



IMMIGRATION INSIDER

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Headlines:

Federal Government Reopens; OFLC, USCIS Announce Temporary Accommodation for I-129 H-2A Petitions – The Department of Labor's Office of Foreign Labor Certification and USCIS announced temporary accommodation for I-129 H-2A petitions.

EOIR Updates Guidance on Immigration Court Filings After Government Shutdown, Changes Zip Code – EOIR issued details about immigration court filings in the wake of the government shutdown, and announced a change in zip code.

E-Verify Issues Guidance for Employers on Technical Glitch Related to Documentation – On October 22, 2013, E-Verify experienced some technical issues, and has issued related guidance.

USCIS Clarifies Eligibility Requirements for 17-Month Extension of Post-Completion OPT for F-1 STEM Students – F-1 students engaging in post-completion OPT are eligible for a 17-month STEM extension even if they have not yet completed the thesis requirement or equivalent for their STEM degree.

ABIL Global: Schengen Area – A new European regulation clarifies the calculation of the authorized length of short-term stays in the European Union (new "90-day rule,") and amends other rules.

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Federal Government Reopens; OFLC, USCIS Announce Temporary Accommodation for I-129 H-2A Petitions

The Department of Labor's Office of Foreign Labor Certification issued the following announcement on October 23, 2013:

With the reopening of the federal government, USCIS has been informed that the Department of Labor's (DOL) Office of Foreign Labor Certification is once again accepting and processing applications, including Temporary Labor Certifications (TLCs).

On Oct. 21, 2013, DOL issued an announcement to H-2A stakeholders stating that once the TLC is certified, the Chicago National Processing Center will send an email to the employer and its authorized representative containing an Adobe PDF of the labor certification. The employer would need to print, sign and date the PDF version for submission to USCIS with the Form I-129, Petition for Nonimmigrant Worker.

USCIS usually requires that a petitioner submit the certified TLC on blue security paper with original signatures. Beginning October 23, 2013, USCIS in consultation with DOL has determined that USCIS will temporarily accept Form I-129 H-2A petitions that are filed with a copy of the certified TLC. During this temporary accommodation, the signatures on the TLC submitted to USCIS do not need to be original. This temporary accommodation is being implemented because of the unique time sensitivities associated with agricultural work.

H-2A petitioners must submit the original Form I-129 petition, all required fees, and supporting documentation with a copy of the signed, certified TLC. DOL has indicated that this accommodation should last no longer than 30 days. USCIS will provide further guidance on when this accommodation will expire. At that time, H-2A petitioners will once again be required to submit the signed original of the certified TLC with their H-2A petition.

The notice is available at <http://www.foreignlaborcert.doleta.gov/>. USCIS' related notice is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=47894061ca6e1410VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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EOIR Updates Guidance on Immigration Court Filings After Government Shutdown, Changes Zip Code

The Department of Justice's Executive Office for Immigration Review (EOIR) issued updated guidance on October 25, 2013, about immigration court filings following the U.S. government shutdown. The guidance notes that during the government shutdown (October 1-16, 2013), EOIR was operating in a limited capacity. Immigration courts nationwide continued to adjudicate "detained" cases but all other functions were suspended.

The guidance notes that any filing with the immigration court related to a "non-detained" case that was due October 1-16, 2013, will be considered timely filed if it is received by the appropriate court by November 8, 2013. No request for, or documentation supporting, an extension is required if the appropriate court receives the originally due filing before the close of business on November 8. EOIR said it will issue new notices of hearing for cases affected by the lapse in government funding. Cases will be scheduled for available dates on the docket, but will not be scheduled in a way "that would cause disruption to previously scheduled cases."

EOIR also noted that the Board of Immigration Appeals (BIA) processed only filings related to detained cases during the lapse in government funding. The BIA accepted all filings during that period. Also, EOIR transitioned to zip code 20530 on October 1, 2013. Due to the convergence of those two events, the BIA said it will consider timely filed any filing that meets both of these criteria:

- (1) the filing was due during the month of October 2013; and
- (2) the BIA received the filing on or before November 1, 2013.

No request for, or documentation supporting, an extension is required for filings that arrive at the BIA by November 1, 2013. Filings that arrive after November 1, 2013, will be subject to normal filing deadlines. If timeliness is an issue for any filings that the BIA receives after November 1, 2013, the BIA recommends consulting the *BIA Practice Manual*, available online at <http://go.usa.gov/Wx7j>.

EOIR said that the Office of the Chief Administrative Hearing Officer (OCAHO) maintained its ability to issue subpoenas and accept complaints required to be filed by statutory deadlines. OCAHO granted all requests for extensions of time or temporary stays of proceedings made during that period, and accepted all filings received. Future requests for extensions or stays will be decided on a case-by-case basis, EOIR said.

