



Immigration Insider

News from the Alliance of Business Immigration Lawyers Vol. 6, No. 9B • September 15, 2010

Headlines:

- **1. Dep't of State Updates Guidance on Medical Grounds of Inadmissibility** - Following an update by the CDC to its technical instructions, the State Department has updated guidance on medical grounds of inadmissibility and issued a corresponding cable to the field.
- **2. USCIS Discusses Effects of Invalid Puerto Rico Birth Certificates on I-9 Process** - After September 30, 2010, all certified copies of Puerto Rico birth certificates issued before July 1, 2010, will become invalid, but employers should not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for I-9 purposes and whose employment eligibility was verified on the I-9 before October 1, 2010.
- **3. ICE Approves Special Relief for Certain F-1 Haitian Students** - The suspension of certain regulatory requirements allows eligible Haitian F-1 students to obtain employment authorization, work an increased number of hours during the school term and, if necessary, reduce their course load while continuing to maintain their F-1 student status.
- **4. U.S. Mission in Canada Announces New Appointment Service for Visa Applicants Coming to U.S.** - Applicants now must pay their machine-readable visa fee before scheduling an appointment.

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Details...

1. Dep't of State Updates Guidance on Medical Grounds of Inadmissibility

Following an update by the Centers for Disease Control and Prevention (CDC) to its technical instructions, the Department of State (DOS) has updated guidance in the *Foreign Affairs Manual* (FAM) concerning medical grounds of inadmissibility and issued a corresponding cable to the field.

The cable notes that the CDC updated the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders (2010 MH TIs) effective June 1, 2010. Those instructions supersede all previous guidance on physical or mental disorders and substance related disorders. The major revisions in the 2010 MH TIs include changes to the methods of diagnosis of mental disorders and substance-related disorders, the definition and determination of remission, and the alcohol abuse evaluation. The DOS cable includes updates to 9 FAM resulting from this change to the technical instructions.

The CDC's updated technical instructions for panel physicians are available at <http://www.cdc.gov/immigrantrefugeehealth/exams/ti/panel/mental-panel-technical-instructions.html>. The updated portion of the FAM is available at <http://www.state.gov/documents/organization/86936.pdf>.

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2. USCIS Discusses Effects of Invalid Puerto Rico Birth Certificates on I-9 Process

On July 1, 2010, the Vital Statistics Office of the Commonwealth of Puerto Rico began issuing new, more secure certified copies of birth certificates to U.S. citizens born in Puerto Rico because of a new Puerto Rico birth certificate law. After September 30, 2010, all certified copies of Puerto Rico birth certificates issued before July 1, 2010, will become invalid. However, U.S. Citizenship and Immigration Services (USCIS) noted in recent guidance that employers should not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for I-9 purposes and whose employment eligibility was verified on the I-9 before October 1, 2010.

USCIS noted that the new law does not affect the U.S. citizenship status of individuals born in Puerto Rico. It only affects the validity of certified copies of Puerto Rico birth certificates. The guidance notes:

New Employees

- All certified copies of Puerto Rico birth certificates are acceptable for Form I-9 purposes through September 30, 2010.
- Beginning October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.

- Beginning October 1, 2010, if an employee presents for List C a birth certificate issued by the Vital Statistics Office of the Commonwealth of Puerto Rico, the employer must look at the date that the certified copy of the birth certificate was issued to ensure that it is still valid.

Existing Employees

Employers must not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for Form I-9 purposes and whose employment eligibility was verified on Form I-9 before October 1, 2010.

Federal Contractors

Employers awarded a federal contract that contains the Federal Acquisition Regulation (FAR) E-Verify clause have special Form I-9 rules for the verification of existing employees.

- **If completing new Forms I-9 for existing employees**, certified copies of Puerto Rico birth certificates are acceptable as a List C document under the following circumstances:
 - Until October 1, 2010, all certified copies of Puerto Rico birth certificates are acceptable for Form I-9 purposes.
 - Beginning October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.
- **If updating existing Forms I-9**, an employer must not ask an employee to present a new certified copy of a Puerto Rico birth certificate if the employee presented a certified copy of a birth certificate issued in Puerto Rico before July 1, 2010 that was valid and acceptable for the Form I-9 at the time it was presented.

See the E-Verify *Supplemental Guide for Federal Contractors* for more information on E-Verify and FAR requirements.

How will this law affect the retention of documents with Form I-9?

The new law prohibits Puerto Rico employers from keeping original certified copies of birth certificates issued in Puerto Rico but allows employers to keep photocopies of these documents. Employers who choose to make photocopies of documents that their employees present when completing Form I-9 must do so for all employees, regardless of national origin or citizenship status.

