



Immigration Insider

News from the Alliance of Business Immigration Lawyers Vol. 6, No. 7B · July 15, 2010

Headlines:

- **1. U.S. Files Lawsuit Against Arizona Immigration Law** - The Department of Justice has filed a complaint and requested a preliminary injunction to enjoin enforcement of the law, arguing that the law is unconstitutional and will cause irreparable harm.
- **2. U.S. Expands Appointment Scheduling for Nonimmigrant Visa Applicants in China** - Nonimmigrant visa applicants may now schedule interview appointments at any U.S. Consular Section in China, regardless of the province or city where they live.
- **3. USCIS Extends TPS Designation for El Salvador** - El Salvador's TPS designation has been extended through March 9, 2012.
- **4. State Dep't Explains Biometric Visa Program's Fingerscan, Photo Requirements** - Fingerscans and photos are generally required, with certain exceptions.
- **5. Labor Dep't Launches National H-2A Electronic Job Registry** - The Employment and Training Administration launched a new National Electronic Job Registry for H-2A job orders on July 8, 2010.
- **6. Decisions Not to Hire Persons Based on Need for Visa Sponsorship or Employer Submission OK, Justice Dep't Says** - Only certain classes of individuals are protected from citizenship status discrimination under the law, including U.S. citizens, U.S. nationals, temporary residents, recent lawful permanent residents, refugees, and asylees.
- **7. CBP Invites Comments on SENTRI and FAST Commercial Driver Applications** - U.S. Customs and Border Protection (CBP) has invited the public and other Federal agencies to comment on an information collection requirement concerning CBP's Trusted Traveler Programs.

Also in this issue:

[New Publications and Items of Interest](#)

[Government Agency Links](#)

Details...

1. U.S. Files Lawsuit Against Arizona Immigration Law

The Department of Justice challenged the state of Arizona's recently passed immigration law, S.B. 1070, in federal court on July 6, 2010. The Department has requested a preliminary injunction to enjoin enforcement of the law, arguing that the law's operation will cause irreparable harm.

In a brief filed in the District of Arizona, the Department said S.B. 1070 unconstitutionally interferes with the federal government's authority to set and enforce immigration policy, explaining that "the Constitution and federal law do not permit the development of a patchwork of state and local immigration policies throughout the country." Having enacted its own immigration policy that conflicts with federal immigration law, Arizona "crossed a constitutional line."

The Department also argued that S.B. 1070 will place significant burdens on federal agencies, diverting their resources from high-priority targets. In addition, the Department expressed concerns that the law would result in the harassment and detention of foreign visitors and legal immigrants, as well as U.S. citizens, who cannot readily prove their lawful status.

In declarations filed with the brief, Arizona law enforcement officials, including the Chiefs of Police of Phoenix and Tucson, said that S.B. 1070 will hamper their ability to police their communities effectively. The chiefs said that victims of or witnesses to crimes would be less likely to contact or cooperate with law enforcement officials and that implementation of the law would require them to reassign officers from critical areas such as violent crimes, property crimes, and home invasions.

The Department said it filed the suit after extensive consultation with Arizona officials, law enforcement officers and groups, and civil rights advocates. The suit was filed on behalf of the Departments of Justice, Homeland Security, and State, which share responsibilities in administering federal immigration laws.

"Arizonans are understandably frustrated with illegal immigration, and the federal government has a responsibility to comprehensively address those concerns," Attorney General Eric Holder commented. "But diverting federal resources away from dangerous aliens such as terrorism suspects and aliens with criminal records will impact the entire country's safety. Setting immigration policy and enforcing immigration laws is a national responsibility. Seeking to address the issue through a patchwork of state laws will only create more problems than it solves."

Department of Homeland Security Secretary Janet Napolitano said that when she was governor of Arizona, with the strong support of state and local law enforcement, she vetoed several similar pieces of legislation "because they would have diverted critical law enforcement resources from the most serious threats to public safety and undermined the vital trust between local jurisdictions and the communities they serve. We are actively working with members of Congress from both parties to comprehensively reform our immigration system at the federal level." While this effort progresses, she said, the Department of Homeland Security "will continue to enforce the laws on the books by enhancing border security and removing criminal aliens from this country."

The Department's announcement is available at <http://www.justice.gov/opa/pr/2010/July/10-opa-776.html>. Links to the complaint filed and other case documents are provided at the bottom of that page.

