



# IMMIGRATION INSIDER

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## Headlines:

**Feds Crack Down on Employers** – In recent actions, the Criminal Division of the U.S. Attorney's Office in Washington, DC, is investigating Chipotle Mexican Grill about hiring undocumented workers at its 1,092 restaurants; owners of another establishment were arrested for violations related to employing undocumented workers and not paying taxes on them.

**House Holds Hearing on E-Verify** – A hearing in April focused on identity fraud as a continuing concern in the E-Verify system.

**Senator Asks for Investigation of B-1 Visa Program** – Sen. Grassley questioned the "B-1 in lieu of H-1B" policy currently in place, and referenced a formal complaint against Infosys by a U.S. employee.

**ABIL Webinar Series: U.S. Investment Visas and Green Cards for Foreign Nationals** – The intended audience includes individual investors; potential and actual EB-5 regional centers; attorneys and advisors; real estate developers; and companies seeking capital for development projects.

**ABIL Global Mobility Conference** – This half-day free conference will help guide professionals involved in global mobility to be better equipped when conducting business transactions in another country.

**ABIL Global: Canada and Medical Inadmissibility** – As the case law is evolving in this area, great care must be taken by foreign nationals interested in coming to Canada who suffer from significant medical problems.

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## Feds Crack Down on Employers

In an investigation of Chipotle Mexican Grill Inc., the Criminal Division of the U.S. Attorney's Office in Washington, DC, asked Chipotle on April 13, 2011, for documentation related to hiring issues at its 1,092 restaurants. U.S. Immigration and Customs Enforcement (ICE) had recently audited Chipotle's records in several areas, resulting in the company's firing of at least 490 workers.

In another case, federal agents arrested the owners and an outside bookkeeper for Chuy's Mesquite Broiler and detained 40 suspected undocumented workers at 15 locations in California and Arizona. The federal indictment charged the owners with employing about 360 undocumented workers and keeping two payrolls, one for the undocumented workers, for whom no taxes were paid, and another for workers with employment authorization.

For more information on recent ICE enforcement operations, see <http://www.ice.gov/news/>.

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## **House Holds Hearing on E-Verify**

A hearing on April 14, 2011, focused on identity fraud as a continuing concern in U.S. Citizenship and Immigration Services' E-Verify system for verification of work authorization.

Rep. Sam Johnson (R-Tex.), chairman of the House Ways and Means Committee's Subcommittee on Social Security, noted in his opening statement that under the Internet-based E-Verify system, an employer first enters information from the Form I-9. Verification requests are transmitted to the Social Security Administration (SSA), which checks whether the worker's information matches the SSA's records; those involving noncitizens are then routed to the Department of Homeland Security (DHS). If a worker's information does not match these agencies' databases, a tentative "non-confirmation" (TNC) notice is sent and the worker must contact either SSA or DHS "to present needed documentation in order to keep their job."

Rep. Johnson cited a Government Accountability Office (GAO) study (<http://www.gao.gov/new.items/d11146.pdf>) finding that the E-Verify system had made progress in improving accuracy, with immediate confirmations rising to 97.4 percent. He noted, however, that the GAO said the system was still vulnerable to unauthorized workers and unscrupulous employers presenting stolen or borrowed documents for the purpose of identity fraud.

Richard M. Stana, Director of Homeland Security and Justice for the GAO, testified that TNCs had been reduced but that the accuracy of E-Verify continues to be limited by both inconsistent recording of employees' names and fraud. He said that about 0.3 percent of the total 2.6 percent (over 211,000 of newly hired employees) who received either a SSA or USCIS TNC were determined to be work-eligible after they contested a TNC and resolved errors or inaccuracies in their records. About 2.3 percent (about 189,000) received final nonconfirmations because their employment eligibility status remained unresolved. Mr. Stana noted that USCIS was unable to determine how many of those employees (1) were authorized to work but did not take action to resolve a TNC because they were not informed by their employers of their right to contest the TNC, (2) independently decided not to contest the TNC, or (3) were not eligible to work.

Among other things, Mr. Stana noted the GAO's recommendation that USCIS could better position employees to avoid erroneous TNCs by disseminating information to employees on the importance of providing consistent name information and on how to record names consistently. USCIS said it began to distribute information at all naturalization ceremonies advising new citizens to update their records with SSA. USCIS also said it has commissioned a study, to be completed in the third quarter of fiscal year 2011, to determine how to enhance its name-matching algorithms. Mr. Stana said these were useful steps "but they do not fully address the intent of the [GAO's] recommendation because they do not provide specific information to employees on how to prevent a name-related TNC.

