



IMMIGRATION INSIDER

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Headlines:

DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing – The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification.

CBP Rolling Out Automation of I-94 Arrival/Departure Records – The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21.

SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence – The Social Security Administration has updated its Program Operations Manual System, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity.

ABIL Global: Peru – Amendments have been made recently to Peruvian immigration rules.

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DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing

On April 24, 2013, the Departments of Labor (DOL) and Homeland Security published a joint interim final rule on wage methodology for the temporary non-agricultural employment H-2B program. The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification.

The interim final rule was published in response to a court order issued by the U.S. District Court for the Eastern District of Pennsylvania on March 21, 2013, in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 09-cv-00240 (E.D. Pa). The court order vacated a portion

of the 2008 wage methodology rule dealing with the way the DOL determines the prevailing wage when relying on the Bureau of Labor Statistics' Occupational Employment Statistics (OES) survey, and provided the Department of Labor with 30 days to come into compliance.

On April 24, 2013, the effective date of the interim final rule, the DOL also resumed processing both pending H-2B prevailing wage requests and H-2B applications for temporary labor certification based on the OES wage survey data, in accordance with standards set in the interim final rule.

USCIS also has resumed processing of all Form I-129 (Petition for Nonimmigrant Worker) H-2B petitions for temporary nonagricultural workers. On March 22, 2013, USCIS temporarily **suspended adjudication** of most I-129 H-2B petitions while the government considered appropriate action in response to the court order.

The DOL released frequently asked questions (FAQs) to assist filers in complying with the requirements of the interim final rule. The FAQs address the applicability of the new prevailing wage methodology, employer wage obligations, requests for review, and processing pending H-2B prevailing wage requests and H-2B applications for temporary labor certification. The FAQs were updated on April 25, 2013, and are available at http://www.foreignlaborcert.doleta.gov/pdf/faq_final_rule_april_2013.pdf.

The DOL/DHS interim final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-24/pdf/2013-09723.pdf>. The DOL's announcement is available at <http://www.foreignlaborcert.doleta.gov/>. USCIS's related announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=4cf5b6f39b14e310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>. The decision in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis* is available at http://www.oalj.dol.gov/PUBLIC/INA/DECISIONS/COURT_DECISIONS/09_00240_Comite_de_Apoyo_ED_Pa_03_21_2013.pdf.

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CBP Rolling Out Automation of I-94 Arrival/Departure Records

U.S. Customs and Border Protection (CBP) announced on April 26, 2013, that it has automated the Form I-94, Arrival/Departure Record. The I-94 provides international visitors evidence that they have been lawfully admitted to the United States, which is necessary to verify registration, immigration status, and employment authorization. Affected visitors will no longer need to fill out a paper form when arriving in the U.S. by air or sea. CBP will now generate records of admission using traveler information already transmitted electronically.

The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21.

Travelers wanting a hard copy or other evidence of admission may access that information online at <http://www.cbp.gov/I94> if they did not receive a hard copy attached to their passport. From there, individuals can print a copy of the I-94 based on electronically submitted data, including the I-94 number from the form, to provide as necessary to benefit providers or as evidence of lawful admission.

The announcement is available at http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/04262013_4.xml.

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SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence

The Social Security Administration has updated its Program Operations Manual System (POMS), effective April 30, 2013, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity. The updated SSA information, "List of Documents in Priority of Acceptability for Use as Evidence of Identity," says that this is considered a separate document from an unexpired passport.

The updated SSA information in POMS refers to "Policy for Number of Documents Required for an SSN Card," which explains:

- An I-551 stamp (Temporary Lawful Permanent Resident stamp) or a U.S. immigration stamp in the applicant's foreign passport and the foreign passport are two separate documents.
- Likewise, an Arrival Departure Record (Form I-94) stapled in a foreign passport and the foreign passport are two separate documents.
- A machine-readable immigrant visa (MRIV) issued by the U.S. Department of State and placed in the foreign passport and the foreign passport are two separate documents.
- The Department of Homeland Security (DHS) admission stamp placed partially on the MRIV is a third document.
- While you can use the immigration and admission stamp to establish identity and lawful alien status, you can use the foreign passport to establish age.

SSA has also posted policy information on new types of nonimmigrant evidence, including the admission stamp and recently introduced versions of the I-94 Arrival/Departure record, including U.S. Customs and Border Protection's I-94 website printout and the Global Entry I-94, and has added a parole stamp placed in an unexpired foreign passport as acceptable evidence of parole status for a Social Security number (SSN).