[Back to Top](#)

2. U.S. Expands Appointment Scheduling for Nonimmigrant Visa Applicants in China

Nonimmigrant visa applicants may now schedule interview appointments at any U.S. Consular Section in China, regardless of the province or city where they live. Consular Sections are located at the U.S. Embassy in Beijing and U.S. Consulates General in Chengdu, Guangzhou, Shanghai, and Shenyang. The U.S. Embassy in Beijing noted that although the basic application process is the same, specific times and application procedures at each visa issuing office may vary. Before applying for a visa, applicants should check each post's Web site for procedures specific to that post. In 2009, the U.S. Embassy in Beijing noted, almost half a million people received nonimmigrant visas in China.

The notice is available at http://beijing.usembassy-china.org.cn/visa_interview_appointment_availability.html. Information about making an appointment is available at http://beijing.usembassy-china.org.cn/niv_appointment.html.

[Back to Top](#)

3. USCIS Extends TPS Designation for El Salvador

U.S. Citizenship and Immigration Services (USCIS) has extended the designation of El Salvador for temporary protected status (TPS) for 18

months, from its current expiration date of September 9, 2010, through March 9, 2012.

The notice also 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) with 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.

New EADs with a March 9, 2012, expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, USCIS said it recognizes the possibility that all re-registrants may not receive new EADs until after their current EADs expire on September 9, 2010. Accordingly, the notice automatically extends the validity of EADs issued under the TPS designation of El Salvador for six months, through March 9, 2011, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

The extension of the TPS designation is effective September 10, 2010, and will remain in effect through March 9, 2012. The 60-day re-registration period begins July 9, 2010, and will remain in effect until September 7, 2010.

The notice is available at <http://edocket.access.gpo.gov/2010/pdf/2010-16431.pdf>. A Q&A is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=9fc4a93adb7b9210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

[Back to Top](#)

4. State Dep't Explains Biometric Visa Program's Fingerscan, Photo Requirements

The Department of State has published a notice in the Federal Register that explains when fingerscans and other biometric identifiers are required, and notes exceptions to the general requirements.

The notice explains that the Enhanced Border Security and Visa Entry Reform Act of 2002 has required, since October 26, 2004, that all visas

issued by the Department of State (DOS) must be machine-readable and tamper-resistant and use biometric identifiers. DOS determined, in consultation with the Departments of Homeland Security (DHS) and Justice (DOJ), that fingerprints and a photo image should be required as biometric identifiers. When the biometric visa program began, available technology allowed for the efficient capture and comparisons of only two fingerscans. As a result of technological improvements, DOS instituted a 10-fingerscan standard.

DOS's Biometric Visa Program is a partner program to DHS's US-VISIT program in effect at U.S. ports of entry that uses the same biometric identifiers. The DOS notice explains that fingerscans and photos of visa applicants are sent to DHS databases. When a person to whom a visa has been issued arrives at a port of entry, his or her photo is retrieved from a database and projected on the computer screen of the U.S. Customs and Border Protection officer, who compares the person's fingerscans to the fingerscans in the database.

Certain exemptions to the fingerscans under the Biometric Visa Program have been coordinated with DHS to coincide with the exemptions to fingerscans under US-VISIT. Under the Biometric Visa Program, applicants for diplomatic or official visas, for visas to represent their governments at recognized international organizations such as the United Nations or for visas to serve as employees of such organizations, for NATO visas, or for government officials on official transit through the U.S. are exempt from the fingerscans. The aforementioned are represented by these visa categories: A-1, A-2, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6 and C-3 (except for attendants, servants, or personal employees of accredited officials).

In addition, the notice states, persons under age 14 and persons age 80 or above are generally exempt from the fingerscans, unless the person is applying for a visa at a consular post in Mexico and in Yemen. In Mexico, fingerscans are required for applicants beginning at age 7 and above under the program for issuance of biometric Border Crossing Cards (commonly known as "laser visas"), which began in 1998. DOS recently expanded that policy to include visa applicants in Yemen, and may further expand it to include additional countries in the future. DOS retains the authority to require fingerscans of children under age 14 or adults age 80 or above in all other countries.

All visa applicants must submit a photograph with the visa application, the notice explains, except at consular posts in Mexico where most nonimmigrant visa applicants have a live-capture photo taken at the post.

All persons, regardless of whether they submit fingerscans, are reviewed against the Department's facial recognition database.

The notice, published on July 8, 2010, is available at <http://edocket.access.gpo.gov/2010/pdf/2010-16671.pdf>.