The USCIS guidance, released on September 9, 2010, is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=45e3285ca77fa210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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3. ICE Approves Special Relief for Certain F-1 Haitian Students

U.S. Immigration and Customs Enforcement (ICE) has approved special relief for certain F-1 Haitian students who have suffered severe economic hardship as result of the January 12, 2010, earthquake in Haiti. This relief applies only to students who were lawfully present in the United States in F-1 status on January 12, and enrolled in an institution that is certified by ICE's Student and Exchange Visitor Program.

The suspension of certain regulatory requirements allows eligible Haitian F-1 students to obtain employment authorization, work an increased number of hours during the school term and, if necessary, reduce their course load while continuing to maintain their F-1 student status.

F-1 students granted employment authorization by means of the notice will be deemed to be engaged in a full course of study if they meet the minimum courseload requirements specified in the notice.

"We want to ensure that students from Haiti, who were here at the time of January's tragic events, are able to concentrate on their studies without the worry of financial burdens created by the devastation of the earthquake," said Louis Farrell, director of the Student and Exchange Visitor Program. "These students have the full support of SEVP [the Student and Exchange Visitor Program] and designated school officials for assistance."

ICE manages SEVP and the Student and Exchange Visitor Information System.

An ICE press release announcing the relief is available at <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C32985>.

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4. U.S. Mission in Canada Announces New Appointment Service for Visa Applicants Coming to U.S.

The U.S. Mission in Canada is transitioning to a new appointment service for applicants applying for a visa to come to the United States. As of

September 1, 2010, all services, including calling for information and scheduling an appointment, are being provided at no additional cost, with no requirement that applicants pay phone charges or use PIN numbers to access such services. Applicants should go to http://www.usvisa-info.com/en-CA/selfservice/ss_country_welcome to obtain information online or via telephone on how to start their application for a U.S. visa at a consular section in Canada.

Beginning September 1, 2010, applicants must pay their machine-readable visa (MRV) fee before scheduling an appointment. If the applicant has paid the MRV fee before September 1, 2010, but has not scheduled an appointment, there is a grace period from September 1, 2010, until October 1, 2010 during which the applicant can still use the MRV fee for appointment scheduling. If the applicant does not schedule an appointment before October 1, 2010, he or she will have to pay the MRV fee again through the new service to schedule an appointment.

The announcement and related links are available at http://www.consular.canada.usembassy.gov/new_appointment_service.asp.

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New Publications and Items of Interest

Congressional Budget Office publications. The Congressional Budget Office (CBO) has a variety of publications available on immigration topics. In the coming weeks, CBO plans to release updates to several past immigration publications. CBO said the research helps inform its understanding of the impact of immigration on the federal budget and the economy. For more information, see <http://www.cbo.gov/publications/collections/collections.cfm?collect=7>.

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Member News

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>), president of the Alliance of Business Immigration Lawyers (ABIL), recently appeared on National Public Radio to comment on the recent decline in undocumented persons in Georgia. Mr. Kuck attributed the decline to stricter law enforcement and the state of the economy in Georgia, along with changes in visa regulations. The audio is available at <http://www.publicbroadcasting.net/wabe/news.newsmain/article/0/1/1696130/Atlanta./Report.Shows.Fewer.Illegal.Immigrants.in.Georgia>.

Mr. Kuck also appeared on Fox News on September 2, 2010, to discuss immigration issues.

In a recent blog entry, Mr. Kuck commented on the *Lozano v. Hazleton* decision, in which the U.S. Court of Appeals for the Third Circuit ruled on Hazleton's enforcement of two local ordinances attempting to regulate the employment of, and provision of rental housing to, undocumented persons. Among other things, the court said that "these provisions attempt to effectively 'remove' persons from Hazleton based on a snapshot of their current immigration status, rather than based on a federal order of removal. This is fundamentally inconsistent with the [Immigration and Nationality Act]." Mr. Kuck called the ruling "a significant victory for the constitution and for sane people everywhere," but noted that it is not the end of the story. Mr. Kuck's blog on this and other topics is available at <http://musingsonimmigration.blogspot.com/2010/09/kris-kobach-and-anti-immigrationists.html>.

ABIL members recently participated in drafting a comment from the American Immigration Lawyers Association on EB-1 adjudication standards that was sent to U.S. Citizenship and Immigration Services. The comment is available at <http://xa.yimg.com/kq/groups/15854395/452608354/name/AILA%20Kazarian%20comment%209-3-10.pdf>.

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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

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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 150 member attorneys and their 400+ staff. Corporate counsel, human resource professionals, in-house immigration managers and other corporate decision-makers turn to ABIL attorneys 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:
<http://www.abil.com/>.*

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