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Headlines:

Spending Bill Extends EB-5 Investor Visa Program to September 30; No Funding for Wall – The Consolidated Appropriations Act of 2017 extends the EB-5 immigrant investor visa program through September 30, 2017. The legislation also provides a large border-security funding increase, but no funding for a border wall.

USCIS Completes Data Entry of FY 2018 H-1B Cap-Subject Petitions – USCIS has completed data entry of all fiscal year 2018 H-1B cap-subject petitions selected in a computer-generated random process and has begun returning all H-1B cap-subject petitions that were not selected.

DACA Recipient Files Suit Over Revoked Status – Jessica Colotl, a DACA recipient whose case has received publicity over the years, has had her DACA status revoked. Her attorney has filed a motion requesting a federal judge in Atlanta, Georgia, to reinstate her DACA protection.

USCIS Implements New Interpreter Policy, Form – The guidance applies to interviews conducted at domestic field offices except in cases where USCIS provides interpreters or has other policies.

State Dept. Announces Continued High Demand for Visa Numbers in Several Employment-Based Categories – The Department of State's Visa Bulletin for the month of June 2017 notes that continued high demand is resulting in cut-off dates being established in several categories.

IT Issues Hamper Tracking of Visa Overstays, DHS OIG Says – It can take months for ICE to determine a visa-holder's status and whether that person may pose a national security threat, which contributes to a backlog of more than 1.2 million visa overstay cases.

Pro Bono: New Developments in Sanctuary Case – The Joseph Law Firm announced a preliminary victory in a recent pro bono case. Attending a criminal hearing meant that their client had to come out of sanctuary from a local church. It took a lot of courage knowing she could be arrested and sent back to Peru.

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Spending Bill Extends EB-5 Investor Visa Program to September 30; No Funding for Wall

The Consolidated Appropriations Act of 2017, passed by Congress and signed May 7, extends the EB-5 immigrant investor visa program through September 30, 2017. The legislation also provides a large border-security funding increase, among other things.

The spending bill was also notable for what it didn't contain. For example, the bill did not include funding to begin construction of the border wall promised by President Trump.

Some observers believe that before that date, legislation could be enacted to change the EB-5 program, such as by raising the minimum investment amount, which currently is \$500,000 in rural and high unemployment areas and \$1 million elsewhere. The EB-5 program has received a lot of attention recently because of a particular EB-5 project in New Jersey being promoted by the Kushner Company. Jared Kushner, President Trump's son-in-law and a senior advisor to the President, stepped down as chief executive of the Kushner Company in January and has sold stakes in several properties to help allay concerns about possible conflicts of interest.

A statement by President Trump on signing the legislation is at <https://www.whitehouse.gov/the-press-office/2017/05/05/statement-president-donald-j-trump-signing-hr-244-law>. For more on this case, see <https://www.nytimes.com/2017/05/08/us/politics/kushner-china-visa-eb-5.html>.

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USCIS Completes Data Entry of FY 2018 H-1B Cap-Subject Petitions

U.S. Citizenship and Immigration Services (USCIS) announced on May 3, 2017, that it has completed data entry of all fiscal year 2018 H-1B cap-subject petitions selected in a computer-generated random process. USCIS said it has begun returning all H-1B cap-subject petitions that were not selected. Due to the high volume of filings, USCIS was unable to provide a definite time frame for returning these petitions. USCIS asked petitioners not to inquire about the status of submitted cap-subject petitions until they receive a receipt notice or an unselected petition is returned. USCIS will issue an announcement once all the unselected petitions have been returned.

Additionally, USCIS is transferring some Form I-129 H-1B cap-subject petitions from the Vermont Service Center to the California Service Center to balance the distribution of cap cases. USCIS will notify by mail those whose cases are transferred.

USCIS also reminded petitioners that it has temporarily suspended premium processing for all H-1B petitions, including cap-subject petitions, for up to six months.

The USCIS announcement is at <https://www.uscis.gov/news/alerts/uscis-completes-data-entry-fiscal-year-2018-h-1b-cap-subject-petitions>.

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DACA Recipient Files Suit Over Revoked Status

Jessica Colotl, a Deferred Action for Childhood Arrivals (DACA) recipient whose case has received publicity over the years, has had her DACA status revoked. Her attorney has filed a motion requesting a federal judge in Atlanta, Georgia, to reinstate her DACA protection.

