



IMMIGRATION INSIDER

Vol. 8, No. 11A • November 1, 2012

Headlines:

E-Verify Mandated in Four States in 2013 – Georgia, North Carolina, Pennsylvania, and Tennessee have all passed mandatory work authorization verification laws, the final provisions of which take effect in 2013.

EB-2 Priority Dates Become 'Current' in November, Except for China and India – For China in November, the EB-2 priority date cut-off is September 1, 2007; for India, the cut-off date is September 1, 2004.

Justice Dept. Settles With Florida Janitorial Services Company – The agreement resolves allegations that the company violated the antidiscrimination provision of the Immigration and Nationality Act when it failed to fully reinstate an employee in retaliation for asserting her right to work in the United States.

Justice Dept. Intervenes in Suit Against Texas Farm for Discriminating Against U.S. Worker – The Department alleges that the company discriminated against one of two U.S. citizen applicants when it refused to hire him based on his citizenship status.

DHS Partners With Loews Hotels & Resorts – Through the new partnership, Loews Hotels offers its YouFirst Platinum loyalty rewards members complimentary enrollment in the Global Entry program.

Joint U.S.-Canada Entry/Exit Pilot Begins – In October, both agencies began exchanging information so that recording an entry into one country becomes a record of exit from the other country.

ABIL Global: Canada – IT Workers and Work Permits – The IT Worker Program was shut down in all provinces recently, but Canadian work permits for IT workers are still possible in certain circumstances.

Also in this issue:

[New Publications and Items of Interest](#)

[Member News](#)

[Government Agency Links](#)

[Back to Top](#)

E-Verify Mandated in Four States in 2013

Georgia, North Carolina, Pennsylvania, and Tennessee have all passed mandatory E-Verify laws, the final provisions of which take effect in 2013:

- Georgia: Larger employers already must use E-Verify, but HB 87 requires all Georgia employers with more than 10 employees to use E-Verify by July 1, 2013.
- North Carolina: Similarly, larger employers already must use E-Verify, but HB 36 requires employers that employ between 25 and 100 employees to use E-Verify by July 1, 2013.
- Pennsylvania: Effective January 1, 2013, the Public Works Employment Verification Act (SB 637) requires contractors and subcontractors performing public works projects for Pennsylvania worth at least \$25,000 to use E-Verify for newly hired employees.
- Tennessee: The Tennessee Lawful Employment Act (HB 1378) requires employers with 6 to 199 employees to use E-Verify (or otherwise verify the work authorization of new hires) by January 1, 2013. Larger employers are already required to do so.

[Back to Top](#)

EB-2 Priority Dates Become 'Current' in November, Except for China and India

The Visa Bulletin for November 2012 shows that the employment-based second preference (EB-2) immigrant visa priority dates have become "Current" for all countries except China and India. For China in November, the EB-2 priority date cut-off is September 1, 2007; for India, the cut-off date is September 1, 2004.

The November Visa Bulletin is available at http://www.travel.state.gov/visa/bulletin/bulletin_5779.html.

[Back to Top](#)

Justice Dept. Settles With Florida Janitorial Services Company

The Justice Department has reached an agreement with Diversified Maintenance Systems LLC, a provider of janitorial and facilities maintenance services based in Tampa, Florida. The agreement resolves allegations that the company violated the antidiscrimination provision of the Immigration and Nationality Act (INA) when it failed to fully reinstate an employee in retaliation for asserting her right to work in the United States.

The charging party alleged that the company failed to provide the employee with proper notice and instructions for contesting an initial data mismatch in E-Verify, resulting in E-Verify issuing an erroneous final response that she was not work-authorized.

Although the employee immediately visited the Social Security Administration (SSA) after receiving verbal notice of the initial data mismatch and instructions from her supervisor, the employee alleged that the supervisor failed to give her the proper E-Verify paperwork that would have enabled the SSA to resolve the mismatch. As a result, the E-Verify program provided an erroneous final response, known as a "final nonconfirmation," to the employer, stating that the charging party was not eligible to work in the United States. The company subsequently terminated the employee, and the employee contacted the E-Verify hotline for help. An E-Verify agent notified the employer that the employee was authorized to work, but the employee's manager refused to reinstate her employment, allegedly because she contacted E-Verify and asserted her right to work under the antidiscrimination provision of the INA. The INA protects employees from discriminatory practices in the employment eligibility verification process,

including E-Verify, and prohibits employers from retaliating against individuals who assert their rights or oppose a practice that is illegal under the provision.

