. USCIS guidance provides that refugee and asylee workers are not required to present an EAD for Section 2 to complete the I-9. They may choose to present other documents, such as a driver's license (List B) and unrestricted Social Security card (List C), to satisfy the I-9 requirements. The I-9 instructions further provide that reverification of a worker's employment authorization does not apply to refugees and asylees "unless they chose to present evidence of employment authorization in Section 2 that contains an expiration date and requires reverification, such as Form 1-766, Employment Authorization Document." Thus, Ms. Nanda said, an employer that reverifies the employment authorization of an asylee or refugee who originally presented an EAD upon the EAD's expiration is following USCIS guidance. OSC therefore would be "unlikely to find a violation of the anti-discrimination provision unless the employer somehow acted in a discriminatory manner based on national origin or citizenship status," Ms. Nanda said.

Ms. Scofield also asked about refugee and asylee workers who are unable to present a new unexpired EAD by the date of expiration of their originally presented EAD. Ms. Nanda responded that for reverification, an employee may present unexpired documentation from either List A or List C showing he or she is still authorized to work. Employers cannot require the employee to present a List A document. Thus, she noted that a refugee or asylee who originally presented an EAD could, for example, present an unrestricted Social Security card at reverification. Furthermore, the receipt rule would allow a worker to present a receipt for a lost, stolen, or misplaced document for reverification purposes. To the extent an employer requires an employee to present a specific document, such as an unexpired EAD, for reverification purposes, it may violate the anti-discrimination provision's prohibition against document abuse, Ms. Nanda warned.

The OSC's response letter, which was sent on September 25, 2013, is available at <http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2013/172.pdf>.

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DOL Postpones Action on Decision Vacating Supplemental Prevailing Wage Determinations

The Department of Labor (DOL) announced on December 20, 2013, that it is postponing action on a decision vacating supplemental prevailing wage determinations issued in light of an interim final H-2B wage rule.

On December 3, 2013, the Board of Alien Labor Certification Appeals (BALCA) issued an en banc decision in *Matter of Island Holdings LLC* (2013-PWD-00002). That decision vacated the supplemental prevailing wage determinations issued in light of the DOL's interim final H-2B wage rule (78 Fed. Reg. 24047, Apr. 24, 2013). A class action complaint has been filed in the district court in the Eastern District of Pennsylvania, challenging the *Island Holdings* decision, *CATA v. Perez*, 13-CV-07213.

The DOL's Office of Foreign Labor Certifications (OFLC) said that after a full review of the *Island Holdings* decision and the district court complaint, the DOL has decided to postpone action on the *Island Holdings* decision pending judicial review. "This action is in the interest of justice, given the confusion and substantial disruption that would be created if the Department implemented the decision and it was subsequently overturned by the district court," the OFLC noted. Accordingly, all OFLC actions related to the resolution of appeals in the supplemental prevailing wage decisions will be stayed pending the resolution of the district court action.

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

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Philippines Requests TPS Designation

The government of the Philippines has asked the Obama administration to designate the Philippines for temporary protected status (TPS) in the wake of Typhoon Yolanda/Haiyan, which killed more than 6,000 people and displaced millions. The request was relayed to the Department of Homeland Security (DHS). Not only would this give an estimated 1 million Filipinos in the United States the opportunity to stay and work, but it would also allow them to send remittances back home. As of the date of publication of this newsletter, the DHS has not acted on the request.

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SSA Updates Operations Manual Re Same-Sex Marriages in Foreign Jurisdictions

The Social Security Administration (SSA) has added a new section to its Program Operations Manual System (POMS) providing instructions for obtaining legal opinions on the validity of foreign same-sex marriages in light of the Supreme Court's decision in *United States v. Windsor*. The new POMS instructions include policy, process, and procedures for processing same-sex marriage cases.

The SSA noted that under *Windsor*, the agency is no longer prohibited from recognizing same-sex marriages for purposes of determining benefits. Consequently, all claims filed on or after June 26, 2013, or that were pending final determination at the time of that decision are subject to *Windsor* instructions. The SSA said it is working with the Department of Justice to interpret the decision.

The new POMS instructions are available at <https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013093759AM>, <https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013094242AM>, and <https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013094652AM>. The decision in *United States v. Windsor* is available at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf.

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DHS, USCIS Personnel Changes Announced

The U.S. Senate confirmed the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security on December 20, 2013, by a vote of 54-41. Mr. Mayorkas has been head of U.S. Citizenship and Immigration Services (USCIS) since 2009.