SSA also updated the 10-day hold procedure for verifying evidence of status for an SSN using the Systematic Alien Verification for Entitlements (SAVE) program through the enumeration system (SSNAP). SSA said it is making these changes as a result of Department of Homeland Security (DHS) automation of the I-94 Arrival/Departure record and recent DHS information regarding the real-time verification of alien evidence. SSA has eliminated the 10-day hold policy for all DHS evidence except DHS Forms N-550/N-570 (Certificate of Naturalization) and N-560/N-561 (Certificate of Citizenship).

The updated information on admission stamps is included in RM 10210 TN 16 (effective date: 4/30/2013), and is available at <https://secure.ssa.gov/apps10/public/reference.nsf/links/04162013014723PM>. The referenced document, RM 10210.020, is available at <https://secure.ssa.gov/poms.nsf/lnx/0110210020#c3>. The new policy documents, also effective April 30, 2013, are available at <https://secure.ssa.gov/apps10/public/reference.nsf/links/04122013093257AM> and <https://secure.ssa.gov/apps10/public/reference.nsf/links/04112013010840PM>. The 10-day hold update is available at <https://secure.ssa.gov/apps10/public/reference.nsf/links/04122013093259AM>.

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ABIL Global: Peru

Amendments have been made recently to Peruvian immigration rules.

Changes do not often occur in Peruvian immigration law, but there have been some recent modifications to certain aspects of immigration proceedings and requirements by the Peruvian Immigration Administrative Authority concerning visa processes for foreign nationals.

Legislative Decree No. 1130 has created a new immigration Peruvian authority based on the former authority known as "DIGEMIN" and now called "MIGRACIONES." This legislative decree took effect December 7, 2012. The new government office, the National Superintendence of Migration (MIGRACIONES), is a technical and specialized entity within the Ministry of the Interior of Peru that has its own administrative, economic, and functional autonomy.

In addition, on December 23, 2012, Supreme Decree No. 003-2012-IN was published, which included the Text of Administrative Procedures of the Ministry of the Interior (TUPA), comprising procedures and related administrative services. Among them are those pertinent to MIGRACIONES, which is now the lead agency in domestic immigration policy in Peru. Among its different powers, however, there still exists the recently issued DIGEMIN TUPA. MIGRACIONES has not yet issued its own TUPA.

In general, MIGRACIONES has become more demanding and rigorous. Previously, there were only the discretionary judgment and criteria of DIGEMIN in some aspects. Now the legal basis has been incorporated into the recent DIGEMIN TUPA regarding such aspects. DIGEMIN TUPA contains the administrative rules to apply to immigration law in Peru.

Now there are more requirements for work visas and appointed worker visas related to performing labor activities in Peru for those who are either working in the country employed by local companies registered on their payroll as "dependent workers," or as foreigners who provide services in Peru to some local companies as "consultants or advisors" on a regular basis and who hold a migratory status and visa regulated by law, maintaining their capacity as workers for foreign companies because they are not included on the payroll of Peruvian companies.

The most significant changes include:

I. Change of status (in-country processing) or obtaining of visa proceeding (with a consular step):

Resident - Worker (WRA)

- A foreign citizen who requires this type of visa must sign the Initiation "F-0004" form, in the case of "Change of Status" procedure (in-country processing), since he or she is in the country.

- At present, the F-0004 is obtained online either for in-country or obtaining of visa proceeding.

- No more than 15 working days should elapse between the date of approval of the employment contract for foreign nationals and the start date of filing the case before MIGRACIONES.

- Where the parties in an employment contract related to a foreign national have agreed to a probationary period, MIGRACIONES shall first grant a visa with temporary worker status only until the completion of this period. After that, the applicant applies for a "change of visa process" to get his or her WRA visa at MIGRACIONES.

- The power of attorney letter granted by the foreign citizen must be addressed to the National Superintendence of Migration-MIGRACIONES, not to DIGEMIN.
- A copy of the Registry of Taxpayers (*RUC*) of the local company employing the foreign national, which is obtained from SUNAT's website (<http://www.sunat.gob.pe/>) using the key password "clave sol," must be "Active" (*Activo*) and "Existing" (*Habido*), and the local company must have workers enrolled on its payroll.
- A certified copy of the validity of the power of attorney (*Vigencia de Poder*) of the representative of the contracting employer updated and recently issued by the Registry Office must show explicitly that this is a representative of the employer who has signed the employment contract on behalf of the local company, and has the authorization to hire staff.
- The foreign passport of the applicant must have a minimum validity of one year.

