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Headlines:

FY 2013 H-1B Filing Season Rapidly Approaches – Beginning on April 2, 2012 (because April 1 is a Sunday), employers may file cap-subject H-1B petitions for fiscal year (FY) 2013, for employment starting on October 1, 2012, or later.

Eleventh Circuit Blocks Additional Portions of Alabama Immigration Law – The court ruled that Alabama may not enforce provisions barring undocumented people in Alabama from obtaining a driver's license and barring courts from enforcing contracts involving the undocumented, pending a challenge to the law by the Obama administration.

USCIS Releases Guidance on Maximum Period of Stay for Nonimmigrant Religious Workers – The memo outlines the procedure to be used for "recapturing" time spent outside the United States by R-1 nonimmigrants when seeking an extension of their R nonimmigrant status, and discusses the concept of recapturing for nonimmigrants.

Labor Dept. Announces 2012 Allowable Charges for Temporary Agricultural Workers' Meals, Lodging, Travel; Farm Labor Survey Now Semi-Annual – The Department announced allowable charges for 2012 that employers seeking H-2A workers may charge their workers when the employer provides three meals per day, and clarified overnight lodging costs as part of required subsistence.

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FY 2013 H-1B Filing Season Rapidly Approaches

Beginning on Monday, April 2, 2012 (because April 1 is a Sunday), employers may file cap-subject H-1B petitions for fiscal year (FY) 2013, for employment starting on October 1, 2012, or later.

On November 22, 2011, U.S. Citizenship and Immigration Services (USCIS) received a sufficient number of petitions to reach the statutory cap for FY 2012. USCIS also received more than 20,000 H-1B petitions on behalf of persons exempt from the cap under the advanced degree exemption as of October 19, 2011. With the improving economy, they could run out faster this year. The Alliance of Business Immigration Lawyers (ABIL) recommends that employers file early and allow time for the labor condition application process. Contact your ABIL attorney now for guidance and help with the process.

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Eleventh Circuit Blocks Additional Portions of Alabama Immigration Law

The U.S. Court of Appeals for the Eleventh Circuit has included additional provisions of a controversial Alabama immigration law in its injunction. The court ruled that Alabama may not enforce provisions barring undocumented people in Alabama from obtaining a driver's license and barring courts from enforcing contracts involving the undocumented, pending a challenge to the law by the Obama administration. The administration argues that immigration law and regulation is a federal responsibility. In October, the court prevented Alabama from criminalizing the failure to carry documents evidencing legal resident status and requiring schools to check children's immigration status when they enroll.

Alabama's attorney general, Luther Strange, reportedly said that he hopes that "the Supreme Court's coming decision in [a similar case from Arizona] will make clear that our law is constitutional."

The Southern Poverty Law Center (SPLC) noted that several of the bill's cosponsors conflated the growth in Alabama's Hispanic population with growth in "illegal immigrants." SPLC quoted a judge's decision in December citing lawmakers' comments such as their having visited a poultry plant and seen "4-foot Mexicans in there catching them chickens." SPLC's article on the law are available at <http://www.splcenter.org/get-informed/news/court-cites-discriminatory-intent-behind-alabamas-anti-immigrant-law>. An SPLC report, "Alabama's Shame: HB 56 and the War on Immigrants," recounts several of the thousands of stories received on its hotline for residents established shortly after the law took effect, including accounts of its impact on legal immigrants and even U.S. citizens. The report is available at <http://www.splcenter.org/alabamas-shame-hb56-and-the-war-on-immigrants>.

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USCIS Releases Guidance on Maximum Period of Stay for Nonimmigrant Religious Workers

U.S. Citizenship and Immigration Services released a policy memorandum on March 8, 2012, for Immigration Service Officers who adjudicate religious worker (R-1) nonimmigrant petitions for those coming to the United States temporarily to perform religious work, and their dependents. The memo outlines the procedure to be used for "recapturing" time spent outside the United States by R-1 nonimmigrants when seeking an extension of their R nonimmigrant status. The guidance applies to all R-1 petitions seeking to recapture time that are currently pending with USCIS or to new petitions filed on or after March 8, 2012.

"Recapturing" is used in the memo as "short-hand" for the period of time spent outside the United States that the worker seeks to have subtracted from his or her maximum period of stay in R-1 status, to have that period of time added back ("recaptured") when he or she requests an extension of R-1 status.