Under the terms of the settlement agreement, the company agreed to pay \$6,800 to the employee, which included back pay and interest, along with a \$2,000 civil penalty. The company also agreed to training from the Justice Department on the antidiscrimination provision and training from the Department of Homeland Security on proper E-Verify procedures. The case was settled before the Justice Department filed a complaint.

The announcement is available at <http://www.justice.gov/opa/pr/2012/September/12-crt-1169.html>.

[Back to Top](#)

Justice Dept. Intervenes in Suit Against Texas Farm for Discriminating Against U.S. Worker

The Justice Department recently filed a motion to intervene in a lawsuit against Jerry Estopy, d/b/a Estopy Farms, a sorghum and soy farm in McAllen, Texas, which also provides equipment and equipment operators for harvests at other farms. The Justice Department seeks to intervene in a lawsuit filed by two U.S. citizens against the farm. The Department alleges that the company discriminated against one of the U.S. citizens when it refused to hire him based on his citizenship status.

According to the department's complaint, a U.S. citizen with over 12 years experience operating cotton combines and tractors applied for a position with Estopy Farms as a cotton picker operator around June 2010. Estopy Farms hired a number of seasonal foreign workers but not the U.S. citizen. The department found reasonable cause to believe that the company did not hire the U.S. citizen because it preferred to hire foreign workers under the H-2A visa program.

Texas Rio Grande Legal Aid filed a lawsuit with the Office of the Chief Administrative Hearing Officer (OCAHO) within the Justice Department's Executive Office for Immigration Review on behalf of the two U.S. citizens on November 14, 2011. Because a complaint has already been filed, the department seeks to intervene in the existing lawsuit.

The announcement is available at <http://www.justice.gov/opa/pr/2012/September/12-crt-1096.html>.

[Back to Top](#)

DHS Partners With Loews Hotels & Resorts

Secretary of Homeland Security Janet Napolitano recently announced a new partnership between the Department of Homeland Security and Loews Hotels & Resorts to promote the Department's expedited traveler programs, which includes CBP's Global Entry and the Transportation Security Administration's (TSA) Pre✓™.

Through the new partnership, Loews Hotels offers its YouFirst Platinum loyalty rewards members complimentary enrollment in the Global Entry program. CBP will review the applicant's information; conduct an in-person interview at a CBP enrollment center, including providing fingerprints; and complete a background check.

CBP has also worked with American Express and United Airlines, which provide reimbursements for their top-tier customers, and continues to partner with other private-sector entities to expand the network of Global Entry members.

Currently available at 30 U.S. airports, Global Entry streamlines the screening process for trusted travelers through biometric identification and reduces average wait times by 70 percent, according to DHS, with more than 75 percent of travelers using Global Entry processed in under five minutes. More than a million people are enrolled in Global Entry, and these travelers have used its automated kiosks more than three million times.

The TSA Pre✓™ pre-screening initiative allows eligible passengers to volunteer information about themselves to expedite their screening. Eligible passengers enter a separate security lane where they undergo expedited screening, and may pass through screening technology without removing shoes, light outerwear, belts, laptops, or 3-1-1 compliant liquids/gels from their carry-on. To be eligible, participants must be U.S. citizens traveling through one of the 25 participating U.S. airports and members of CBP Trusted Traveler programs or select frequent flyers of participating airlines. More than 2.8 million passengers have received expedited screening through TSA Pre✓™ security lanes since the initiative began in October 2011, DHS said.

The announcement is available at <http://www.dhs.gov/news/2012/09/24/napolitano-announces-partnership-loews-hotels>.

[Back to Top](#)

Joint U.S.-Canada Entry/Exit Pilot Begins

The Department of Homeland Security (DHS) and the Canada Border Services Agency (CBSA) have begun the Phase I pilot of the Entry/Exit program, as outlined in the Beyond the Border Action Plan.

