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USCIS Ombudsman Annual Report Notes Continuing RFE Issues – The Ombudsman continues to be concerned with the quality and consistency of adjudications and the issuance of unduly burdensome requests for evidence, among other things.

China Visa Availability Retrogresses in Some Categories in August, Other Categories Advance – An "extremely large increase" in applicant demand has resulted in retrogressions in the China-mainland born EB-3 and "Other Workers" categories, to 2004.

USCIS Resumes Premium Processing for Extension-of-Stay H-1B Petitions – As of July 13, 2015, USCIS resumed accepting requests for premium processing service for all H-1B extension-of-stay petitions (Form I-129, Petition for a Nonimmigrant Worker).

USCIS Media Campaign Highlights Citizenship Info, Tools – The media campaign includes print and digital advertisements, and video and radio public service announcements, in several languages.

U.S. Embassy in Mexico Announces Changes in Nonimmigrant E Visa Application Processing – The embassy is shifting processing of E-1 treaty trader and E-2 treaty investor visas away from Mexico City.

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USCIS Ombudsman Annual Report Notes Continuing RFE Issues

U.S. Citizenship and Immigration Services' (USCIS) Ombudsman's Office has published the 2015 Annual Report. Highlights include:

RFE issues. The Ombudsman's Office reviews issues involving temporary nonimmigrant petitions (H-2A, H-2B, H-1B, L-1, and O-1), investor immigrant petitions (EB-5), other immigrant petitions, and employment authorization applications. The Annual Report states that the Ombudsman continues to be concerned with the quality and consistency of adjudications and the issuance of unduly burdensome requests for evidence (RFEs). Last year's report discussed in detail RFEs that were "too often vague, unduly burdensome, or unnecessary," this year's report notes. The Ombudsman said that such RFEs "continue to delay adjudications and burden applicants and petitioners, particularly in the provisional waiver program and key employment-based categories." Providing adequate notice regarding filing deficiencies "is essential to the effectiveness of RFEs, but they are often general and fail to address evidence already in the record," the Ombudsman said, adding that this is especially important in cases in which applicants and petitioners are not afforded the option of an appeal or a motion to reopen or reconsider.

The report notes one example of an employer agent who submitted a request for case assistance with the Ombudsman. The agent had filed an H-2A petition on behalf of the employer on October 31, 2014, with a November 15, 2014, start date requested. USCIS issued an RFE on November 19, 2014. USCIS did not use the next-day-return courier envelope provided and instead sent the request by regular USPS mail. The agent did not receive the notice until December 1, 2014. Furthermore, the agent was confused by the duplicative nature of the RFE because the documents requested were submitted with the initial petition. The employer immediately submitted a duplicate copy of the documents to USCIS using overnight mail. The Ombudsman contacted USCIS, and assisted in having the agency review and adjudicate the H-2A petition within a day of the communication. The report states that a shift to electronic processing, whether via online submission or email, would result in faster processing.

Stakeholders continue to raise concerns about USCIS adjudication of nonimmigrant petitions for high-skilled beneficiaries, the report notes, including H-1B (specialty occupations), L-1A (intracompany transferee managers or executives), L-1B (specialized knowledge workers), and O-1 (extraordinary ability or achievement). Specifically, employers and their representatives have sent examples to the Ombudsman of RFEs that appear to be redundant, seeking documentation that was previously provided; unnecessary, requesting information that is irrelevant or exceeds what is needed to complete the adjudication; and unduly burdensome in scope or intrusiveness.

Petitioners have also provided the Ombudsman with examples of RFEs and denials in "new" office L-1A extension cases. In reviewing these extension filings, the report notes that "it is appropriate that adjudicators examine whether the petitioner is actually 'doing business,' to ascertain the specific job duties that will be performed by the beneficiary under the extended petition," and to consider the "staffing of the new operation, including the number of employees and types of positions held." Yet, in some instances, the report notes, "it appears that adjudicators are placing undue emphasis on whether the beneficiary is too closely connected to the actual production work or services offered by the petitioning entity." The report states that "L-1A managers and executives are in fact permitted to engage in some hands-on activities, provided these activities are secondary to their principal and essential duties."

