



# IMMIGRATION INSIDER

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**OCAHO Reduces Employer's Fines for I-9 Violations** – The total penalty sought was \$21,598.50, which was reduced to \$9,450.

**DOL Releases 2014 Allowable Charges for Agricultural Workers** – The notice announces (1) the allowable charges for 2014 that employers seeking H-2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2014.

**USCIS Extends TPS for Haitians; ICE Extends Work Authorization for Certain Haitian F-1 Students** – USCIS has extended temporary protected status for eligible nationals of Haiti for an additional 18 months, through January 22, 2016. Also, ICE has extended employment authorization for certain Haitian F-1 students due to ongoing hardship related to the earthquake of 2010.

**Supreme Court Denies Certiorari in Local Ordinance Cases** – The U.S. Supreme Court denied certiorari in several recent cases relating to local ordinances aimed at undocumented persons.

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## OCAHO Reduces Employer's Fines for I-9 Violations

The Department of Justice's Office of the Chief Administrative Hearing Officer (OCAHO) recently reduced fines imposed on New Outlook Homecare, LLC, for violations related to the Form I-9, Employment Authorization Verification. The complaint filed by U.S. Immigration and Customs Enforcement (ICE) alleged that New Outlook failed to ensure that employees properly completed section 1 of the I-9 and that the company failed to properly complete sections 2 or 3 of the form for 22 employees. One of the charges was subsequently dropped because it was for the owner of New Outlook, for which no I-9 was required.

The total penalty sought was \$21,598.50, which OCAHO reduced to \$9,450. New Outlook characterized the violations as minor clerical errors, but OCAHO said there were "serious substantive errors" in the completion of section 2 of the forms. Section 2 for all but three employees was blank. The forms contained no signatures attesting that New Outlook had

examined documents to verify the employees' identities and authorization to work in the United States. OCAHO noted that case law confirms that such failures constitute serious violations.

ICE had calculated a baseline penalty in accordance with internal agency guidance that sets a penalty of \$935 for each violation when the employer's error rate exceeds 50 percent. An ICE auditor stated that the government mitigated the penalty by 5 percent based on New Outlook's status as a small business, but aggravated the penalty based on the seriousness of the violations. ICE initially aggravated the fine by 5 percent based on a lack of good faith, but later treated this factor as neutral, as it did the remaining statutory factors: the absence of any history of previous violations and the absence of unauthorized workers.

OCAHO found that although the violations were serious, penalties at or near the maximum permissible "should be reserved for more egregious violations than have been demonstrated here." Penalties should be sufficiently meaningful to deter future violations but should not be "unduly punitive" in light of the respondent's resources, OCAHO said. Given the nature of the business and considering the record as a whole "in light of the general public policy of leniency toward small entities," OCAHO adjusted the penalties "closer to the midrange of permissible penalties," setting the fines at \$450 per violation, for a total of \$9,450.

The decision is available at

<http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1210.pdf>.

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## **DOL Releases 2014 Allowable Charges for Agricultural Workers**

The Department of Labor's Employment and Training Administration (ETA) issued a notice in the Federal Register on March 5, 2014, to announce (1) the allowable charges for 2014 that employers seeking H-2A temporary agricultural workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2014. The notice includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

Among the minimum benefits and working conditions that 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 maximum allowable charge is \$11.58 per day, unless the Office of Foreign Labor Certification (OFLC) Certifying Officer approves a higher charge. The OFLC Certifying Officer may permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer.

The Continental United States (CONUS) minimum meals component remains \$46.00 per day for 2014. Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of \$34.50, as provided for in the General Services Administration per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum.

ETA said it interprets the applicable regulation as requiring 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 transportation and lodging are 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, ETA noted. 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 if the worker completes the contract, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the United States to the employer's worksite.

The notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-05/pdf/2014-04895.pdf>.

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## **USCIS Extends TPS for Haitians; ICE Extends Work Authorization for Certain Haitian F-1 Students**

U.S. Citizenship and Immigration Services (USCIS) has extended temporary protected status (TPS) for eligible nationals of Haiti for an additional 18 months, effective July 23, 2014, through January 22, 2016. Also, U.S. Immigration and Customs Enforcement (ICE) has extended employment authorization for certain Haitian F-1 students due to ongoing hardship related to the 2010 earthquake in Haiti. Highlights of these two developments follow.

Haitian TPS. Current Haitian beneficiaries seeking to extend their TPS status must re-register during a 60-day period that began on March 3, 2014, and runs through May 2, 2014. USCIS encourages beneficiaries to re-register as soon as possible.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Haitian TPS beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of January 22, 2016. USCIS recognizes that some re-registrants may not receive their new EADs until after their current EADs expire. Therefore, USCIS is automatically extending current TPS Haiti EADs bearing a July 22, 2014, expiration date for an additional 6 months. These existing EADs are now valid through January 22, 2015.