Routine biographic information will be collected under the pilot until January 31, 2013. In October, both agencies began exchanging this information so that recording an entry into one country becomes a record of exit from the other country. The pilot will not affect regular port operations in any way.

As part of the pilot, DHS and CBSA will exchange routinely collected data on third-country nationals (those who are citizens of neither Canada nor the United States), permanent residents of Canada, and lawful permanent residents of the United States at the following four ports of entry:

- Pacific Highway, Blaine, Washington/Pacific Highway, British Columbia;
- Peace Arch, Blaine, Washington/Douglas (Peace Arch), British Columbia;
- Lewiston-Queenston Bridge, Lewiston, New York/Queenston-Lewiston Bridge, Ontario;and
- Rainbow Bridge, Niagara Falls, New York/Niagara Falls Rainbow Bridge, Niagara Falls, Ontario.

DHS said the coordinated entry/exit system will help the U.S. and Canada identify persons who overstay their lawful periods of admission; better monitor the departure of persons subject to removal orders; and verify that residence requirements are being met by applicants for continued eligibility in immigration programs.

DHS noted that the process of sharing personal information will be in accordance with each country's privacy laws and policies. It will also be consistent with the Beyond the Border Action Plan's Joint Statement of Privacy Principles and a Letter of Intent agreed to by DHS and CBSA.

The announcement is available at http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/09282012.xml.

[Back to Top](#)

ABIL Global: Canada – IT Workers and Work Permits

Although Canada does not have an equivalent work visa to that of the U.S. H-1B temporary work visa, for years information technology workers could rather easily secure a Canadian Work Permit on obtaining a Canadian job offer under what was known as the Information Technology Worker Program. The IT Worker Program existed from 1997 until recently when it was shut down in all provinces.

Canadian work permits for IT workers are still possible if a Human Resources and Skills Development Canada (HRSDC) Service Canada Labour Market Opinion is obtained:

1. if the employment is in the province of Québec under a February 2012 Memorandum of Understanding between Citizenship and Immigration Canada and the provincial Québec government if the worker will be employed in one of 44 occupations (which include, among others, IT Consultants, Software Engineers and Designers, Computer Programmers, and Interactive Media Developers);
2. if the employment is in the provinces of Ontario or British Columbia and in the video gaming and digital animation/visual effects industries and requires a Software Engineer and Designer or a Graphic Designer and Illustrator; or
3. if the first two possibilities do not apply, then if the Minimum Advertising Requirements of HRSDC have been met and a determination made by HRSDC that the employment of the foreign national is likely to have a neutral or positive effect on the labor market in Canada.

[Back to Top](#)

New Publications and Items of Interest

GAO recommendations on improving H-2A program. The U.S. Government Accountability Office (GAO) has published *Modernization and Improved Guidance Could Reduce Employer Application Burden* (GAO-12-706). The GAO noted that over 90 percent of employer applications for H-2A temporary agricultural workers were approved in fiscal year (FY) 2011, but some employers experienced processing delays. For example, the Department of Labor (DOL) processed 63 percent of applications in a timely manner in FY 2011, but 37 percent were processed after the deadline, including 7 percent that were approved less than 15 days before workers were needed. This left some employers little time for the second phase of the application process, which is managed by the Department of Homeland Security (DHS), and for workers to obtain visas from the Department of State.

The GAO noted that although workers can apply for visas online, most of the H-2A process involves paper handling, which contributes to processing delays. In addition, employers who need workers at different times of the season must repeat the entire process for each group of workers. Although the agencies lack data on the reasons for processing delays, employers reported delays due to increased scrutiny by DOL and DHS when these agencies implemented new rules and procedures intended to improve program integrity and protect workers. For example, in FY 2011, DOL notified 63 percent of employers that their applications required changes or additional documentation to comply with its new rules, up sharply from previous years.

Federal agencies are taking steps to improve the H-2A application process. DOL and DHS are developing new electronic application systems, but both agencies' systems have been delayed. DOL also recently began using e-mail to resolve issues with employers, and all three agencies provided more information to employers to clarify program requirements.