Meanwhile, the Obama administration nominated Leon Rodriguez to lead USCIS. Since 2011, Mr. Rodriguez has served as the Director of the Office for Civil Rights at the Department of Health and Human Services. From 2010 to 2011, he served as Chief of Staff and Deputy Assistant Attorney General for Civil Rights at the Department of Justice (DOJ). Previously, Mr. Rodriguez was County Attorney for Montgomery County, Maryland, from 2007 to 2010. He was a principal at Ober, Kaler, Grimes & Shriver in Washington, DC, from 2001 to 2007. He served in the U.S. Attorney's Office for the Western District of Pennsylvania from 1997 to 2001, first as Chief of the White Collar Crimes Section from 1998 to 1999 and then as First Assistant U.S. Attorney until his departure. Before joining the U.S. Attorney's Office, Mr. Rodriguez was a trial attorney in the DOJ's Civil Rights Division from 1994 to 1997 and a Senior Assistant District Attorney at the Kings County District Attorney's Office in New York from 1988 to 1994. He received a B.A. from Brown University and a J.D. from Boston College Law School.

The White House announcement for Mr. Rodriguez is available at <http://www.aila.org/content/default.aspx?docid=46806>. For more on Mr. Mayorkas, see <http://www.uscis.gov/about-us/leadership/alejandro-mayorkas-director-us-citizenship-and-immigration-services>.

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New Publications and Items of Interest

[Vote for Best and Worst: IMMI Awards](#). The "Nation of Immigrators" blog is preparing its annual list of the year's best and worst in immigration policy and law. See <http://www.nationofimmigrators.com/immi-awards/2013-nation-of-immigrators-awards-coming-soon----immi-nominees-welcome/> for details and to vote.

[EOIR launches Facebook page](#). The Executive Office for Immigration Review (EOIR) has opened a Facebook account to assist the agency in providing interested parties with information about news, events, and announcements through a second social media channel. EOIR's website, <http://www.justice.gov/eoir>, will continue to be the agency's primary source of information online. Receive EOIR updates by liking EOIR on Facebook at <https://www.facebook.com/doj.eoir> and by continuing to follow @DOJ_EOIR on Twitter at [follow @DOJ_EOIR](#).

[Several ABIL members co-authored and edited the *Global Business Immigration Practice Guide*](#), released by LexisNexis. The *Practice Guide* is a one-stop resource for dealing with questions related to business immigration issues in immigration hotspots around the world.

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."

This comprehensive guide is designed to be used by:

- 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.

Order at:

<http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&core=&parent=&catId=31&prodId=70836>. International customers who do not want to order through the bookstore can order through Nicole Hahn at (518) 487-3004 or Nicole.hahn@lexisnexis.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

Kehrela Hodkinson (bio: <http://www.abil.com/lawyers/lawyers-hodkinson.cfm>) was quoted in an article on U.S. visa questions in the November 20, 2013, edition of the *Financial Times*. She noted that clients are not always likely to answer incriminating questions on visa applications truthfully.

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) has published a new blog entry. "Obama—Still the Deportation President" is available at <http://musingsonimmigration.blogspot.com/2013/12/obama-still-deportation-president.html>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has authored or co-authored several new blog entries. "Top Ten Posts on the Insightful Immigration Blog in 2013" is available at <http://blog.cyrusmehta.com/2013/12/top-10-posts-on-insightful-immigration.html>. "One Step Forward, Two Steps Backwards: Immigration Benefits for Same Sex and Domestic Partners in India" is available at <http://blog.cyrusmehta.com/2013/12/one-step-forward-two-steps-backwards.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has authored a new blog entry. "Immigration Triangulation—Another Dysfunctional Government Policy" is available at <http://www.nationofimmigrators.com/immigration-reform/immigration-triangulation----another-dysfunctional-government-policy/index.html#!>.

Mr. Paparelli has announced the 2013 Nation of Immigrant ("IMMI") awards at <http://www.nationofimmigrators.com/immigration-awards/the-2013-nation-of-immigrators-awards---the-immis-are-announced/>.

Bernard Wolfsdorf is the Program Chair for the American Immigration Lawyers Association's Midyear Conference focusing on "Strategies in Advising Entrepreneur & Investor Visas," to be held January 24, 2014, at the Westin Grand Cayman Seven Mile Beach Resort. Mr. Wolfsdorf will be the Discussion Leader on the EB-5 Essentials Panel.

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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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