To re-register, current TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status. Re-registrants do not need to pay the I-821 application fee, but they must submit the biometric services fee, or a fee waiver request, if they are 14 or older. All TPS re-registrants must also submit Form I-765, Application for Employment Authorization. TPS re-registrants requesting an EAD must submit the I-765 application fee, or a fee waiver request. If the re-registrant does not want an EAD, no application fee is required.

Applicants may ask that USCIS waive the I-765 application fee or biometrics fee based on an inability to pay by filing Form I-912, Request for Fee Waiver, or by submitting a written request. Fee waiver requests must be accompanied by supporting documentation. Failure to submit the required filing fees or a properly documented fee waiver request will result in rejection of the TPS application, USCIS said.

Extension of work authorization for Haitian F-1 students. ICE announced on March 3, 2014, that it would extend the suspension of certain requirements for F-1 nonimmigrant Haitian students who are experiencing severe economic hardship as a direct result of the January 12, 2010, earthquake in Haiti. This relief applies only to students whose country of citizenship is Haiti and who were lawfully present in the United States in F-1 status on January 12, 2010, and enrolled in an institution certified by ICE's Student and Exchange Visitor Program (SEVP).

The current extension will enable eligible F-1 students to continue to obtain employment authorization, work an increased number of hours during the school term, and, if necessary, reduce their course load while continuing to maintain their F-1 student status. The suspension of the regulatory requirements will remain in effect through January 22, 2016.

ICE noted that the ongoing devastation and unstable conditions caused by the earthquake in Haiti increased the financial burden on many of these students, who previously relied on assistance from the Haitian government or family members in Haiti to meet basic living expenses. "While the government of Haiti has made progress in improving security and quality of life of its citizens following the January 2010 earthquake, Haiti continues to lack the adequate infrastructure, employment and educational opportunities, and basic services," ICE said. As of February 3, there were 820 active F-1 Haitian students enrolled in SEVP-certified schools in the United States.

Additional information on TPS for Haiti, including guidance on eligibility, the application process, and where to file, is available online at <http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status>. Further details on this extension of Haiti for TPS, including application requirements and procedures, are available in the Federal Register notice published at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/html/2014-04593.htm>. USCIS's announcement is available at <http://www.uscis.gov/news/temporary-protected-status-extended-haitians-0>.

The ICE F-1 work authorization extension notice is available at <http://www.ice.gov/news/releases/1403/140303washingtondc.htm>.

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### **Supreme Court Denies Certiorari in Local Ordinance Cases**

The U.S. Supreme Court denied certiorari on March 3, 2014, in several recent cases relating to local ordinances aimed at undocumented persons.

In *City of Hazleton v. Lozano*, the U.S. Court of Appeals for the Third Circuit had held that local ordinances in the city of Hazleton, Pennsylvania, prohibiting the knowing harboring of undocumented persons in rental housing or hiring them, was unconstitutional.

In *City of Farmers Branch v. Villas at Parkside Partners*, the U.S. Court of Appeals for the Fifth Circuit had held that local ordinances in the city of Farmers Branch, Texas, prohibiting the knowing harboring of undocumented persons in renting housing in the city, was unconstitutional.

Information about *Hazleton* is available at <http://www.scotusblog.com/case-files/cases/city-of-hazleton-v-lozano/>. Information about *Farmers Branch* is available at <http://www.scotusblog.com/case-files/cases/city-of-farmers-branch-v-villas-at-parkside-partners/>.

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

[Video on how to complete the I-9](#). U.S. Citizenship and Immigration Services has released three 4-minute videos explaining how to fill out the Form I-9, Employment Eligibility Verification. The videos are available at <http://www.uscis.gov/i-9-central/whats-new> (scroll down to "New Form I-9 Video Vignettes").

[New priority date checker tool](#). The Department of State's U.S. Visas Office has released a new priority date checker tool, based on information from the Visa Bulletin. It is available at <http://travel.state.gov/content/visas/english/immigrate/immigrant-process/approved/checkdate.html>.