Even with these efforts, the GAO noted, some employers view DOL's decisions as inconsistent. For example, some employers received different decisions about issues such as whether they

can require workers to have experience in farm work and questioned the methods states used to decide whether the job qualifications in their applications were acceptable. The GAO found that states used different methods to determine acceptable qualifications, which is allowed under DOL's guidance.

The GAO recommends that: (1) DOL and DHS use their new electronic application systems to collect data on the reasons applications are delayed and use this information to improve the timeliness of application processing; (2) DOL allow employers to submit one application for groups of similar workers needed in a single season; and (3) DOL review and revise, as appropriate, its guidance to states regarding methods for determining the acceptability of employment practices in employers' applications.

DHS and DOL agreed with the GAO's recommendation to collect additional data, and DOL agreed with the recommendation to update its guidance. DOL disagreed with the recommendation that it allow employers to apply once per season. GAO said it believes that the recommendation is still valid and that a single application does not preclude timely testing of the labor market as workers are needed.

The report is available at <http://www.gao.gov/products/GAO-12-706>.

Several ABIL members co-authored and edited the new publication, *Global Business Immigration Practice Guide*, recently 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 six 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 and was a finalist for the International Photography Awards. 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 or to order, visit <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/>.

[Back to Top](#)

Member News

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>), **Rami Fakhoury** (bio: <http://www.abil.com/lawyers/lawyers-fakhoury.cfm>), and **Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) recently spoke at a FEM Detroit Chapter meeting on global immigration expectations for corporations, held on October 19, 2012. Mr. Fakhoury spoke on India, Mr. Loughran spoke on Latin America with a focus on Brazil, and Mr. Paparelli spoke on the United States.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has co-authored a new blog entry. "Yes He Can: A Reply to Professors Delahunty and Yoo" is available at <http://blog.cyrusmehta.com/2012/10/yes-he-can-reply-to-professors.html>.

Mr. Mehta, Bernard Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>), and **Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) will speak at PLI's 45th Annual Immigration & Naturalization Institute on November 19-20, 2012, in New York. Mr. Mehta will speak on ethics. Mr. Wolfsdorf and Mr. Yale-Loehr will speak on EB-5 immigrant investor issues.

Mr. Paparelli has published several new blog entries. "Immigration's NannyStateGate: Picking EB-5 Winners and Losers" is available at <http://ow.ly/ePExx>. "Immigration Lawyers To Join Big Bird in Unemployment Lines" is available at <http://www.nationofimmigrants.com/immigration-lawyers/immigration-lawyers-to-join-big-bird-in-unemployment-lines/index.html>.

Mr. Wolfsdorf has published a new blog entry. "DACA – To File or Not to File, That is the Question" is available at <http://connect.wolfsdorf.com/>.

The following are ABIL member firms listed in **US News Best Law Firms 2013 – National:**

Chin & Curtis, LLP
Flynn & Clark, P.C.
FosterQuan, LLP
Fredrikson & Byron, P.A.
Garfinkel Immigration Law Firm
Ivener & Fullmer, LLP
Klasko, Rulon, Stock & Seltzer, LLP
Kuck Immigration Partners LLC
Larrabee Mehlman Albi Coker, LLP
Maggio & Kattar, P.C.
Seyfarth Shaw, LLP
Serotte Reich & Wilson
Trow & Rahal, P.C.
Wolfsdorf Immigration Law Group

The following are ABIL member firms listed in **US News Best Law Firms – Regional:**

California: Ivener & Fullmer
California: Pearl Law Group
Tier 1 (New York City): Cyrus D. Mehta & Associates, PLLC
Tier 1 (New York City): Serotte Reich Wilson, LLP
Tier 1: Wolfsdorf Immigration Law Group
Tier 1 (Binghamton, NY): Miller Mayer, LLP
Tier 1 (San Diego, California): Larrabee | Mehlman | Albi | Coker LLP

[Back to Top](#)

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

[Back to Top](#)

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.

Copyright © 2012 Alliance of Business Immigration Lawyers. All rights reserved.

[Back to Top](#)