Appointed Worker (WD1)

- A foreign citizen who requires this type of visa must sign the Initiation "F-0004" form in the case of a change of status (in-country process), because he or she is in the country.
- At present, the F-0004 is obtained online either for in-country or obtaining of visa proceeding.
- In addition to the requirements within the scope of the letter of appointment to be granted to the appointed worker by the foreign company that will provide services to the local company, a letter that is addressed to the receiving company must state that both wages, as per diem, or any payment to the appointed worker, shall be paid by the foreign company. The age of the individual must also be indicated in this letter.
- A Certificate of Specialization in the work that the appointed worker will perform in the local company in Peru, should be issued by the foreign company or foreign study center, duly legalized by the Peruvian consulate abroad and endorsed by the Peruvian Ministry of Foreign relations or with an apostil abroad, as appropriate.
- - A copy of the Registry of Taxpayers (*RUC*) of the local company employing the foreign national, which is obtained from SUNAT's website (<http://www.sunat.gob.pe/>) using the key password "clave sol," must be "Active" (*Activo*) and "Existing" (*Habido*), and the local company must have workers enrolled on its payroll.
- A certified copy of the validity of the power of attorney (*Vigencia de Poder*) of the representative of the local company receiving the services, who has signed the service agreement and the letter of the beneficiary company (local company), should be recently updated and issued by the corresponding Registry Office.
- The applicant's passport should be valid for at least six months.

The requirements above apply to both types of procedures, either "change of immigration status" or "obtainment of visa," unless specific reference to only one of them is made.

Other requirements, depending on the type of procedure to be followed, remain mandatory.

In case of an extension or renewal of the permit for an appointed worker (WD1) beyond the additional 90 days initially granted, the INTERPOL International Exchange sheet

should be attached to the file and submitted to MIGRACIONES for this purpose, provided that the extension or renewal requested is at least three months.

II. Procedure for Extension of Residence Permit

Resident Worker

Three original recent payslips for the foreign worker must be presented to MIGRACIONES in addition to other documentation, demonstrating continued employment during the last year of stay in the country.

III. Procedure of Extension of Authorization of Permanency:

Temporary Worker/Appointed Worker

The INTERPOL International Exchange Sheet should be presented if the requested extension is at least three months.

This must be presented to MIGRACIONES in addition to other required documents in the case of extension beyond the additional 90 days initially granting authorization to work for a local company under a dependent labor relationship as a subordinated worker (temporary worker), or as a consultant or advisor (appointed worker).

In addition, three original recent payslips of the foreign worker for a temporary worker visas must be filed.

Requirements in immigration proceedings for change of status and obtaining visa for immigrants, investors, among others, have also been amended.

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New Publications and Items of Interest

Quarter 2 FY 2013 selected statistics from the Office of Foreign Labor Certification. The federal Department of Labor's Office of Foreign Labor Certification has posted updated program fact sheets containing the Quarter 2 FY 2013 selected statistics for the permanent labor certification, prevailing wage determination, H-1B temporary visa, H-2A temporary agricultural visa, and H-2B temporary non-agricultural visa programs. The fact sheets are available at <http://www.foreignlaborcert.doleta.gov/performancecdm> under the "Selected Statistics by Program" tab.

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.

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.

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.

Green Card Stories has won five national awards. It was named a Nautilus book award silver medal winner, and won a silver medal in the Independent Book Publishers Association's Benjamin Franklin Award in the multicultural category. The book also won a Bronze Medal in the Independent Publisher's "IPPY" Awards and an honorable mention for the 2012 Eric Hoffer Book Award. Ariana Lindquist, the photographer, won a first-place award in the National Press Photographers Association's Best of Photojournalism 2012. The writer, Saundra Amrhein, was nominated as a finalist on the short list for the 2011 Santa Fe Writers Project Literary Awards. *Green Card Stories* is also featured on National Public Radio's photo blog at <http://www.npr.org/blogs/pictureshow/2012/07/05/156303716/told-in-pictures-how-50-immigrants-got-green-cards>.

For more information, e-mail Lauren Anderson at lauren@greencardstories.com.