[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](mailto: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

**Fakhoury Law Group** has worked closely with the Michigan Governor's Office of Strategic Planning in its development of a proposal on investor visa options as a viable strategy to help revitalize Detroit's ailing economy. Under Michigan Governor Rick Snyder's proposal, over a period of five years, 50,000 additional visas would be designated for the city of Detroit as a pathway for entrepreneurial immigrants willing to invest, live, and work in Detroit for at least five

years. Fakhoury Law Group, the largest independent employment immigration law firm in Michigan, has advocated for the expansion of immigration investment opportunities as a way to bring business and jobs to Michigan, especially Detroit. "Michigan needs to use every tool in its armory to attack today's problems and immigration is a critical asset to the State as it moves forward in the 21st century. Fakhoury Law Group is proud to lend our expertise to this innovative and important initiative," said Mr. Fakhoury (bio: <http://www.abil.com/lawyers/lawyers-fakhoury.cfm?c=US>), ABIL member and Managing Director of Fakhoury Law Group.

On March 1, 2014, **Mr. Fakhoury** hosted an E-2 Treaty Investor Seminar in Toronto, Ontario, Canada. The seminar included consular officer J. P. Lai from the U.S. consulate in Toronto. The seminar was targeted at individuals from E-2 treaty countries like Canada, who are interested in coming to the United States to invest in, develop, and direct a bona fide business in the U.S. The E-2 investor visa not only grants the principal applicant the necessary authorization to work in the United States, but, unlike many nonimmigrant visas, the E-2 investor visa allows work authorization for the spouse once the E-2 treaty investor visa has been obtained. In addition, unmarried children under the age of 21 can accompany their parents to the United States and attend school.

**Steve Garfinkel** (bio: <http://www.abil.com/lawyers/lawyers-garfinkel.cfm>) has launched a new blog, "White Papers," available at <http://garfinkelimmigration.com/category/white-papers>.

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has published a new blog entry. "Was the Attorney Really Ineffective in *Kovacs v. United States*?" is available at <http://blog.cyrusmehta.com/2014/03/was-attorney-really-ineffective-in.html>.

**Mr. Mehta** was Chair of the PLI Basic Immigration Law 2014 seminar held on March 13, 2014. For more information on course handbooks, see [http://www.pli.edu/Content/Seminar/Basic\\_Immigration\\_Law\\_2014/\\_/N-4kZ1z12eu2?ID=178427](http://www.pli.edu/Content/Seminar/Basic_Immigration_Law_2014/_/N-4kZ1z12eu2?ID=178427).

**Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) was quoted in a *New York Times* editorial on February 5, 2014, about Governor Rick Snyder of Michigan's proposal to attract 50,000 people with advanced degrees or exceptional abilities in the sciences, arts, or business to Detroit to help revive the depressed economy there. Mr. Paparelli, who grew up in Detroit, suggested that states could submit economic revival proposals to vie for a larger share of work-related visas for foreign investors and entrepreneurs. The editorial is available at [http://www.nytimes.com/2014/02/06/opinion/detroits-immigration-solution.html?\\_r=0](http://www.nytimes.com/2014/02/06/opinion/detroits-immigration-solution.html?_r=0).

**Mr. Paparelli** has published a new blog entry. "Senator's Saucy Request Roils EB-5 Regional Centers" is available at <http://www.nationofimmigrants.com/eb-5/senators-saucy-request-roils-eb-5-regional-centers-1/>.

**H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>), **Bernard Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>), and **Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) will speak about the EB-5 immigrant investor program at the Invest in America Summit on March 22-23, 2014, at the Jing An Shangri-la Hotel in Shanghai, China. For more information, see <http://www.investinamerica2014.org>.

**Mr. Yale-Loehr** will speak in Shanghai and Beijing, China, on "The Current U.S. Immigration System and Chances for Reform." The Shanghai event is on Friday, March 21, 2014, from 6 to 8 p.m. at the Westin Shanghai, Bund Center. Cost is RMB 250 per person, which includes refreshments. For more information, e-mail Victor Tchou at [victortchou@gmail.com](mailto:victortchou@gmail.com) by March 17. The Beijing event is on Tuesday, March 25, 2014, at 7 p.m. at Jincheng Tongda & Neal, China World Tower, 10<sup>th</sup> Floor. This event is free and includes refreshments. For more information, e-mail Vivian Gu at [guwenjing@jtnfa.com](mailto:guwenjing@jtnfa.com).

**Mr. Yale-Loehr** was quoted in *U.S. News and World Report* on March 5, 2014, in an article on Democrats and the Obama administration's being increasingly at odds over deportations. "Sen. Menendez has clearly urged the president to do more administratively, but the administration still faces a difficult political calculus in determining how much they can do without jeopardizing their chances for comprehensive immigration reform in the future," he noted. The article is available at <http://www.usnews.com/news/articles/2014/03/05/democratic-lawmakers-call-out-obama-as-deporter-in-chief>.

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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)

**Visa application wait times for any post:** [http://travel.state.gov/visa/temp/wait/wait\\_4638.html](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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