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## Headlines:

**H-1B Premium Processing Has Begun** – On April 27, 2015, USCIS began premium processing for cap-subject H-1B petitions requesting it, and for petitions seeking an exemption from the H-1B cap for individuals with a U.S. master's degree or higher.

**District Court Grants Extension to DOL for H-2B Program** – DOL will continue to process temporary labor certification applications under its 2008 H-2B regulations through May 15, 2015.

**USCIS Resumes Premium Processing for H-2B Petitions** – On April 20, 2015, USCIS resumed accepting premium processing requests for Form I-129 H-2B petitions

**China-Mainland Born EB-5 Category Oversubscribed in May; Philippines EB-3 Retrogresses** – Heavy China-mainland born applicant demand has required the implementation of an employment fifth preference cut-off date to hold visa number use within the maximum for FY 2015. Also, the current rate of increase in demand in the Philippines EB-3 category has required the retrogression of this cut-off date for the month of May.

**OSC Issues Technical Assistance Letter on E-Verify Issues** – The OSC letter was in response to concerns about the possible conflict between the obligations that Texas state contractors and certain Texas state agencies have under federal E-Verify rules and their obligations under a Texas executive order, RP-80, and about possible antidiscrimination violations.

**Sen. Grassley Introduces E-Verify Bill** – Among other things, the bill would allow employers to use E-Verify before a person is hired and require employers to check the status of all current employees within three years.

**ESL Teacher Indicted for Stealing Tens of Thousands From Student Visa Holders** – The teacher allegedly stole more than \$30,000 from at least six victims, in exchange for promises of green cards that she never fulfilled.

**ABIL Global: Hong Kong** – Hong Kong has suspended the Capital Investment Entrant Scheme; other developments have been announced.

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## **H-1B Premium Processing Has Begun**

On April 27, 2015, U.S. Citizenship and Immigration Services (USCIS) began premium processing for cap-subject H-1B petitions requesting it, and for petitions seeking an exemption from the H-1B cap for individuals with a U.S. master's degree or higher. USCIS guarantees a 15-calendar-day processing time for premium processing.

For H-1B petitions that are not subject to the cap and for any other visa classification, the 15-day processing period for premium processing service begins on the date USCIS receives the request. However, for cap-subject H-1B petitions, including advanced-degree exemption petitions, the 15-day processing period began on April 27, 2015, regardless of the date on the Form I-797 receipt notice, which indicates the date on which the premium processing fee is received.

The announcement is available at <http://www.uscis.gov/news/alerts/h-1b-cap-premium-processing-begin-april-27>.

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## **District Court Grants Extension to DOL for H-2B Program**

On April 15, 2015, the federal district court in the Northern District of Florida issued an order effectively allowing the Department of Labor (DOL) to continue issuing temporary labor certifications under the H-2B visa program through May 15, 2015. As a result, DOL will continue to process temporary labor certification applications under its 2008 H-2B regulations through May 15, 2015.

On March 4, the court vacated DOL's 2008 H-2B regulations on the grounds that DOL lacks authority to issue regulations in the H-2B program. DOL and the Department of Homeland Security are working on regulations "to minimize future interruptions to the H-2B program," U.S. Citizenship and Immigration Services said.

The announcement is available at <http://www.uscis.gov/news/district-court-allows-dol-continue-processing-certifications-h-2b-program-and-uscis-resumes-premium-processing-h-2b-petitions>.

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## **USCIS Resumes Premium Processing for H-2B Petitions**

On April 20, 2015, USCIS resumed accepting premium processing requests for Form I-129 H-2B petitions. USCIS had announced a temporary suspension of premium processing for all H-2B petitions on March 9, 2015.

Employers are now able to file Form I-907, Request for Premium Processing Service, either:

- Together with a Form I-129, Petition for a Nonimmigrant Worker, H-2B cap exempt petition; or
- Separately to request premium processing service for a previously filed H-2B petition.

The current filing fee for the I-907 is \$1,225.

The announcement is available at <http://www.uscis.gov/news/district-court-allows-dol-continue-processing-certifications-h-2b-program-and-uscis-resumes-premium-processing-h-2b-petitions>.