The notice is available at <http://www.aila.org/content/default.aspx?docid=46240>. The EOIR's September zip code change was announced at <http://www.justice.gov/eoir/press/2013/EOIRZipCodeChange09112013.html>.

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E-Verify Issues Guidance for Employers on Technical Glitch Related to Documentation

U.S. Citizenship and Immigration Services disseminated an alert on October 24, 2013, noting that on October 22, 2013, E-Verify experienced some technical issues that now have been resolved. As a result, employees who provided U.S. Passports or Passport Cards were erroneously receiving Tentative Nonconfirmations. USCIS's instruction only applies to cases created on October 22, 2013, for employees who provided a U.S. Passport or Passport Card. It does not apply to other employees who provided other acceptable document(s) from the List of Acceptable Documents. USCIS sent the following guidance to E-Verify users:

If you created a case for an employee who provided a U.S. Passport or Passport Card and received a Tentative Nonconfirmation, close the case as "Invalid because the data entered is incorrect." You should then create a new case for the employee using the same U.S. Passport or Passport Card information provided for Form I-9.

Additionally, if you were unable to create a case, you should now create a new case for the employee using the same U.S. Passport or Passport Card information provided for Form I-9. If you created the new case on the same day as the technical issue (October 22, 2013), you must close that case as "Invalid because the data entered is incorrect" and create a new case.

If you are prompted to select or enter the reason why the case was not submitted within 3 business days of hire please select "Technical Problems" from the drop-down menu.

You must NOT ask the employee to provide a different document if the document(s) they provided, including the U.S. Passport or Passport Card, appear to be genuine and relate to the individual presenting it. You must NOT request that employees produce more documents than are required by Form I-9 to establish your employee's identity and employment authorization. Requiring that your employee present new or different

documentation could be considered document abuse and is prohibited under the Immigration and Nationality Act.

We apologize for any inconvenience this may have caused. If you have any additional questions, please feel free to contact E-Verify at 888-464-4218. Customer service representatives are available Monday - Friday 8 AM - 5PM local time. You may also e-mail E-Verify at E-Verify@dhs.gov.

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USCIS Clarifies Eligibility Requirements for 17-Month Extension of Post-Completion OPT for F-1 STEM Students

On October 21, 2013, U.S. Citizenship and Immigration Services (USCIS) clarified eligibility requirements for a 17-month extension of post-completion optional practical training (OPT) for F-1 students enrolled in STEM (science, technology, engineering, and mathematics) programs.

USCIS said the issue is whether F-1 students engaging in post-completion OPT under 8 CFR § 214.2(f)(10)(ii)(A) are eligible for the 17-month STEM extension under 8 CFR § 214.2(f)(10)(ii)(C) if they have not yet completed their thesis requirement or equivalent for their STEM degree when applying for the STEM extension. USCIS said that F-1 students engaging in post-completion OPT are eligible for a 17-month STEM extension even if they have not yet completed the thesis requirement or equivalent for their STEM degree.

USCIS explained that to be eligible for post-completion OPT under 8 CFR § 214.2(f)(10)(ii)(A), F-1 students must have completed their course of study, or, for students in a bachelor's, master's, or doctoral degree program, the students must have completed all course requirements for their degree, excluding any applicable thesis requirement or equivalent.

USCIS said that with a narrow reading of 8 CFR § 214.2(f)(10)(ii)(C)(1) and (2), one might conclude that F-1 students who have been granted post-completion OPT under 8 CFR § 214.2(f)(10)(ii)(A) must have completed all course requirements for their STEM degrees, *including* any applicable thesis requirement or equivalent, to be eligible for the 17-month STEM extension (i.e., only after "earning a STEM degree"). However, 8 CFR § 214.2(f)(10)(ii)(C)(1) and (2) cannot be read in isolation, USCIS said; they must be read in conjunction with 8 CFR § 214.2(f)(10)(ii)(A)(3), which states that students need not necessarily have completed their thesis requirement or equivalent to be eligible for post-completion OPT. Because the 17-month STEM extension is merely an extension of a previously granted period of post-completion OPT, USCIS concluded that students who are applying for the STEM extension need not necessarily have completed their STEM degree thesis requirement or equivalent to be eligible for the extension. Such a reading "is made even more compelling from a policy perspective, given the nation's interest in attracting and retaining the world's best and brightest individuals," USCIS said. Moreover, USCIS noted, such a reading is consistent with the position taken by the Student and Exchange Visitor Program (SEVP) in policy guidance on this specific issue.

Additional details are available in USCIS's guidance, available at <http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/OPT-STEM-Extension.pdf>.

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ABIL Global: Schengen Area

A new European regulation clarifies the calculation of the authorized length of short-term stays in the European Union (new "90-day rule,") and amends other rules.

Short-term stay is defined by European Union (EU) legislation as residence up to "three months during the six months following the date of first entry." This wording has led to interpretation problems.