[Back to Top](#)

5. Labor Dep't Launches National H-2A Electronic Job Registry

The Department of Labor's Employment and Training Administration (ETA) launched a new National Electronic Job Registry for H-2A job orders on July 8, 2010. Under a final rule published in February 2010, the agency must post all job orders filed in connection with H-2A applications until the end of 50 percent of the contract period. This requirement, the notice explains, is intended to "improve the transparency of agricultural jobs available to U.S. workers and provide an unprecedented level of public access to one of the most frequently requested types of records maintained by the Department."

The job order information is searchable by common data points such as case number, employer name, area of intended employment, work contract period, job title, and primary crop or agricultural activity. All search results are displayed in a table format with sortable column headers. The public is able to view a summary of the job order as well as download a copy of the entire job order and all attachments in Adobe PDF format.

The Office of Foreign Labor Certification (OFLC) noted that since March 15, 2010, it has received more than 620 H-2A applications requesting nearly 11,000 workers. Approximately 450 active H-2A job orders are available to the public.

Public access to the job registry is available through the OFLC iCERT Visa Portal System at <http://icert.doleta.gov>. Questions related to job orders placed on the H-2A job registry may be e-mailed to H-2Ajobregistry.chicago@dol.gov. This H-2A job registry Help Desk e-mailbox is monitored from 8:30 a.m. to 5 p.m. Central Time, Monday through Friday. Members of the public may also call the job registry Help Desk at (312) 886-8000 (not toll-free).

The notice, which was published on July 1, 2010, and includes additional details about how the registry will be updated, is available at <http://edocket.access.gpo.gov/2010/pdf/2010-16011.pdf>. A fact sheet is available at http://www.foreignlaborcert.doleta.gov/pdf/H2A_JobRegistry_Factsheet.pdf.

[Back to Top](#)

6. Decisions Not to Hire Persons Based on Need for Visa Sponsorship or Employer Submission OK, Justice Dep't Says

Katherine A. Baldwin, Deputy Special Counsel for the Department of Justice's Civil Rights Division, noted in a recent letter that in general, decisions not to hire individuals based solely on their need for visa sponsorship or their need for a written employer submission to U.S. Citizenship and Immigration Services, either currently or in the future, would not be actionable under the antidiscrimination provisions of U.S. immigration law. She noted that only certain classes of individuals are protected from citizenship status discrimination under the law, including U.S. citizens, U.S. nationals, temporary residents, recent lawful permanent residents, refugees, and asylees.

The letter, sent on June 29, 2010, to Angelo Paparelli, partner in the Business Immigration Group of Seyfarth Shaw LLP, is available at <http://www.nationofimmigrants.com/wp-content/uploads/2010/07/OSC%20Reply%20on%20Proper%20Question%20on%20Job%20Application.pdf>.

[Back to Top](#)

7. CBP Invites Comments on SENTRI and FAST Commercial Driver Applications

U.S. Customs and Border Protection (CBP) has invited the public and other Federal agencies to comment on an information collection requirement concerning CBP's Trusted Traveler Programs, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified southwest land border ports of entry, and the Free and Secure Trade program (FAST), which provides expedited border processing for known, low-risk commercial drivers.

The purpose of the Trusted Traveler programs, the notice explains, is to provide prescreened travelers expedited entry into the U.S. The benefit to the traveler is less time spent in line waiting to be processed by CBP.

Applicants may apply for these programs using paper forms available at <http://www.cbp.gov> or through the Global On-line Enrollment System (GOES) at <https://goes-app.cbp.dhs.gov>.

The notice, published on July 6, 2010, is available at <http://edocket.access.gpo.gov/2010/pdf/2010-16314.pdf>.

[Back to Top](#)

New Publications and Items of Interest

[USCIS Ombudsman releases annual report to Congress](#). The U.S. Citizenship and Immigration Services' (USCIS) Ombudsman, January Contreras, recently submitted the 2010 Annual Report to Congress. Challenges identified by the Ombudsman include declining receipts and revenue; antiquated technology and case management systems; employment and family green card queues; issues with requests for evidence; and other issues. The report includes recommendations to address these and other challenges.

The report is available at

http://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf.

[Back to Top](#)

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

[Back to Top](#)

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 the 140 member attorneys and their 460 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

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.

Copyright © 2010 Alliance of Business Immigration Lawyers. All rights reserved.

[Back to Top](#)