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## **China-Mainland Born EB-5 Category Oversubscribed in May; Philippines EB-3 Retrogresses**

The Department of State's Visa Bulletin for May 2015 notes that heavy China-mainland born applicant demand has required the implementation of an employment fifth preference (EB-5) cut-off date of May 1, 2013, for investors from China to hold visa number use for that country within the maximum limit for FY 2015.

The bulletin notes that future visa availability will depend on a combination of demand for numbers being reported each month and the extent to which otherwise unused numbers may become available. An increase in visa demand by applicants with relatively early priority dates could make a retrogression of this cut-off date necessary before the end of the fiscal year. The Bulletin emphasizes that retrogression is not being predicted but cannot be ruled out. "It is extremely likely that this category will remain subject to a cut-off date indefinitely," the Bulletin says.

The bulletin also reports that the cut-off date for the Philippines employment third (EB-3) preference has recently advanced very rapidly "in an effort to generate sufficient demand to fully utilize all available numbers." The current rate of increase in demand has required the retrogression of this cut-off date for the month of May to July 1, 2007, in an attempt to hold number use within the annual limit for this preference category.

On April 13, 2015, the Visa Office attended the IIUSA 2015 EB-5 Regional Economic Advocacy Conference to address questions related to the implementation of a visa cutoff date for Chinese investors in the EB-5 visa category. Responses from the Visa Office to questions are available at <http://travel.state.gov/content/dam/visas/VO%20Attends%20IIUSA%20EB5%20Conference.pdf>.

The Visa Bulletin for May 2015 is available at <http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2015/visa-bulletin-for-may-2015.html>.

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## **OSC Issues Technical Assistance Letter on E-Verify Issues**

The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) issued a technical assistance letter on April 15, 2015, in response to a query from an attorney expressing concerns about the possible conflict between the obligations that Texas state contractors and certain Texas state agencies have under federal E-Verify rules and their obligations under a Texas executive order, RP-80. The attorney also raised a concern about a potential violation of the antidiscrimination provision of the Immigration and Nationality Act (INA), which the OSC enforces.

First, the attorney expressed concern that RP-80's requirement that state contractors use E-Verify for "all persons employed during the contract term to perform duties within Texas" conflicts with federal E-Verify rules. The attorney noted that as a general matter, federal E-Verify rules require E-Verify users to create E-Verify cases only for newly hired employees, whereas RP-80 requires Texas contractors to use E-Verify on all their current employees performing duties in Texas, whenever hired. Second, the attorney raised concerns about RP-80's requirement that certain Texas state agencies use E-Verify for "all current and prospective agency employees." The attorney observed that federal E-Verify rules bar all employers from creating E-Verify cases for an individual before he or she accepts a job offer and completes the employment eligibility verification form (I-9). Finally, the attorney expressed concern that under

RP-80, a nationwide employer may seek "to root out employees" by "transferring some complainers into Texas after winning a Texas project" and running them through E-Verify, potentially violating the antidiscrimination provision.

In response, OSC noted that it cannot provide an advisory opinion on any set of facts involving a particular individual or entity, but that the agency can provide general guidelines. Regarding the apparent conflict between federal E-Verify rules and the provisions of RP-80, OSC noted that U.S. Citizenship and Immigration Services (USCIS), the agency that administers the E-Verify program and issues related guidance, has advised employers in Texas that federal E-Verify requirements are in effect at all times. Under federal E-Verify rules, OSC noted, most employers using E-Verify may only create E-Verify cases for new hires. However, federal E-Verify rules provide an exception for employers enrolled in E-Verify as federal (not state) contractors. Such federal contractors must create cases in E-Verify both for new hires and for existing employees performing work under the federal contract (if the employer has not already created a case for the employee), and may choose an option to create cases in E-Verify for all employees of the contractor.

OSC also noted that federal E-Verify rules also prohibit all employers from creating an E-Verify case for an individual who has not yet accepted a job offer and completed an I-9. Consequently, employers using E-Verify for prospective employees or using E-Verify for current employees, when not enrolled in E-Verify as federal contractors, "would violate federal E-Verify program rules—the same rules that the employers agreed to comply with in their MOU [memorandum of understanding] with USCIS." OSC said that "[f]ailure to comply with E-Verify program rules could lead to possible termination or suspension from the E-Verify program."

