



IMMIGRATION INSIDER

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Headlines:

Infosys Settles Visa Fraud and Abuse Case for Record \$34 Million – Infosys has agreed to pay a record \$34 million civil settlement based on allegations of systemic visa fraud and abuse of immigration processes. The company also has agreed to enhanced corporate compliance measures.

Office of Foreign Labor Certification Deals With Backlogs After Shutdown – OFLC has implemented temporary changes to deal with backlogs resulting from the recent federal government shutdown.

Visa Office Forecasts Changes in Some Employment Cut-Off Dates – The Department of State's Visa Office has projected changes in some employment cut-off dates.

OCAHO Substantially Reduces Penalties for Two Small Businesses; Fact Sheet Updated – OCAHO reduced I-9-related penalties substantially for two small restaurants. Also, the EOIR updated its fact sheet on OCAHO.

State Dept. Updates Visa Reciprocity Tables – Among other things, the Department recently updated the document section for Somalia.

USCIS Extends TPS for Somalis – Current Somali beneficiaries seeking to extend their TPS status must re-register by December 31, 2013.

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Infosys Settles Visa Fraud and Abuse Case for Record \$34 Million

Infosys Limited, an Indian company involved in consulting, technology and outsourcing, has agreed to pay a record \$34 million civil settlement based on allegations of systemic visa fraud and abuse of immigration processes, and also agreed to enhanced corporate compliance measures. The \$34 million payment made by Infosys as a result of these allegations represents the largest payment ever levied in an immigration case, U.S. Immigration and Customs Enforcement (ICE) announced.

ICE noted that Infosys is located in 30 countries and in 17 U.S. cities, including a location in Plano, Texas. The Plano location is responsible for handling the immigration practices and procedures for U.S. operations of Infosys. Infosys brings foreign nationals into the United States to perform work and fulfill contracts with its customers under two visa classification programs relevant to this case: H-1B and B-1.

ICE said that, among other things, Infosys fraudulently used B-1 visa holders to perform jobs involving skilled labor that were instead required to be performed by U.S. citizens or legitimate H-1B visa holders. ICE accused Infosys of directing B-1 visa holders to deceive U.S. consular officials, including a "do's and don'ts" memorandum that instructed B-1 foreign nationals not to mention activities that "sound like work" or anything about contract rates. ICE also noted that Infosys failed to maintain I-9 records for many of its foreign nationals in the United States in 2010 and 2011, including failing to update and re-verify the employment authorization status of a large number of its foreign employees.

In addition to the \$34 million payment, the settlement requires Infosys to conduct additional auditing for I-9 forms and meet a reporting requirement for B-1 usage, among other things.

David M. Marwell, special agent in charge of Homeland Security Investigations in Dallas, said: "This settlement against Infosys is the largest immigration fine on record. The investigation indicated that Infosys manipulated the visa process and circumvented the requirements, limitations, and governmental oversight of the visa programs. The investigation also showed that more than 80 percent of Infosys's I-9 forms for 2010 and 2011 contained substantive violations. Ultimately, these actions by Infosys cost American jobs and simultaneously financially hurt companies that sought to follow the laws of this nation. Companies that misuse the visa process can expect to be scrutinized and held accountable."

The settlement agreement is available at <http://www.ice.gov/doclib/news/releases/2013/131030plano.pdf>.

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Office of Foreign Labor Certification Deals With Backlogs After Shutdown

The Department of Labor's Office of Foreign Labor Certification (OFLC) has experienced backlogs as a result of the cessation of its electronic systems due to the recent federal government shutdown. OFLC noted that this further resulted in a backlog of documents submitted to OFLC during that period by mail, hand-delivery, or email. As a result, OFLC has implemented the following temporary changes:

- 1. Submissions mailed, couriered, or emailed to OFLC and received between October 1 and October 18:**

Submissions are applications that the National Processing Centers (Chicago, Atlanta, or Prevailing Wage Center) could not receive electronically through the iCERT system during the shutdown, and were mailed, delivered by private courier (Federal Express, etc.) or emailed to OFLC. These include Applications for Permanent Employment

Certification (PERM, ETA 9089), Applications for Temporary Employment Certification (H-2B, H-2A ETA 9142), and Applications for Prevailing Wage Determinations (ETA 9141).