In addition, Mr. Stana said identity fraud remains a challenge because employers may not be able to determine whether an employee's documents are genuine, borrowed, or stolen. E-Verify also cannot detect cases in which an employer may be unscrupulously assisting unauthorized employees. Among other measures, USCIS has implemented a photo-matching tool for permanent residence cards, employment authorization documents, and passports. Mr. Stana

noted that implementing biometric systems has its own set of challenges, such as cost and civil liberties considerations.

Mr. Stana noted that USCIS began implementing its "Self-Check" program in March 2011 to allow individuals to check their own work authorization status against SSA and DHS databases before applying for a job. Mr. Stana said the GAO found USCIS's efforts to be a step in the right direction but insufficient "because, among other things, USCIS does not have operating procedures in place for USCIS staff to explain to employees what personal information produced the TNC or what specific steps they should take to correct the information." Mr. Stana said the GAO also found that USCIS's cost estimates for E-Verify may not be accurate.

The opening statement and hearing testimony are available from <http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=234780>.

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### **Senator Asks for Investigation of B-1 Visa Program**

Sen. Charles Grassley (R-Iowa) has asked the Departments of State and Homeland Security to investigate the B-1 visa program and its use by employers "to recruit foreign workers who are then not subject to the cap and the prevailing wage requirements of the H-1B program." In a letter to Secretary of State Hillary Clinton and Secretary of Homeland Security Janet Napolitano, Grassley questioned the "B-1 in lieu of H-1B" policy currently in place. He wrote, "Under this low threshold [for the B-1 visa], a company could import workers via the B-1 business visitor visa and evade the H-1B visa cap and prevailing wage requirements that would otherwise apply to such workers so long as the workers could show that their paychecks were still coming from the foreign company."

Sen. Grassley also referenced a formal complaint against Infosys by a U.S. employee that alleges Infosys management in India used the B-1 business visitor visa program to get around H-1B program restrictions. He said the complaint alleges that Infosys was importing foreign workers as B-1 business visitors under the guise of attending meetings rather than working for wages as employees of a U.S. company, which is forbidden under the statute and regulations governing the B-1 visa program.

Sen. Grassley has introduced legislation in previous Congresses on the H-1B and L visa programs and plans to introduce a bill again in the 112<sup>th</sup> Congress.

Sen. Grassley's letter to the Secretaries of State and Homeland Security is available at <http://grassley.senate.gov/about/upload/Immigration-04-14-11-Grassley-letter-to-State-DHS-B-1-H-1B-visas.pdf>.

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### **ABIL Webinar Series: U.S. Investment Visas and Green Cards for Foreign Nationals**

Many foreign entrepreneurs want to start businesses or invest in the United States. Other wealthy individuals want green cards to live in the United States, but may be hesitant because of real or perceived immigration obstacles. Real estate developers and companies seeking capital for development projects are increasingly looking for EB-5 capital from foreign investors. Several visa options exist, but each has advantages, disadvantages, and limits.

A three-part webinar series, presented by the Alliance of Business Immigration Lawyers (ABIL) and co-sponsored by Invest In the USA, the association of EB-5 regional centers, helps guide individual investors and others, as well as U.S. companies that want to attract foreign investors and wealthy individuals. The intended audience includes individual investors; potential and

actual EB-5 regional centers; attorneys and advisors; real estate developers; and companies seeking capital for development projects. Each 90-minute webinar in the series explains immigration options and offers practical real-world strategies:

- Session 1: Visa options for individual investors: E and L nonimmigrant visas; EB-5 green cards through direct investments or regional centers, was held on April 13. (A recording of the webinar is available for purchase.) Moderated by Bernard P. Wolfsdorf. Presenters: Kehrela Hodkinson, Mark Ivener, and Stephen Yale-Loehr.
- Session 2: EB-5 regional center applications and project pre-approval petitions, to be held July 6 at 3 p.m. (ET). Moderated by Laura Danielson. Presenters: Bryan Funai, H. Ronald Klasko, and Steve Trow.
- Session 3: How to successfully navigate the back end of the EB-5 process for both individual investors and regional centers, to be held August 16 at 3 p.m. (ET). Moderated by Steve Clark. Presenters: H. Ronald Klasko, Robert Loughran, and Stephen Yale-Loehr.

All participants will receive a file with the PowerPoint presentation, relevant articles, and resources before each session, as well as a recording of the webinar. The cost is \$89 for an individual session or \$249 for all three sessions, live or recorded. To register, go to: [https://securec9.ezhostingserver.com/abil-com/abil\\_webinar\\_signup.cfm](https://securec9.ezhostingserver.com/abil-com/abil_webinar_signup.cfm). For more information, contact Lauren Anderson at [lauren@abil.com](mailto:lauren@abil.com) or visit <http://abil.com>.