A recent European Regulation of June 26, 2013 (hereafter "Regulation 610/2013") amended the Schengen Borders Code and the Schengen Agreement by replacing the reference to "three months during the six months following the date of first entry" by "90 days in any 180-day period." The aim of the new wording is to install "clear, simple and harmonized rules" with regard to the "calculation of the authorized length of short-term stays in the [EU]."

One of the amended articles is article 5, para. 1, introductory part, of the Schengen Borders Code. In this same article a new para. 1a is inserted:

1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

....

1a. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorized under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States." (Emphasis added.)

All amended articles with regard to the new 90-day rule took effect on October 18, 2013.

Regulation 610/2013 has also amended other rules, already effective as of July 19, 2013. One of these rules is article 5, para. 1(a) of the Schengen Borders Code, pursuant to which the short-term stay entry conditions relating to a valid travel document have been modified. Under the new rules, the required valid travel document not only must entitle the holder to cross the border, but also must (i) be valid "at least three months after the intended date of departure from the territory of the Member States" (this requirement may be waived in "a justified case of emergency") and (ii) "have been issued within the previous 10 years."

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New Publications and Items of Interest

I-9 inspection overview. U.S. Immigration and Customs Enforcement (ICE) released a fact sheet, "Form I-9 Inspection Overview." The fact sheet includes procedures ICE follows when conducting an I-9 inspection. The fact sheet notes, among other things, that monetary penalties for violations related to knowingly hiring and continuing to employ undocumented workers range from \$375 to \$16,000 per violation, with repeat offenders receiving penalties at the higher end. Penalties for substantive violations, which include failing to produce an I-9, range from \$110 to \$1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, whether there was a good faith effort to comply, the seriousness of the violation, whether the violation involved unauthorized workers, and any history of previous violations. The fact sheet is available at <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>. A related

fact sheet, "Worksite Enforcement," is available at <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>.

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.

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."

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.

[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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Several ABIL firms were included in the *2014 U.S. News—Best Lawyers* "Best Law Firms" rankings:

- Ivener & Fullmer
- Klasko, Rulon, Stock & Seltzer, LLP
- Maggio + Kattar, P.C.
- Wolfsdorf Immigration Law Group

For more information, see <http://bestlawfirms.usnews.com/>.

H. Ronald Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) recently spoke on "Options for Developers Seeking Capital under the EB-5 Program" for *EB-5 Investment Report Magazine's* educational Dialogue Series webcast. Mr. Klasko discussed what a regional center is and how to create one, and also explained different investment models, differences between individual EB-5 and regional center EB-5, the USCIS application process, and more.

Sharon Mehlman (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>) spoke on "Negotiating With ICE" on October 22, 2013, at the Federal Bar Worksite Enforcement Conference in Chicago, Illinois.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) spoke on "U.S. Immigration and Tax Rules For Global Professionals" at the North American South Asian Bar Association's (NASABA) Tax & Immigration Webinar, October 24, 2013. For details, see http://www.nasaba.com/events/event_details.asp?id=356514.

Mr. Mehta also spoke on "Immigration Reform and Ethics" at the Statewide Meeting of the New York State Association of Disciplinary Attorneys, New York Country Lawyers' Association, in New York City on October 25, 2013.

Bernard Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) will speak Wednesday, November 6, 2013, at the NAFSA Region XII Annual Conference on Visa Options for Entrepreneurial International Students in San Diego, California.

Mr. Wolfsdorf will speak on the Consular Update Panel on Thursday, November 7, 2013, at the NAFSA Region XII Annual Conference in San Diego.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm>) spoke on a panel discussing when F-1 foreign students can and cannot legally work off-campus at the NAFSA Region X conference on Wednesday, October 30, 2013, in Atlantic City, New Jersey. For details, see http://www.nafsa.org/Connect_and_Network/Engage_with_a_Community/NAFSA_Regions/Region_X/.

Mr. Yale-Loehr was quoted in an article about a family's long wait for a green card, on October 27, 2013, on Syracuse.com. He noted that it usually takes more than a year for an overseas spouse to immigrate to the United States because of background and income checks. "It's very hard to expedite that process. Partly why we have illegal immigration is because it's so hard to immigrate legally." The article is available at http://www.syracuse.com/news/index.ssf/2013/10/to_give_her_child_hope_a_mother_must_stay_half_a_world_away.html.

Mr. Yale-Loehr was quoted in an article about a record fine being imposed against an Indian company for visa violations. "This complaint and large settlement should be a wake-up call to all

employers that the government is serious about enforcing the H-1B visa regulations," he said. The article was published in the *Wall Street Journal* on October 29, 2013 (<http://stream.wsj.com/story/gadget-wars/SS-2-51456/SS-2-367185/>) and in the *Wall Street Journal's* MarketWatch on the same day (<http://www.marketwatch.com/story/infosys-faces-record-us-immigration-fine-2013-10-29>).

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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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