In response to the concerns about RFEs, the Ombudsman said that trainings for adjudicators could be made more useful. "A training program on the preponderance of the evidence standard using detailed real-world case examples for each product line would better assist USCIS adjudicators [in determining] whether cases are approvable or deniable upon first review,

resulting in the issuance of fewer, and more narrowly tailored RFEs," the report notes. The Ombudsman also continues to urge the agency to pilot an initiative requiring 100 percent supervisory review before an RFE is issued.

EB-5 program and employment-based processing. The report notes that although USCIS has hired new adjudicators and economists, it had 12,749 investor petitions (Form I-526, Immigrant Petition by Alien Entrepreneur) in its pending inventory as of March 31, 2015, with nearly 20 percent pending adjudication for more than a year, and that EB-5 processing times have been getting longer. The report notes that USCIS has provided technical assistance to Congress and is working with other DHS and government agencies to put safeguards in place to ensure program integrity.

Regarding employment-based immigrant petition processing, the report notes that in recent months USCIS has taken steps to review its longstanding policy on who is an "affected party" for purposes of appealing a decision on a Form I-140, Immigrant Petition for Alien Worker. The Ombudsman encourages USCIS to consider the significant case law and recognize legal standing for certain beneficiaries of a Form I-140 petition.

Matter of Simeio. The report notes that on April 9, 2015, USCIS's Administrative Appeals Office (AAO) issued a rare precedent decision addressing when a reassignment of an H-1B worker requires the petitioning employer to file an amended H-1B petition that is supported by a DOL certified Labor Condition Application (Form ETA-9035). As a precedent decision—one of only four issued in the last three years—the holding in *Simeio* is binding on all USCIS H-1B petitioning employers nationwide, the report notes.

Since the *Simeio* decision was issued without accompanying guidance, the Ombudsman hosted a national teleconference on April 30, 2015, to seek stakeholder feedback and identify outstanding issues. Over 650 external stakeholders and government officials participated in the call. Of utmost importance to the affected stakeholder community, the report notes, was how the decision would be applied to H-1B employees who were previously reassigned with no amended filing based on prior practice. On May 21, 2015, USCIS addressed some of these questions through its issuance of draft guidance, which established a 90-day time frame for employers to submit amended filings.

The report notes that the *Simeio* case had been pending before AAO for nearly four years, and that this new agency interpretation was made without first providing the affected stakeholder community an opportunity to provide its input. "Some large employers have informed the Ombudsman that the decision could cost them millions in additional legal fees and filing costs," the report states.

DACA. USCIS began accepting Deferred Action for Childhood Arrivals (DACA) renewal applications in June 2014. Approximately 15 percent of requests for case assistance submitted to the Ombudsman involved DACA renewal processing delays. The report notes that this year, Department of Homeland Security (DHS) Secretary Jeh Johnson directed USCIS to expand the provisional waiver program and to clarify "extreme hardship" factors.

Juveniles. In this reporting period, USCIS developed and implemented the In-Country Refugee/Parole Program for Central American Minors in El Salvador, Guatemala, and Honduras. The Ombudsman continues to be concerned with adjudications issues and processing delays in special immigrant juvenile petitions, fee waiver requests, and asylum applications. Among other things, the Ombudsman received numerous examples of special immigrant juvenile petitions in which USCIS issued RFEs requesting a wide range of records pertaining to the underlying state court dependency order, "essentially second-guessing the state court action." The report notes that in the near future, the Ombudsman will publish formal recommendations to improve processing of petitions for special immigrant juveniles.

Other issues. The Annual Report also discusses delivery of USCIS notices and documents; recording or withdrawal of legal representation; USCIS's calculation of processing times; and the agency's ongoing effort to move from a paper-based to an electronic environment.

The report is available at <http://www.dhs.gov/annual-report-congress>.

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China Visa Availability Retrogresses in Some Categories in August, Other Categories Advance

The Department of State's Visa Bulletin for August 2015 reported an "extremely large increase" in applicant demand that has resulted in retrogressions in the China-mainland born employment-based third preference (EB-3) and "Other Workers" categories, to June 1, 2004, and January 1, 2004, respectively. The Visa Office said that "[e]very effort will be made to return those categories to the [previous] ... cut-off dates as quickly as possible under the FY-2016 annual limits. Those limits will take effect October 1, 2015."

Otherwise, most employment-based priority dates advanced. The EB-3 and "Other Workers" categories for the Philippines have once again become available, with a cut-off date in both categories of June 1, 2004.

The Visa Bulletin for August 2015 is available at http://travel.state.gov/content/dam/visas/Bulletins/visabulletin_August2015.pdf.