Because of the backlog in submissions that were mailed, delivered or emailed to OFLC for shutdown-related reasons or otherwise, **all submissions received by OFLC between October 1 and October 18 will be considered received on October 18.** For example, a PERM application mailed to the Atlanta National Processing Center on October 5 will be given a receipt date of October 18, 2013. If an October 18 receipt date on an application would otherwise render out-of-date the recruitment or prevailing wage determination used for the application, the application will be deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination.

2. **PERM and H-2B submissions with time-sensitive recruitment or prevailing wage determinations NOT mailed or delivered to OFLC during the shutdown:**

Employers that decided not to mail or deliver PERM or H-2B submissions to OFLC because of the shutdown may now have recruitment or prevailing wage determinations that are out-of-date because of the shutdown-related delay. These employers may now mail or file electronically in PERM or iCERT (see note below about iCERT filing) submissions for receipt **NO LATER THAN November 14, 2013.** This accommodation applies only to PERM and H-2B applications that had timely recruitment or prevailing wage determinations during the shutdown period and are now unsuitable for filing due to expired recruitment or prevailing wage determinations. Employers with time-sensitive recruitment or prevailing wage determinations who delayed their filings until after October 18, 2013 will be deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination. For mailed submissions, please include a pink sheet of paper as a cover page for the submission and label that cover sheet as a "shutdown pre-empted submission" so that it is properly handled in our mailrooms.

Note for PERM and H-2B iCERT filers: PERM and H-2B applications with out-of-date recruitment or prevailing wage determinations may also be submitted electronically. The system will warn the user that the application contains information that will cause the application to be denied, but such an application will not be denied for this reason. As with PERM and H-2B submissions with out-of-date recruitment or prevailing wage determinations that are mailed, no application with expired recruitment or expired prevailing wage determinations will be accepted after November 14, 2013.

3. **Employer responses to OFLC directives that were due between October 1 and October 18, 2013 but were NOT transmitted to OFLC:**

In the H-2A, H-2B and PERM programs, some employers may have been directed by OFLC to respond by a deadline that occurred from October 1, 2013 to October 18, 2013. **Responses that were due to the OFLC during this period but NOT transmitted will have their due dates extended to November 14, 2013.** The deadline extension applies to the following documents in the following programs:

For Prevailing Wage Determinations:

- Responses to Requests For Information

In H-2A and H-2B:

- Responses to Notices of Deficiencies or Requests for Further Information

- Audit Responses
- Responses to Notices of Intent to Debar

In PERM:

- Responses to information requests related to employer sponsorship
- Audit/AAIR responses
- Responses to Requests For Information
- Responses to requests for review of advertisements in supervised recruitment
- Responses to supervised recruitment (Recruitment Instructions Letters)
- Responses to Notices of Intent to Revoke or to Debar

4. Employer responses to OFLC directives that were due between October 1 and October 18, 2013 and were transmitted to OFLC during that period:

Responses to OFLC directives in the H-2A, H-2B and PERM programs (those noted in no. 3 above) that were due between October 1 and October 18, 2013, and were transmitted via mail, hand-delivery or email during that time will be **considered received on October 18 and timely.**

If an applicant transmitted an application or response by mail, hand-delivery or email between October 1 and October 18, 2013, and the employer has not received notice that the transmission was undeliverable, the employer should **NOT** re-submit it.

Employers are reminded that if they view a PERM application as erroneously denied during this period based on out-of-date recruitment, they may submit the request for reconsideration to the attention of the government error queue.

None of the temporary procedures established in this notice apply to appeals to the BALCA. Employers are encouraged to contact the BALCA for information related to deadlines applicable to appeals.

The notice is available at <http://www.foreignlaborcert.doleta.gov/>.