Regarding the attorney's concern that an employer may violate the antidiscrimination provision of the INA when it uses E-Verify to improperly "root out employees," the OSC noted that an employer that uses RP-80 to assign an employee to work in Texas for the purpose of reverifying the employee's employment authorization "may raise concerns that it is treating that employee differently in the employment eligibility verification process based on perceived citizenship status or national origin." The OSC said these concerns are heightened "where an employer requires an existing employee to provide new Form I-9 documentation to run the existing employee through E-Verify when not permitted to do so under federal E-Verify requirements."

The OSC's technical assistance letter is available at <http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2015/184.pdf>. More information about related MOUs is available at <http://www.uscis.gov/e-verify/questions-and-answers/what-memorandum-understanding-mou-0>. The MOU for employers is available at [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/MOU\\_for\\_E-Verify\\_Employer.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/MOU_for_E-Verify_Employer.pdf).

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### **Sen. Grassley Introduces E-Verify Bill**

Sen. Charles Grassley (R-Iowa) introduced the "Accountability Through Electronic Verification Act," S. 1032, on April 21, 2015. Among other things, the bill would permanently authorize E-Verify, make employer E-Verify use mandatory, allow employers to use E-Verify before a person is hired, require employers to check the status of all current employees within three years, and require employers to re-verify an employee's immigration status if his or her work authorization is due to expire.

Similar legislation (H.R. 1147) is pending in the House of Representatives.

Details of the Senate bill will be posted at <https://www.congress.gov/bill/114th-congress/senate-bill/1032/all-info> as they become available. Sen. Grassley's statement explaining the bill is available at <http://www.grassley.senate.gov/news/news-releases/grassley-introduces-legislation-expand-work-eligibility-tool-employers>.

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## **ESL Teacher Indicted for Stealing Tens of Thousands From Student Visa Holders**

Manhattan District Attorney Cyrus R. Vance, Jr., announced on April 6, 2015, the indictment of Jenetta Ferguson, an English as a Second Language (ESL) teacher, for allegedly stealing tens of thousands of dollars from European and Asian student visa holders by misleading the victims and falsely promising to provide them with green cards in exchange for cash payments. The defendant was charged in an indictment in New York State Supreme Court with grand larceny in the third and fourth degrees, as well as scheme to defraud in the first degree.

The defendant's alleged victims include individuals from Italy, Uzbekistan, Bangladesh, and the Philippines, who were residing in the U.S. on student visas. According to the indictment and documents filed in court, Ms. Ferguson taught ESL at a school in Manhattan. Between March and September 2014, she allegedly approached the students and falsely informed them that she could provide them with green cards in exchange for a fee, charging between \$8,500 and \$10,500 per person. However, instead of providing the promised documents to these individuals, Ms. Ferguson allegedly kept the money, which amounted to more than \$30,000 from at least six victims.

The indictment also charges that the defendant encouraged many of the victims to refrain from renewing their student visas, leaving many without adequate documentation once their visas later expired.

The announcement of the indictment is available at <http://manhattanda.org/press-release/davance-announces-indictment-esl-teacher-stealing-thousands-student-visa-holders>. U.S. Citizenship and Immigration Services' Fraud Detection and National Security Directorate in the New York Office played a key role in the indictment. The related USCIS release is available at <http://www.uscis.gov/news/news-releases/uscis-assists-ny-case-leading-indictment-esl-teacher-stealing-thousands-student-visa-holders>.

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## **ABIL Global: Hong Kong**

*Hong Kong has suspended the Capital Investment Entrant Scheme; other developments have been announced.*

The Hong Kong Immigration Department (HKID), under the leadership of the Chief Executive, actively reviews immigration policy to better suit the ever-evolving economic development of the Hong Kong Special Administrative Region. One of the most significant policy changes in 2015 is the suspension of the Capital Investment Entrant Scheme (CIES) effective January 15, 2015. The CIES has been a popular vehicle for residence in Hong Kong since its launch in October 2003 with the objective of facilitating the entry of investors willing to make a substantial passive investment without having to play an active role in a business.