Ms. Colotl's parents brought her to the United States from Mexico when she was 11. She was granted DACA status in 2013, which was renewed last year. In the intervening years, her parents moved back to Mexico but she stayed in the United States, graduated from college, and has been working as a paralegal with Kuck Immigration Partners, LLC. Last year, she wanted to travel to Mexico to visit her ill mother, but since she had an outstanding removal order, she filed

a motion to reopen and administratively close her removal proceedings. An immigration judge denied the request but the Board of Immigration Appeals found in her favor and sent the case back to the immigration judge to administratively close her case. However, the immigration judge asked the government for its position in writing; in a supplemental filing in March 2017, the government said her case shouldn't be closed and she was a priority for removal under a February 2017 Department of Homeland Security memorandum due to her criminal history (she was pulled over on campus for a traffic violation and driving without a license in 2010 and was charged with a felony false statement to a law enforcement officer when her address given didn't match the record. At that time, she was detained for 37 days).

Kuck Immigration Partners filed a complaint on May 9, 2017, in Atlanta for declaratory and injunctive relief. "Trump promised that DACA kids were fine. Nothing's changed in Jessica's case....They are simply in bad faith punishing her for exercising her rights under the policies enacted by the government," said Charles Kuck. Now 28, Ms. Colotl said in her lawsuit that the government is using her as "a test case to revoke DACA, exceeding its discretionary authority in an arbitrary and capricious manner." Calling the government's action "completely outrageous," she said she "felt shock because I didn't know this could happen."

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USCIS Implements New Interpreter Policy, Form

U.S. Citizenship and Immigration Services (USCIS) announced the May 1, 2017, implementation of a policy memorandum issued on January 17, 2017. The guidance applies to interviews conducted at domestic field offices except in cases where USCIS provides interpreters or has other policies, such as asylum and refugee interviews; credible fear and reasonable fear screening interviews; interviews to determine eligibility for relief under provisions of the Nicaraguan Adjustment and Central American Relief Act; and naturalization interviews, unless the interviewee qualifies for an exception to demonstrating adequate proficiency in reading, writing, and speaking English. The standards also do not apply to document translations or to interviews conducted at international field offices.

The guidance states that interpreters must be sufficiently fluent in both English and the interviewee's language, able to interpret competently between English and the interviewee's language, and able to interpret impartially and without bias. Those restricted from serving as interpreters include minors under age 18 (an exception for good cause may be granted for those age 14-17); attorneys and accredited representatives of the interviewee; and witnesses (unless an exception for good cause is granted). A witness is anyone who gives a personal account, orally or in writing, of something seen, heard, or experienced.

USCIS has introduced the new Form G-1256, Declaration for Interpreted USCIS Interview, as part of implementation of this guidance. Both the interviewee and the interpreter must sign the form at the beginning of the interview in the presence of a USCIS officer. The form includes a declaration stating that the interpreter must accurately, literally, and fully interpret for both the interviewee and interviewing officer, and requires the interpreter to agree not to disclose any personal information learned in the interview.

USCIS officers will receive training to implement the new policy.

The announcement is at <https://www.uscis.gov/news/alerts/role-and-use-interpreters-domestic-field-office-interviews>. The policy memorandum is at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-17-1-RoleUseInterpreters-PM-602-0125-1.pdf>. A related Web alert is at <https://www.uscis.gov/news/alerts/role-and-use-interpreters-domestic-field-office-interviews>.

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State Dept. Announces Continued High Demand for Visa Numbers in Several Employment-Based Categories

The Department of State's Visa Bulletin for the month of June 2017 notes, among other things:

- Continued high level of demand for the China and India employment-based first preference (EB-1) categories has required the establishment of a cut-off date for June. The EB-1 date for these two countries will once again become Current for October, the first month of fiscal year 2018.
- There has been an extremely large increase in China employment third preference applicant demand during the past month, due to the "downgrading" of status by applicants who had originally filed in the employment second preference. This has resulted in the third preference final action date being held for the month of June. Continued heavy demand for numbers will require a retrogression of this date no later than August.
- There also is continued high demand in the India EB-4 and special religious worker categories, which is likely to result in the India EB-4 per-country limit being reached in June. Therefore, implementation of July EB-4 and special religious worker final action dates for India is expected. The India EB-4 and special religious worker dates should once again become Current for October.