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Visa Office Forecasts Changes in Some Employment Cut-Off Dates

The Department of State's Visa Office has projected changes in some employment cut-off dates. The December 2013 Visa Bulletin notes that the India employment second and third preference category cut-off dates advanced very rapidly at the end of fiscal year 2013. Those movements were based on the availability of thousands of "otherwise unused" numbers that could be made available without regard to the preference per-country annual limits. This has resulted in a dramatic increase in applicant demand, the Visa Bulletin notes. Consequently, the Visa Office has retrogressed those cut-off dates for December "in an effort to hold number use within the numerical limits."

In the coming months, the Visa Office expects the employment first preference category to remain Current, and the employment second preference worldwide category to remain Current. The employment second preference category for China is expected to move forward three to five weeks. No forward movement is expected in the India second preference category.

The worldwide employment third preference category cut-off date has advanced extremely rapidly during the past seven months "to generate new demand," the Visa Bulletin states. As the rate of applicants whose cases are finalized increases, it could have a significant effect on the

cut-off date. Rapid forward movement of this cut-off date "should not be expected to continue beyond February," the Visa Bulletin notes.

China's and Mexico's employment third preference cut-off dates are expected to remain at the worldwide date. India should see no forward movement and the Philippines is expected to move forward three to six weeks.

The employment fourth and fifth preference cut-off dates are expected to remain Current. The Visa Office noted that these projections are "what is likely to happen during each of the next few months based on current applicant demand patterns." However, the Visa Office cautioned that these trends are not guaranteed and corrective action could be required at some point to maintain number use within the applicable annual limits. Unless indicated, the Visa Office said that those categories with a Current projection in the December Visa Bulletin "will remain so for the foreseeable future."

The Visa Bulletin for December 2013 is available at http://www.travel.state.gov/visa/bulletin/bulletin_6211.html.

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OCAHO Substantially Reduces Penalties for Two Small Businesses; Fact Sheet Updated

In *U.S. v. Red Bowl of Cary, LLC*, the Executive Office for Immigration Review's (EOIR) Office of the Chief Administrative Hearing Officer (OCAHO) reduced fines for Red Bowl of Cary, doing business as Red Bowl Asian Bistro in North Carolina, for Form I-9 violations. OCAHO also reduced fines for a small family business in a similar case, *U.S. v. Kobe Sapporo Japanese, Inc.* EOIR also recently updated its fact sheet on OCAHO.

Red Bowl case. U.S. Immigration and Customs Enforcement (ICE) investigated Red Bowl, which had 23 active employees, in 2011. The restaurant manager advised ICE that its I-9 employment authorization forms were filled out after ICE issued its Notice of Inspection and that he and Red Bowl's president were unaware of the requirement to use the form. ICE sought penalties totaling \$21,505. Red Bowl argued that the penalty was both inappropriate and excessive.

OCAHO noted that the minum penalty for paperwork violations is \$110 and the maximum is \$1,100. In assessing an appropriate penalty, OCAHO noted, the following factors are considered: (1) the size of the employer's business, (2) the good faith of the employer, (3) the seriousness of the violations, (4) whether the individual was an unauthorized alien, and (5) the history of previous violations. OCAHO observed that the law neither requires that equal weight be given to each factor nor rules out consideration of additional factors.

Potential penalties for the 23 violations in this case ranged from \$23,509 to \$25,300, OCAHO noted. Instead of focusing on the completion of its I-9 forms, Red Bowl noted that it exercised reasonable care to refrain from hiring unauthorized aliens and had never done so. Red Bowl said that its conduct may have been negligent but that its violations were less serious than, for example, an intentional falsification of forms or a refusal to fill them out. Red Bowl argued that the fines were unduly punitive in light of a statutory analysis showing no aggravating factors. The restaurant noted that even in a worst-case scenario, where a large company willfully disregarded its obligations, falsified I-9 forms, employed unauthorized workers, and had a history of previous violations, the penalty would still be only \$3,794.45 more than what the government sought here. Red Bowl also noted that the proposed penalty represented 16% of its income for the tax year 2011 and would create undue hardship. Red Bowl argued that a more appropriate penalty would be \$110 for each violation, or a total of \$2,530. The restaurant also requested a schedule permitting payment over a six-month period.