USCIS explained that the R-1 nonimmigrant classification is for those seeking to enter the United States for a period not to exceed five years solely to work as a minister or in a qualifying religious occupation or vocation. In calculating the five-year maximum period of stay, USCIS has not subtracted time in which the R-1 religious worker was traveling or residing outside of the United States following his or her initial admission in R-1 status.

USCIS noted that certain nonimmigrants who have spent the maximum period of stay authorized by their nonimmigrant classification are prohibited from having a new petition in the same status filed on their behalf until they have remained outside of the United States for a specific period of time (also known as a "limitation on admission" or "limitation on total stay"). Currently, USCIS policy guidance provides that H-1B and L-1 nonimmigrants and their dependents may recapture time spent outside of the United States when calculating their maximum period of authorized stay. USCIS said the policy of allowing recapture is intended to permit a qualifying nonimmigrant to spend the maximum permitted period of time allowed by his or her classification in the United States before he or she must spend a specific period outside of the United States to file a new petition for the same status.

USCIS said it has determined that extending the recapture policy to the R-1 nonimmigrant classification is "appropriate, and that such a policy is consistent with R-1 statutory and regulatory language and the purpose and intent of the R-1 visa classification." USCIS has further determined that the spouse or minor child of a principal who recaptures periods of time spent outside the United States toward an extension of R-1 status may receive periods of R-2 stay coextensive with that of the principal.

The USCIS memo may be an effort to settle or moot a class action lawsuit filed earlier this year that challenged the agency's prior refusal to allow R-1 religious workers to recapture time spent out of the United States. See *Society of the Divine Word v. Napolitano* (N.D. Ill. filed Jan. 3, 2012).

The USCIS memo is available at http://www.uscis.gov/USCIS/Laws/Memoranda/2012/March/R-1_Recapture_%20AFM_Update_3-8-12.pdf.

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Labor Dept. Announces 2012 Allowable Charges for Temporary Agricultural Workers' Meals, Lodging, Travel; Farm Labor Survey Now Semi-Annual

On March 2, 2012, the Department of Labor's Employment and Training Administration announced allowable charges for 2012 that employers seeking H-2A agricultural workers may charge their workers when the employer provides three meals per day, and the maximum meal reimbursement a worker with receipts may claim. The Department also clarified overnight lodging costs as part of required subsistence.

Among the minimum benefits and working conditions the Department requires employers to offer their U.S. and H-2A workers are three meals a day or free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. The notice states that the maximum allowable charge an employer may impose for providing three meals per day is \$11.13, unless the Office of Foreign Labor Certification's Certifying Officer approves a higher charge as authorized under the regulations.

The Department noted that the employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and return costs if a worker completes the contract. If a worker must travel to obtain a visa so that the worker may enter the United States to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well. The Department said it has traditionally interpreted the regulations to require the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. If not provided by the employer, the amount an employer must pay for transportation and, where required, lodging must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and the employer is responsible for return transportation and subsistence costs, including lodging costs where necessary, if the worker completes the contract. This policy applies equally to instances where the worker is traveling within the United States to the employer's worksite.

The notice, which gives additional details and specifics on these amounts and how they are calculated, is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-02/pdf/2012-5243.pdf>.

The Labor Department also published a notice on the same day about a "non-material change" to the farm labor survey used in determining adverse effect wage rates (AEWRs). Specifically, beginning in 2012, the farm labor survey will be conducted semi-annually instead of quarterly. The U.S. Department of Agriculture's National Agricultural Statistics Service will continue to collect data quarterly but will only survey establishments twice a year. The farm labor survey will remain the basis of the AEWR.

That notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-02/pdf/2012-5201.pdf>.

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New Publications and Items of Interest

[Educational videos for employers on Salvadorans with TPS; webinars on avoiding workplace discrimination.](#) The Department of Justice has released an educational video reminding employers that Salvadorans with temporary protected status (TPS) may continue working beyond the March 9, 2012, expiration date of their Employment Authorization Documents. The announcement by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) informs employers that they can continue to employ workers with TPS from El Salvador and at the same time avoid claims of discrimination in the employment eligibility reverification process.

The video is available at <http://www.justice.gov/crt/pressroom/videos.php?group=3>. The notice, which includes additional details, is available at <http://www.justice.gov/opa/pr/2012/March/12-crt-299.html>.