The Visa Bulletin for June 2017 is at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-june-2017.html>.

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IT Issues Hamper Tracking of Visa Overstays, DHS OIG Says

The Department of Homeland Security's (DHS) Office of Inspector General (OIG) recently found that U.S. Immigration and Customs Enforcement (ICE) relies on information technology (IT) systems that are "fragmented" and "ineffective," lacking in integration and information-sharing capabilities. As a result, OIG said, ICE personnel are forced to "laboriously piece together vital information from up to 27 distinct DHS information systems and databases to accurately determine an individual's overstay status." It can take months for ICE to determine a visa-holder's status and whether that person may pose a national security threat, OIG said, which contributes to a backlog of more than 1.2 million visa overstay cases.

Further complicating ICE's efforts to track visa overstays is DHS's lack of a comprehensive biometric exit system at U.S. ports of departure to capture information on nonimmigrant visitors. In the absence of such a system, OIG reported, ICE must rely on third-party departure data, such as commercial carrier passenger manifests, which do not include biometric land departure information reflecting those who cross the border on foot or using their own vehicles.

OIG made several recommendations to the DHS and ICE Chief Information Officers (CIOs) to improve information sharing, provide training and guidance, evaluate data reliability, and implement a biometric exit solution.

A related press release is at <https://www.oig.dhs.gov/assets/pr/2017/oigpr-050417.pdf>. The full report is at <https://www.oig.dhs.gov/assets/Mgmt/2017/OIG-17-56-May17.pdf>.

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Pro Bono: New Developments in Sanctuary Case

Jeff Joseph, Senior Partner of Joseph Law Firm, P.C., had a victory in a pro bono case for his client, who is currently in sanctuary in a church in Denver, Colorado. Ingrid Encalada is from Peru. She entered the United States at age 17 and is now 33. She has two U.S. citizen children, an 8-year-old and an 18-month-old.

In 2010, she was arrested for using false documents. On the advice of her attorney, she pled guilty to criminal impersonation, which made her deportable and ineligible for cancellation of removal. She appealed the case, but the appeal was dismissed in 2016. She then hired another attorney to try and withdraw her guilty plea. That attorney failed to show up for the hearing and the judge denied her post-conviction motion to withdraw her guilty plea. She filed a stay with U.S. Immigration and Customs Enforcement that was denied. Because she was subject to a final order and the stay was denied, she entered sanctuary in a Quaker church and has remained there for the past 5 months.

Joseph Law Firm agreed to take her case pro bono. On May 3, 2017, she had her first hearing with the criminal court. The purpose of this hearing was to prove that her second attorney was ineffective when he failed to show in court. The judge granted this motion and found that the previous attorney was in contempt and that he intends on fining that attorney the fees and costs necessary for Ingrid to file a second post-conviction motion.

Attending this hearing meant that Ingrid had to come out of sanctuary. It took a lot of courage knowing she could be arrested and sent back to Peru. But it was successful and she is now safely back in the church. There will be another hearing on whether her initial attorney was ineffective when he recommended the plea to criminal impersonation.

The case has made national news. Additional information is at <http://www.denverpost.com/2017/05/03/peruvian-woman-denver-church-refuge/>.

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New Publications and Items of Interest

A [Spanish overview of employee rights during the I-9 and E-Verify process](#) will be presented via conference call on May 16, 2017, from 2 to 3 pm ET by USCIS. Register at https://public.govdelivery.com/accounts/USDHSCISINVITE/subscriber/new?topic_id=USDHSCISINVITE_278. Questions can be emailed to public.engagement@uscis.dhs.gov.

[How to safeguard your data from searches at the border](#) is the topic of several recent articles and blogs. See, for example, <https://www.nytimes.com/2017/03/21/technology/personaltech/crossing-the-border-heres-how-to-safeguard-your-data-from-searches.html> and <https://www.aclu.org/blog/free-future/can-border-agents-search-your-electronic-devices-its-complicated>.

[Airport Lawyer](#) is a free Web app that is intended to help ensure that immigrants are treated fairly at airports. Arrivals information can be securely passed along to large groups of volunteer attorneys who have been organized to monitor arrivals. See <https://www.airportlawyer.org/>.