OCAHO noted that Red Bowl had not employed any unauthorized aliens and had no history of previous violations, so the only negative factor was the seriousness of the violations. OCAHO said that an employer's failure to prepare a timely I-9 form for an employee is a serious violation because it may permit an unauthorized individual to maintain unlawful employment. OCAHO acknowledged that 16% of the restaurant's income appeared excessive in light of the record, noting that a penalty "needs to be sufficiently meaningful to accomplish the purpose of deterring future violations" but "should not be unduly punitive in light of the respondent's resources." OCAHO said that penalties very close to the maximum permissible "should be reserved for the most egregious violations," noting a "general public policy of leniency toward small entities." OCAHO adjusted the penalty amount to "an amount closer to the midrange," for a total penalty of \$10,350. OCAHO said that a payment schedule could be established "to minimize the impact of the penalty on the operations of the restaurant."

Kobe Sapporo Japanese case. In a similar case, *U.S. v. Kobe Sapporo Japanese, Inc.*, ICE alleged that the company, a small family-owned restaurant in North Carolina, failed to ensure that its 26 workers properly completed various sections of the I-9 form. The complaint sought penalties totaling \$29,452.50. OCAHO noted that an employer's financial health, the economy, the employer's ability to pay the fine, and the potential effect of the fine on the company are all appropriate additional factors to be considered. Penalties are not intended to cause employees to lose their jobs or to force employers out of business, but rather to enhance the probability of future compliance, OCAHO said, reducing the total amount of the penalties to \$15,400.

Both cases were decided on October 18, 2013. The Red Bowl decision is available at <http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1206.pdf>. The Kobe Sapporo Japanese decision is available at <http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1204.pdf>.

Fact sheet updated. EOIR also updated its OCAHO fact sheet on October 1, 2013. The fact sheet explains what OCAHO does; the types of cases it hears; and how it receives cases related to employer sanctions, document fraud, and unfair immigration-related employment practices, including the typical steps in how a case proceeds. The fact sheet notes that OCAHO decisions are available at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm>. The fact sheet is available at <http://www.justice.gov/eoir/press/2012/OCAHOFactSheet05292012.pdf>.

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State Dept. Updates Visa Reciprocity Tables

The Department of State has updated the visa reciprocity tables. Among other things, the Department recently updated the document section for Somalia; updated police records information for Croatia; and added same-sex marriage certificate information for South Africa and Spain.

The tables are available at http://travel.state.gov/visa/fees/fees_3272.html.

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USCIS Extends TPS for Somalis

Acting Secretary of Homeland Security Rand Beers has extended temporary protected status (TPS) for eligible nationals of Somalia for an additional 18 months, effective March 18, 2014, through September 17, 2015.

Current Somali beneficiaries seeking to extend their TPS status must re-register during a 60-day period that began on November 1, 2013, and runs through December 31, 2013. U.S.

Citizenship and Immigration Services (USCIS) encourages beneficiaries to re-register as soon as possible. USCIS did not accept applications it received before November 1, 2013.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Somali TPS beneficiaries who re-register during the re-registration period and request work authorization will receive a new EAD that expires on September 17, 2015.

To re-register, current TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status. Re-registrants do not need to pay the I-821 application fee, but they must submit the biometric fee, or a fee-waiver request, if they are age 14 or older. All TPS re-registrants must also submit Form I-765, Application for Employment Authorization, but no I-765 application fee is required if the re-registrant does not want an EAD. TPS re-registrants requesting an EAD must submit the I-765 application fee, or a fee-waiver request.

Applicants may request that USCIS waive any or all fees based on inability to pay by filing Form I-912, Request for Fee Waiver, or by submitting a written request. Fee-waiver requests must be accompanied by supporting documentation. Failure to submit the required filing fees or a properly documented fee-waiver request will result in the rejection of the TPS application, USCIS noted.