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### **ABIL Global Mobility Conference**

The Alliance of Business Immigration Lawyers' (ABIL) Global Immigration Network will present a Global Mobility Conference in London, England, on Thursday, May 5, 2011, from 2 to 5 pm. This half-day free conference will help guide professionals involved in global mobility to be better equipped when conducting business transactions in another country. The conference will look at the following areas:

- Compliance related to immigration and tax, as well as criminal liability
- Best practices in global mobility through a case study
- Global mobility trends and hot topics from multiple countries

The conference is presented by ABIL and co-sponsored by Baker Tilly International, a network of accountancy and business advisory firms. For more information, e-mail Lauren Anderson at [lauren@abil.com](mailto:lauren@abil.com).

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### **ABIL Global: Canada and Medical Inadmissibility**

Foreign nationals are usually inadmissible to Canada for having criminal records (including convictions for driving while intoxicated). Many, however, do not know that foreign nationals can also be inadmissible to Canada on health grounds if they are "likely to be a danger to public health or public safety" (very rare) or "might reasonably be expected to cause excessive demand on health or social services."

Approximately 280,000 foreign nationals became Canadian permanent residents in 2010, each of whom was required to undergo a Canadian immigration medical examination before becoming a Canadian permanent resident. About 96,000 foreign students came to Canada and 182,000 foreign workers entered Canada in 2010, many of whom were required to have a medical examination.

Given that Canada has a socialized system of medicine where the provincial governments pay most medical costs, medical inadmissibility can be a real concern for those with health issues who want to immigrate to Canada.

In total, approximately 450,000 Canadian medical examinations are performed each year on foreign nationals. Of those medical examinations, less than one percent of the foreign nationals (and their family members) were held to be inadmissible on health grounds for a health condition that "might reasonably be expected to cause excessive demand on health or social services."

In 2005, the Supreme Court of Canada held that the personal circumstances of each foreign national seeking to immigrate to Canada should be considered by the Canadian visa office and an individualized assessment undertaken when deciding whether there is likely to be excessive demand on social services.

As the case law is evolving in this area, great care must be taken by foreign nationals interested in coming to Canada who suffer from significant medical problems.

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## New Publications and Items of Interest

**House hearing testimony on the H-1B program:** An article in *Computerworld* says that recent cables released by WikiLeaks include "anecdotes" about fraud in the H-1B visa process in countries such as Mexico, Libya, and Iceland that do not normally receive a lot of attention for it. Among other things, a cable sent two years ago from the U.S. Embassy in Mexico City refers to "persistent fraud problems" in the H-1B and L-1 visa programs, including applicants overstating experience, education, or future job responsibilities. The embassy also reportedly said that some individuals "may also set up shell companies as a means to live in the U.S." The article is available at [http://www.computerworld.com/s/article/9215855/WikiLeaks\\_cables\\_describe\\_H\\_1B\\_fraud\\_attempts](http://www.computerworld.com/s/article/9215855/WikiLeaks_cables_describe_H_1B_fraud_attempts).

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## Member News

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>) recently posted a new blog entry on the HB 87 legislation in Georgia, the "Illegal Immigration Reform and Enforcement Act of 2011." Among other things, the blog notes that provisions of HB 87 have "added a significant new burden to state agencies and local governments to ensure compliance with existing E-Verify rules, and place[d] additional expenses and compliance requirements on government contractors." The blog is available at <http://musingsonimmigration.blogspot.com/2011/04/what-hb-87-means-for-you-your-business.html>.

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>) was quoted in *Bloomberg Businessweek* regarding a hearing in the Texas legislature on April 13, 2011, on a variety of immigration enforcement bills: "It is not within your power to solve this tremendously complex problem. This remains a federally defined issue with plenty of case law to back that up. Absent a comprehensive solution to this problem across the United States, we are not solving the problem."

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) will speak on May 2, 2011, at the American Immigration Lawyers Association's New York Chapter meeting, which will focus on PERM and recent BALCA decisions, including decisions related to alternative requirements, recruitment issues, post-recruitment/errors and emerging trends.

Ronald Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm?c=US>) and Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) will speak on a panel on May 10, 2011, at the annual meeting of "Invest In the USA" concerning EB-5 immigrant investor training materials that were recently released by U.S. Citizenship and Immigration Services (USCIS) pursuant to a Freedom of Information Act request filed by Mr. Klasko. For more information about the meeting or to attend, go to <http://iiusadc510.eventbrite.com/>.

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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)

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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 150 member attorneys and their 400+ 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 at <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.*

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