[Listings and links to cases challenging executive orders](#), and related available pleadings, are available at <https://lawfareblog.com/litigation-documents-resources-related-trump-executive-order-immigration>.

The [latest E-Verify webinar schedule](#) from USCIS is available at <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>.

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 30 immigration hotspots around the world.

The latest edition adds chapters on Malta and Romania. Other chapters cover Australia, Belgium, Brazil, Canada, China, Costa Rica, the European Union, France, Germany, Ghana, Hong Kong, India, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Nigeria, Peru, Russia, Singapore, 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 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.

An excerpt of the book is on the ABIL website at http://www.abil.com/global_practice_guide.cfm.

Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584.

ABIL on Twitter. The Alliance of Business Immigration Lawyers is on Twitter: @ABILImmigration. Recent ABIL member blogs are at <http://www.abilblog.com/>.

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ABIL Member/Firm News

Eugene Chow and **Wolfsdorf Rosenthal LLP** were quoted in "Why Wealthy Chinese Are Lining Up To Pay \$500K for U.S. Visas," published by CNN Money on May 8, 2017. The article is at <http://money.cnn.com/2017/05/08/investing/china-eb5-visa-trend/>.

David Isaacson, a Partner at **Cyrus D. Mehta & Associates, PLLC**, has published a new blog entry. "You Ask a Silly Question, and You Get a Silly Answer: Speeding, Terrorist Babies, and Why DHS Should Consider Revising or Eliminating Certain Form Questions" is at <https://tinyurl.com/lxvxf4o>.

Jeff Joseph, of **Joseph Law Firm**, commented on the H-2B provisions of the new spending bill. The article is at <http://www.univision.com/univision-news/immigration/congress-gives-green-light-for-more-h-2b-visas-this-year>.

Vincent Lau (bio: <http://www.abil.com/lawyers/lawyers-lau.cfm>) spoke at several recent events:

- "Continuing Blanket L Challenges," American Immigration Lawyers Association (AILA) Rome District Chapter Conference (Brussels, May 4, 2017)
- "Let's Make PERM Great Again," AILA Upper Midwest Immigration Law Conference (Minneapolis, May 19, 2017)
- "Prevailing Wage Issues: Being Proactive Pays Off," AILA PERM Conference (Seattle, August 18, 2017)

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) was interviewed by Fox 7 News in Austin, Texas, about the practical implications of Texas SB-4, the so-called "sanctuary cities" ban, as well as its exceptions, signed into law by Texas Governor Greg Abbott on May 7, 2017. The law will go into effect on September 1, 2017. A video is at <http://www.fox7austin.com/good-day/253533870-story>.

Mr. Loughran presented in Mexico City, Mexico, on the U.S. immigration options for Mexican investors and the relevant policy changes under the Trump administration at a Grupo San Antonio event held May 4, 2017, "Promoting the Aerospace & Cybersecurity Industries in Mexico." For more information, see <https://www.facebook.com/events/247553395710485/>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has published a new blog entry. "Cross Currents in Federal Preemption of State and Local Immigration Law Under Trump" is at <http://blog.cyrusmehta.com/2017/05/cross-currents-in-federal-preemption-of-state-and-local-immigration-law-under-trump.html>.

Greg Siskind, of Siskind Susser PC, was quoted in "They Treated Us Like Criminals': U.S. Border Crossers Report Severe Reception," published by *The New York Times* on May 1, 2017. Regarding travelers reportedly facing increased aggressive questioning by customs officers when entering the United States, Mr. Siskind said, "We used to hear about these things once in a blue moon, and it would be the talk of the office. Now people just basically roll their eyes because they've heard it so often." The article is at https://www.nytimes.com/2017/05/01/us/customs-airports-trump.html?_r=0.

Wolfsdorf Rosenthal LLP has published several new blog entries. "President Trump, Jared Kushner and the EB-5 Immigrant Investor Program" is at <https://tinyurl.com/k3knq3x>. "Extreme Vetting of U.S. Visa Applicants Being Implemented" is at <https://tinyurl.com/mngxah7>.