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USCIS Resumes Premium Processing for Extension-of-Stay H-1B Petitions

As of July 13, 2015, U.S. Citizenship and Immigration Services (USCIS) has resumed accepting Form I-907, Request for Premium Processing Service, for all H-1B extension-of-stay petitions (Form I-129, Petition for a Nonimmigrant Worker).

Premium processing service had been suspended previously for I-129 H-1B extension-of-stay petitions starting May 26, 2015, to July 27, 2015. USCIS said the temporary suspension allowed the agency to implement the final rule on employment authorization for certain H-4 dependent spouses in a timely manner and begin adjudicating applications for employment authorization filed by H-4 nonimmigrants under the new rule. Premium processing remained available for all other types of I-129 H-1B petitions during the temporary suspension.

USCIS said it closely monitored its workloads and determined that the agency could resume premium processing service for H-1B extension-of-stay petitions as of July 13, 2015. In response to a query, USCIS's Service Center Operations Directorate responded, "We now will accept an I-907 on any H-1B [extension of stay]. If an I-907 was filed/received prior to 07/13/15 it will be rejected."

As a reminder, USCIS also noted that it will accept only the new version (edition date: 01/29/2015) of the I-907. The edition date is printed on the bottom left corner of every page of the form and instructions.

The new USCIS announcement is available at <http://www.uscis.gov/news/uscis-resumes-premium-processing-extension-stay-h-1b-petitions>. The new version of the I-907 is available at <http://www.uscis.gov/i-907>. The final rule discussed above is available at

https://www.federalregister.gov/articles/2015/02/25/2015-04042/employment-authorization-for-certain-h-4-dependent-spouses?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov. The previous announcement about the initial "freeze" on premium processing for these petitions is available at <http://www.uscis.gov/news/alerts/uscis-temporarily-suspends-premium-processing-extension-stay-h-1b-petitions>.

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USCIS Media Campaign Highlights Citizenship Info, Tools

U.S. Citizenship and Immigration Services (USCIS) released a series of promotional materials on July 6, 2015, as part of its Citizenship Public Education and Awareness Initiative.

The effort is intended to raise awareness about the rights, responsibilities and importance of U.S. citizenship and provide information on the naturalization process and USCIS educational resources. The promotional campaign guides lawful permanent residents to the USCIS Citizenship Resource Center for "official, accurate and reliable information on citizenship and naturalization topics."

The media campaign includes print and digital advertisements in English, Spanish, Chinese, and Vietnamese; radio public service announcements in Spanish and Chinese; and video public service announcements in English and Spanish. Online digital advertisements will run until August 15, 2015. A second phase will begin in September, and will include additional print and digital media spots.

USCIS said this campaign "is part of a larger effort to demystify the [naturalization] process and provide lawful permanent residents with information to protect themselves against the unauthorized practice of immigration law."

USCIS noted that an estimated 8.8 million lawful permanent residents are eligible to apply for citizenship, and the median time spent as a lawful permanent resident before becoming a U.S. citizen is seven years.

Immigrant-serving organizations and members of the media interested in donating media space should email norine.w.han@uscis.dhs.gov. The Citizenship Resource Center is available at <http://www.uscis.gov/citizenship>. To view the video public service announcements, see the Video PSAs Web page at <http://www.uscis.gov/citizenship/see-all-section-items-title-right/Video%20PSAs/86344?destination=node/41137>. More information on the Citizenship Public Education and Awareness Initiative is available at <http://www.uscis.gov/citizenship/organizations/citizenship-public-education-and-awareness-initiative>.

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U.S. Embassy in Mexico Announces Changes in Nonimmigrant E Visa Application Processing

The U.S. Embassy in Mexico recently announced changes in nonimmigrant E visa application processing. The embassy notes that E visa treaty trader and treaty investor applicants are an integral part of the U.S. economy. Recent increases in overall visa applications "have made it challenging to offer efficient processing of these cases in Mexico City," the embassy states. To provide a higher level of service for all applicants, the embassy is shifting processing of E-1 treaty trader and E-2 treaty investor visas away from Mexico City.