See also <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

The Santa Monica Bar Association (SMBA) Board of Trustees invites all members to meet, have lunch with, and network with fellow members on the first Friday of each month. New for 2013 will be 1.0 hours of MCLE credit offered at each lunch. The May 3, 2013, lunch and MCLE credit topic will be "ABCs of Immigration Law-From Employer I-9 Compliance to Investor Visa E & EB-

5 Options for Individuals & International Companies." **Bernard P. Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm?c=US>) will present. Attendees must be members of SMBA, and you can join at the event. RSVP is requested as 1.0 hours of MCLE credit is being offered for this event. Reply to: Santa Monica Bar Association Office via telephone, 310-600-7137, or email saying: "YES, Count me in for May 3, 2013" to smbaoffice@aol.com.

Steven Clark (bio: <http://www.abil.com/lawyers/lawyers-clark.cfm>) will address the Boston Bar Association on counseling investors on EB-5 petitions for entrepreneurs on May 6, 2013.

Mark Ivener (bio: <http://www.abil.com/lawyers/lawyers-ivener.cfm?c=US>) gave a presentation on an EB-5 panel on April 19, 2013, at the EB-5 Investment Visa Match-Making Forum in the City of Industry, California. Mr. Ivener's speech was "EB-5 for Investors."

Klasko, Rulon, Stock & Seltzer, LLP held its Annual Spring Seminar on April 23, 2013, at the Radisson Plaza-Warwick Hotel in Philadelphia, Pennsylvania. Topics included legislation, USCIS policies and practices, CBP programs, J-1 waivers, university/hospital roundtable, corporate roundtable, employment eligibility verification, travel issues, prevailing wage issues, and more. **Mr. Klasko** spoke at the seminar. For more information, see <http://www.klaskolaw.com/images/email/2013/email.html>.

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>) has published a new blog entry. "Three Ways To Get Ready for Immigration Reform" is available at <http://musingsonimmigration.blogspot.com/2013/04/three-ways-to-get-ready-for-immigration.html>.

Angelo Paparelli (<http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) has published a new blog entry. "The Xenophobes Can't Kill Immigration Reform - But What Should CIR Supporters Do Now?" is available at <http://www.nationofimmigrants.com/immigration-reform/the-xenophobes-cant-kill-immigration-reform---but-what-should-cir-supporters-do-now/>.

Mr. Paparelli was quoted in Law360 on April 18, 2013, in "Immigration Reform Bill Offers Employers A Mixed Bag." He said, "I think the fact that the U.S. Chamber [of Commerce] and the AFL-CIO reached a consensus on a lesser-skilled worker visa is wonderful, but the numbers make the program illusory," and noted that the cap on W visas was too low to fill the positions employers need.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted on CNN.com on April 18, 2013, in "Immigration Reformers Seek To Avoid Déjà Vu." Among other things, he noted that "[t]he chances of getting something enacted this year are less than 50% because of the short number of legislative days, and the House Republicans may not feel the same sense of urgency to enact immigration reform legislation." The article is available at <http://www.cnn.com/2013/04/18/politics/immigration-opposition/index.html>.

Mr. Yale-Loehr was quoted on WBEZ in a transcript of a radio interview. He said he thinks the E-2 visa "is a good example of a true entrepreneurial visa. We should try to make it easier for people who want to do that to come to the United States more easily in the future, and to be able to get a permanent green card." The transcript is available at <http://www.wbez.org/news/temporary-business-investors-worry-immigration-bill-leaves-them-out-106685>.

Mr. Yale-Loehr was quoted by ABC online on April 16, 2013, in "How Unlimited Visas Could Affect Immigration." He noted that green cards for spouses and children of permanent residents are in demand and backlogged. The article is available at http://abcnews.go.com/ABC_Univision/Politics/removing-visas-caps-affect-immigration/story?id=18970628#.UXjBqZDn-73.

Mr. Yale-Loehr moderated a panel discussion with Cornell University President David Skorton, Cornell government professor Michael Jones-Correa, and UCLA law professor Hiroshi Motomura on April 19, 2013. The panelists discussed the prospects for comprehensive immigration reform, focusing on the need to legalize the estimated 11 million undocumented persons in the United States and to increase visas for highly skilled foreign workers. A news article summarizing the panel is available at <http://www.news.cornell.edu/stories/2013/04/we-need-help-immigrants-stay-us-panelists-say>.

Mr. Yale-Loehr and **Mr. Klasko** will speak at an EB-5 immigrant investor conference on May 2, 2013, in Miami, Florida. They are on the same panel addressing how to set up and operate an EB-5 regional center. Information about the conference is available at <http://www.aila.org/content/default.aspx?docid=42465>.

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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

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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