OSC also offers live webinars on avoiding workplace discrimination. To participate in a webinar, sign up online at <http://www.justice.gov/crt/about/osc/webinars.php>.

[H-2B temporary nonagricultural worker meetings/webinars.](#) The Department of Labor's Employment and Training Administration (Wage and Hour Division) has scheduled a series of webinars and a public briefing to educate stakeholders, program users, and other interested members of the public on changes to the H-2B program made by the H-2B final rule effective April 23, 2012, and on applying for H-2B temporary labor certifications under the new regulations using the modified ETA Form 9142.

The upcoming webinars and briefing dates (subject to change) are:

- Webinar on Tuesday, March 20, 2012, from 1:30 to 4 p.m. EDT
- Webinar on Tuesday, March 27, 2012, from 1:30 to 4 p.m. EDT
- In-person briefing on Tuesday, April 17, 2012, from 10 a.m. to 3 p.m. EDT in Washington, DC. Check-in of registered participants will begin onsite at 9 a.m.

The Department will post any changes related to the webinars on the Office of Foreign Labor Certification Web site at <http://www.foreignlaborcert.doleta.gov/> and will notify registered participants of any changes to the in-person briefing. The capacity of each webinar is limited to 200 concurrent participants. Ability to log in to a webinar session is established on a first-come, first-served basis; all the webinars will cover essentially the same information. Participants will be able to log in approximately 30 minutes before the official start time. The Department encourages organizations or other groups of participants to access the webinars at a single, centralized location to maximize attendance.

Information on how to register is available in the notice at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-02/pdf/2012-5159.pdf>.

USCIS Ombudsman on improving quality of responses. The Ombudsman of U.S. Citizenship and Immigration Services (USCIS) released a new report that analyzes the quality of USCIS responses to inquiries from individuals and employers, and makes recommendations. The report notes that USCIS has prioritized the timeliness of service request responses but has not uniformly focused on their quality. Stakeholders routinely report that responses to service requests consist of form letters that lack new information. When USCIS does not provide informative responses to service requests, individuals and employers find it necessary to make repeat requests in search of more accurate, more useful information, the report notes. These repeat information requests increase the overall volume of calls and visits to USCIS, amplifying the frustration experienced by requesters, and costing the agency, as well as individuals and employers, both time and money. The report says that more efficient use of the system's capabilities would help USCIS address inquiries and at the same time enable the agency to identify trends and improve efficiency by reducing the overall number of such interactions.

The report is available at <http://www.dhs.gov/files/publications/cisomb-recommendations-uscis-service-requests.shtm>.

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

Laura Danielson (bio: <http://www.abil.com/lawyers/lawyers-danielson.cfm?c=US>) has published several new blog entries. "Let's Not Deny Our Kids Their Dreams" is available at <http://www.lampbesidethegoldendoor.blogspot.com/2012/03/lets-not-deny-our-kids-their-dreams.html>. "What Would Jesus Do?" is available at <http://www.lampbesidethegoldendoor.blogspot.com/2012/03/what-would-jesus-do.html>.

Ron Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm?c=US>) was a VIP speaker at the "Invest in America 2012" Summit and Exhibition held in March 2012 in Shanghai, China. The second annual event drew an estimated 1,000 potential Chinese investors and U.S. developers to Shanghai to learn about the investor visa program. He addressed the attendees on performing immigration due diligence on potential investment projects.

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>) opened new Kuck Immigration Partners offices in Salt Lake City and Provo, Utah, with new partners Tim Wheelwright and Barbara Melendez. For more information, see <http://hosted-p0.vresp.com/230261/afc0b4381e/ARCHIVE>.

Mr. Kuck has published a new blog entry. "Georgia's Anti-Education Legislature and SB 458 – What Are They Doing in the Name of Anti-Immigration Fervor?" is available at <http://musingsonimmigration.blogspot.com/2012/03/georgias-anti-education-legislature-and.html>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has published a new blog entry. "Stop the Assault on Employment Immigration to the USA" is available at <http://blog.cyrusmehta.com/2012/03/stop-assault-on-employment-immigration.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) has published several new blog entries. "Stop the Immigration Profiling" is available at <http://www.nationofimmigrators.com/obama-administration-on-immigration/stop-the-immigration-profiling/>. "Immigration's Private Parts Modestly Yet Shockingly Exposed" is available at <http://bit.ly/zVLEuE>.

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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

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