Additional information on TPS for Somalia is available online at <http://www.uscis.gov/tps>. Further details on this extension of Somalia for TPS, including application requirements and procedures, are available in the Federal Register notice at <http://www.gpo.gov/fdsys/pkg/FR-2013-11-01/pdf/2013-25969.pdf>. A correction to the Federal Register notice amending the dates of the re-registration period was published at <https://www.federalregister.gov/articles/2013/11/06/C1-2013-25969/extension-of-the-designation-of-somalia-for-temporary-protected-status>.

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New Publications and Items of Interest

SAVE video. The Systematic Alien Verification for Entitlements (SAVE) program has produced a short video to help applicants understand SAVE's immigration status verification process. The video explains how SAVE functions to help many local, state, and federal government agencies verify immigration status. It shows steps applicants can take to help ensure that the SAVE verification process goes smoothly and reviews SAVE's new service for benefit applicants, SAVE Case Check. SAVE suggests that user agencies and other stakeholders play the video in their waiting rooms and common areas so that benefit applicants can view it, and consider adding the link to websites. The five-minute video is available for download at <http://www.uscis.gov/save/save-awareness-video-benefit-applicants>.

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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Member News

Steve Clark (bio: <http://www.abil.com/lawyers/lawyers-clark.cfm>) addressed the Massachusetts Bar Association on November 14, 2013, on EB-5: The Nuts and Bolts of an EB-5 Case.

H. Ronald Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) wrote "Perspectives on the China Market: Part 2," available at [http://discuss.ilw.com/content.php?2570-Article-Perspectives-on-the-China-Market-\(Part-2\)-by-H-Ronald-Klasko](http://discuss.ilw.com/content.php?2570-Article-Perspectives-on-the-China-Market-(Part-2)-by-H-Ronald-Klasko).

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) has published a new blog entry. "Believing and Being an Immigration Lawyer" is available at <http://musingsonimmigration.blogspot.com/2013/11/believing-and-being-immigration-lawyer.html>. "Why Is My DACA Case Pending So Long?" is available at <http://musingsonimmigration.blogspot.com/2013/11/why-is-my-daca-case-pending-so-long.html>.

Mr. Kuck was a finalist for the Distinguished Service Award given by the Georgia Restaurant Association.

Gunther Mävers (bio: <http://www.abil.com/lawyers/lawyers-mavers.cfm>) will speak at the 6th Biennial Global Immigration Conference, to be held November 20-22, 2013, at the May Fair Hotel in London, England. The conference is presented by the International Bar Association's Immigration and Nationality Law Committee. For more information, see <http://www.int-bar.org/conferences/conf512/binary/London,%20Immigration%20Nov%202013%20programme.pdf>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has published a new blog entry. "The Ambiguous B-1 Visa: Lessons Learned From the Infosys Settlement" is available at <http://blog.cyrusmehta.com/2013/11/the-ambiguous-b-1-visa-lessons-learned.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has authored or co-authored several new blog entries. "Four Post-Infosys Strategies for Corporate Customers and Consultants To Minimize Immigration Risks" is available at <http://www.nationofimmigrators.com/immigration-portfolio-management/four-post-infosys-strategies-for-corporate-customers-and-consultants-to-minimize-immigration-risks/index.html>. "Immigration Voices: 'Visa Now Needed for U.S. Citizens To Enter the Beltway?'" is available at <http://www.nationofimmigrators.com/guest-columns/immigration-voices-visa-now-needed-for-us-citizens-to-enter-the-beltway-1/index.html#!>.

Bernard Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) will speak on U.S. Investor and Entrepreneur Programs on Thursday, November 21, 2013, at the Global Residence and Citizenship Conference at the Shangri-La Oriental Hotel in Miami, Florida.

Mr. Wolfsdorf will host a free webinar on EB-5 Hot Topics on November 19, 2013. For more information or to register, see <https://www4.gotomeeting.com/register/198125071>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm>) co-wrote "A Cumulative Analysis of What USCIS Looks For in EB-5 I-829 RFEs and Denials," available at <http://discuss.ilw.com/content.php?2569-Article-A-Cumulative-Analysis-of-What-USCIS-Looks-For-in-EB-5-I-829-RFEs-and-Denials-by-Sonia-Sujanani-Stephen-Yale-Loehr-Robert-C-Divine>.

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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.

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