At the end of 2014, 41,802 applications were received and 25,504 applicants have made the requisite investments and were granted formal approval to reside in Hong Kong. Additionally,

2,493 applicants were granted approval-in-principle to enter Hong Kong to make the requisite investments.

In a recent press release, the HKID made clear that when the CIES was first implemented, Hong Kong's economy was in recession and new capital was required to stimulate economic growth. However, attracting capital investment entrants is no longer a priority for the Hong Kong government in view of the latest economic situation in Hong Kong, and the focus is now on attracting and retaining talent, professionals, and innovative entrepreneurs to contribute to Hong Kong's economy.

The HKID has announced that it will introduce a series of measures in the second quarter of 2015, including a pilot "Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents" (ASSG), to attract second-generation Chinese Hong Kong permanent residents from overseas to return to Hong Kong. In this scheme, the applicants are not required to have an offer of employment in Hong Kong upon application and will be granted an initial stay of one year without other conditions. The applicants may then apply for extensions of stay if they have secured offers of employment at a level common for degree holders and with a remuneration package at market level.

Other measures include relaxing the duration-of-stay pattern under various visa schemes, including the General Employment Policy (GEP), the Admission Scheme for Mainland Talent and Professionals (ASMTP), and the Quality Migrant Admission Scheme (QMAS). Entrants admitted under the GEP, the ASMTP, and the QMAS under the General Point Test (GPT), will be relaxed from the current initial stay of one year to two years, and the extension pattern will be changed from the current "two-two-three" year pattern to the "three-three" year pattern.

Additionally, top-tier entrants under these immigration schemes, subject to fulfilling specified criteria, which include having worked or resided in Hong Kong under the respective schemes for at least two years, and having an assessable income for salary tax above a certain level in Hong Kong (not less than HK \$2 million or approximately US \$250,000), may be granted a six-year extension on time limitation only without other conditions of stay upon application for the first extension. Those successful QMAS entrants under the Achievement-Based Point Test (APT) will be granted upon entry eight years of stay on time limitation only without other conditions of stay. The HKID will also enhance the scoring scheme of the GPT to attract more talent with outstanding academic backgrounds and international work experience to work in Hong Kong.

The immigration policy in Hong Kong remains open and flexible to highly skilled people and responsive to the labor needs of businesses, to ensure that Hong Kong remains a unique "world city" while gradually being reintegrated with the mainland.

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## New Publications and Items of Interest

The latest 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 a chapter on Singapore. 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, 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 for:

- 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 \$299, but discounts are available. Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584; or go to

<http://www.lexisnexis.com/store/promotions/promolanding.jsp?couponId=GLOBAL15>.

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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## ABIL Member/Firm News

**Sharon Mehlman** (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>) presented on the "Re-Verifying the Workforce" panel at the 9<sup>th</sup> Annual Federal Bar Association Worksite Enforcement Conference in Chicago on April 28-29, 2015.

**David Isaacson**, from **Cyrus Mehta's** office, has authored a new blog entry. "A Preliminary Analysis of the Fifth Circuit Oral Argument on the Application for Stay in *Texas v. United States* is available at <http://blog.cyrusmehta.com/2015/04/a-preliminary-analysis-of-fifth-circuit.html>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) presented on April 28, 2015, on an introduction to EB-5 at the EB-5 Finance WebCourse sponsored by the Council of Development Finance Agencies. More information is available at <http://www.cdfa.net/cdfa/cdfaweb.nsf/0/38B499841975C8C588257AFC0064AC32>.

**Mr. Yale-Loehr** was quoted in the *South China Morning Post* on April 24, 2015, in "Jobs, Investment, Political Asylum: How Fugitive Chinese Officials Enter U.S." Mr. Yale-Loehr said, "It is hard for someone from China to immigrate to the U.S. legally, because of the long backlog of Chinese applications in most green card categories and the extensive criminal background and security checks the U.S. runs on all green card applicants." The article is available at <http://www.scmp.com/news/china/policies-politics/article/1775369/top-countries-chinese-fugitives-offer-life-style-and>.

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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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