Effective for all applications received in Applicant Service Centers in Mexico on or after July 7, 2015:

- E-1 treaty trader visa processing will be handled by the Consulates General in Monterrey and Tijuana
- E-2 treaty investor visa processing will be handled by the Consulate General in Ciudad Juarez
- The U.S. Embassy in Mexico City will not process nonimmigrant E visa applications received in Applicant Service Centers on or after July 7, 2015

The announcement is available at <https://ais.usvisa-info.com/en-mx/niv>.

For more information regarding the transition of E-1 treaty trader visas to Monterrey and Tijuana, contact the consulates in Monterrey and Tijuana through the appropriate "E1" forms at <http://mexico.usembassy.gov/visas/contact/contact-us/form-b.html>.

For more information regarding the transition of E-2 treaty investor visas to Ciudad Juarez, contact the consulate in Ciudad Juarez by selecting the "Other" form under "Ciudad Juarez" at <http://mexico.usembassy.gov/visas/contact/contact-us/form-b.html>.

For a full list of consulates and their contact information, see <http://mexico.usembassy.gov/eng/edirectory.html>.

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New Publications and Items of Interest

[USCIS Spanish resources](#). U.S. Citizenship and Immigration Services has released new resources in Spanish. USCIS Facebook is now available in Spanish at USCIS Español, <https://www.facebook.com/uscis.es>. The agency's Spanish blog, USCIS Compás, has moved from USCIS's English blog to its own page at <http://blog-es.uscis.gov/>. Both resources "will contain new, original content exclusively in Spanish," the agency said.

[The 2015 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 chapters on Ghana and Peru. 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, Singapore, 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 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.

The list price is \$359, but a 15% discount is available by visiting <http://www.lexisnexis.com/abil> and entering discount code "ABIL15". Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584.

[ABIL on Twitter](#). The Alliance of Business Immigration Lawyers is available on Twitter: @ABILImmigration. Recent ABIL member blogs are available at <http://www.abilblog.com/>.

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ABIL Member/Firm News

Several ABIL members have been selected for inclusion in the top 20 practitioners in the area of Immigration Law, in the Most Powerful Employment Lawyers Guide for 2015. The 8th annual list, selected by Lawdragon and produced in partnership with *Human Resource Executive*, was recently published on Lawdragon.com and in HRE's print magazine. The list is available at <http://www.lawdragon.com/guides/2015-top-20-lawyers-in-immigration-law/>. The ABIL members included are:

- **H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) and **William Stock**, of Klasko Immigration Law Partners
- **Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>)
- **Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>)

- **Julie Pearl** (bio: <http://www.abil.com/lawyers/lawyers-pearl.cfm>)
- **Bernard Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>)

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) has published several new blog entries. "Three Reasons Conservatives Should Support DAPA" is available at <http://musingsonimmigration.blogspot.com/2015/07/three-reasons-conservatives-should.html>. "Georgia and 'Sanctuary Cities': Facts Are A Good Place To Start" is available at <http://musingsonimmigration.blogspot.com/2015/07/georgia-and-sanctuary-cities-facts-are.html>.

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) moderated Part 2 of a three-part panel on Consular Processing for Experts sponsored by ILW.com. **Jose R. Perez, Jr.**, also of Foster, participated in the panel and provided expert insight on immigrant and nonimmigrant waivers. For more information on the seminar, see <http://www.ilw.com/seminars/201502.shtm>. For more on Foster, see <http://www.fosterglobal.com/about-us/>.

Mr. Mehta has published a new blog entry. "History Will Trump Donald" is available at <http://blog.cyrusmehta.com/2015/07/by-cyrusd.html>.

David Isaacson of **Mr. Mehta's** office has published a new blog entry. "Resumption of Diplomatic Relations With Cuba: How Does It Impact U.S. Immigration Law" is available at <http://blog.cyrusmehta.com/2015/07/resumption-of-diplomatic-relations-with.html>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) co-authored an article, "Nine Key Concepts College Counsel Must Know About Immigration Law," which was published in the July 1, 2015, issue of Bender's Immigration Bulletin. He also authored an article on S. 1501, a new Senate bill that would affect EB-5 immigrant investors, that was published in the same issue. The Bulletin is available by subscription at <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?prodId=10762>.

Mr. Yale-Loehr spoke on an ILW.com phone seminar on June 30, 2015, about a new Senate bill, S. 1501, that would make major changes to the EB-5 immigrant investor program. More information about the tele-seminar is at <http://www.ilw.com/seminars/EB5RegionalCenterSeminars.shtm#regnow>.

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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' website 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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