"President Trump To Sign Extension of EB-5 Regional Center Program to September 30, 2017" is at <https://tinyurl.com/lnpdpd7>. "Diversity Immigrant Lottery—I Just 'Won' the Green Card Lottery—Do I Need a Lawyer and When Will I Get My Green Card?" is at <https://tinyurl.com/msar9xv>. "EB-5 Update and Things I Learned From Charlie Oppenheim During the IIUSA EB-5 Washington, DC Conference" is at <https://tinyurl.com/m4by78a>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted by CNN on May 15, 2017, in an article regarding President Trump's travel ban litigation. Mr. Yale-Loehr said, "No matter how the two courts [4th Circuit and 9th Circuit] rule, I predict this case will go to the Supreme Court. The issue is too important for the Supreme Court to pass up." The article is at <http://www.cnn.com/2017/05/15/politics/9th-circuit-travel-ban-hearing-round-two/>.

Mr. Yale-Loehr was quoted by the *Financial Times* regarding immigration court backlogs. "The immigration courts are already overwhelmed," he said. "It's going to create even more of a crisis if the administration rounds up more people," he said. The article is available via subscription at <https://www.ft.com/content/80e89d80-2b87-11e7-9ec8-168383da43b7>.

Mr. Yale-Loehr was quoted by *China Daily* regarding the recent one-week EB-5 program extension. "Congress did this to give itself more time to try to resolve some big-ticket items like additional funding for the military and healthcare reform. The additional week also gives members of Congress time to try to finalize an EB-5 reform package," he said. The article is at http://usa.chinadaily.com.cn/world/2017-05/01/content_29151167.htm.

Mr. Yale-Loehr was quoted in "Kushner Uproar Latest Blow To Beleaguered EB-5 Program," published in *Law360* (subscription required) on May 9, 2017. "Congress is close to a consensus on how to reform the EB-5 program," he said, noting that the Kushner EB-5 uproar could "hasten legislative efforts to reform the EB-5 program." The article is at <https://www.law360.com/articles/921763/kushner-uproar-latest-blow-to-beleaguered-eb-5-program>.

Mr. Yale-Loehr was also quoted by the *New York Times* and *marketplace.org* on May 9, 2017, and was interviewed on May 10 by *National Public Radio*, about the Kushner EB-5 project:

- New York Times: <https://www.nytimes.com/2017/05/08/us/politics/kushner-china-visa-eb-5.html>. For developers, he said, the appeal of EB-5 can be summed up in two words: "Cheap money."
- Marketplace.org: <https://www.marketplace.org/2017/05/08/economy/what-eb-5-visas-jared-kushner-s-company-touted-china-are-supposed-do>
- NPR's All Things Considered: <http://www.npr.org/2017/05/10/527817898/kushner-family-dealings-prompt-calls-to-reform-eb-5-visa-program>

Mr. Yale-Loehr was quoted in "Governing: Cities, States Move to Calm Fear of Deportation," published in *Governing.com* on May 10, 2017. He said local laws about sensitive locations, like many sanctuary policies, have little legal weight: "They're largely symbolic. There's nothing to prevent ICE from waiting on the courthouse steps or in public areas to arrest somebody if they want to." Only federal legislation, like that proposed in the House and Senate, could regulate how ICE is allowed to operate, he said. The article is at <http://www.governing.com/topics/politics/stateline-Cities-States-Fear-of-Deportation.html>.

Mr. Yale-Loehr was also quoted in the following media regarding recent immigration-related developments:

- PBS Newshour: <http://www.pbs.org/newshour/rundown/cities-states-fear-deportation/>
- Huffington Post: Trump Isn't Fighting Human Trafficking, He's Facilitating It: http://www.huffingtonpost.com/entry/trump-isnt-fighting-human-trafficking-hes-facilitating_us_590a339ee4b03b105b44bec9
- Cornell Daily Sun: ICE Agents Arrest 'Unlawfully Present Mexican National' in Ithaca: <http://cornellsun.com/2017/05/02/ice-agents-arrest-man-in-ithaca/>
- TV interview re immigrant arrested by ICE agents in Ithaca: <http://www.twcnews.com/nys/central-ny/news/2017/05/3/immigration-attorney-weighs-in-on-man-detained-by-ice-in-ithaca.html>
- Sinotf.com re EB-5 program extension: <http://www.sinotf.com/GB/News/Enterprise/2017-05-04/5NMDAwMDIzMzQ5Nw.html>

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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' website is at <http://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.

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