



# IMMIGRATION INSIDER

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## Headlines:

**DOL Suspends Prevailing Wage Determinations** – Processing of prevailing wage determinations (PWDs), redeterminations, and Center Director Reviews have been suspended temporarily; prevailing wage requests filed since early June 2011 are still pending.

**Ombudsman Recommends That USCIS Improve EAD Process** – The Ombudsman noted that many problem areas remain unaddressed.

**Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings**– Secretary of Homeland Security Janet Napolitano announced that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate a related interagency case-by-case review.

**USCIS Announces Extension of Deferred Enforced Departure for Liberians** – Employment authorization is extended automatically for eligible Liberian nationals covered under deferred enforced departure (DED) through March 31, 2012.

**ABIL Preparing Amicus Curiae Brief on Extraordinary Ability Case** – This decision will critically affect the adjudication of immigrant petitions for persons of extraordinary ability, outstanding professors or researchers, and exceptional ability immigrants.

**USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants** – The new policy memorandum on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants clarifies, among other things, that one or more extensions are appropriate in the exercise of discretion for household members, including the cohabiting partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.

**USCIS Redesigns Customer Service Center 1-800 Options** – USCIS shortened and reorganized the menu options.

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## **DOL Suspends Prevailing Wage Determinations**

The Department of Labor (DOL) recently announced that the Office of Foreign Labor Certification's (OFLC) National Prevailing Wage Center (NPWC) has suspended temporarily processing of prevailing wage determinations (PWDs), redeterminations, and Center Director Reviews. The NPWC handles PWDs for the PERM labor certification, H-1B, H-1B1 (Chile/Singapore), H-2B, and E-3 programs. As a result of the suspension, prevailing wage requests filed since early June 2011 are still pending. Previously, such requests were routinely processed in three to four weeks.

DOL also published a final rule on wage methodology for the H-2B (temporary nonagricultural employment) program, effective September 30, 2011.

In response to practitioners' inquiries concerning pending requests, the NPWC has been issuing the following e-mail:

*The OFLC National Prevailing Wage Center is experiencing delays in processing prevailing wage determinations as it is currently working to reissue certain determinations to comply with a court order issued June 15, 2011 in the United States District Court for the Eastern District of Pennsylvania. A Notice of Proposed Rulemaking was published in the Federal Register on June 28, 2011, and a Final Rule will be published on August 1. All Center resources are currently being utilized to comply with this court order. The processing of Prevailing Wage Determinations, redeterminations, and Center Director Reviews has been temporarily suspended. Processing will resume as soon as full compliance with the court order has been completed by OFLC. If you have further questions concerning your PWD, please contact 202-693-3010.*

The American Immigration Lawyers Association (AILA) published notes on a stakeholder call with the Department of Labor (DOL) about this topic. Among other things, Dr. Bill Carlson, a representative from the Office of Foreign Labor Certification, said that DOL was very aware of the impact of the prevailing wage hold and that the agency has been reviewing all appropriate suggestions from stakeholders. However, in considering possible suggestions, he stated that DOL was not considering any proposal that would require waiving regulatory requirements. DOL must issue all of the H-2B wage redeterminations before September 30 to comply with the court order. The stakeholder notes say that after DOL has cleared the H-2B wage redeterminations, it will then move resources to H-2B processing and must process those cases within 30 days. As those are processed, DOL will begin working on PERM and H-1B wage requests.

The Department of Labor's final rule, published at 76 Fed. Reg. 45667 (Aug. 1, 2011), is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19319.pdf>. AILA's notes are available at <http://xa.yimg.com/kq/groups/15854395/1728587735/name/AILA-DOL%20stakeholder%20call%208-18-11.pdf>.

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## **DHS Publishes Regulation To Facilitate Electronic Filing**

The Department of Homeland Security (DHS) has published the first in a series of regulations intended to promote the migration of U.S. Citizenship and Immigration Services (USCIS) benefit filings from a paper-based environment to an electronic one. USCIS said the regulation "is an important step toward modernizing how USCIS handles the more than 6 million benefit applications submitted annually."

Over the next several years, USCIS plans to roll out an online account system that will enable people to submit benefit requests and supporting documents electronically. The new Web-

based system is intended to simplify the process of applying for immigration benefits. It will assign new users a unique account that will enable them to access case status information, respond to USCIS requests for additional information, update certain personal information, and receive decisions and other communications from USCIS.

The new regulation revises more than 50 parts of DHS title 8 regulations. It eliminates references to outdated USCIS benefit request forms and descriptions of paper-based procedures. In addition, the regulation removes numerous obsolete provisions.

The public is invited to comment on this regulation and offer suggestions on further improvements. Comments must be received by October 28, 2011. The new regulation will become effective on November 28, 2011.

The new regulation, which was published in the Federal Register on August 29, 2011, is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-29/pdf/2011-20990.pdf>. The USCIS announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=169c4ae218702310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

### **Ombudsman Recommends That USCIS Improve EAD Process**

The Ombudsman for U.S. Citizenship and Immigration Services (USCIS) recently made recommendations focused on delays due to processing and adjudications issues of employment authorization document (EAD) applications. The Ombudsman noted that although USCIS has implemented procedures to resolve certain issues, many problem areas have not been addressed. When processing is delayed, the Ombudsman noted, "individuals and employers experience significant adverse consequences such as job loss and disruption in business operations." The Ombudsman recommended specific actions that USCIS can take to improve the EAD process, including:

1. Establishing methods at local offices to facilitate immediate resolution;
2. Establishing a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD;
3. Improving monitoring and ensuring real-time visibility through an automated system for tracking processing times;
4. Following established internal procedures for issuing interim EADs in cases where background checks are pending; and
5. Issuing replacement EADs with validity dates beginning on the date the old EAD expires.

The Ombudsman identified several ways to implement these recommendations that build upon existing USCIS processes.

The Ombudsman's recommendations are available at <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf>.

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## Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings

On August 18, 2011, Secretary of Homeland Security Janet Napolitano announced that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate an interagency case-by-case review to ensure that both those currently in removal proceedings and new cases placed in removal proceedings meet those priorities. Secretary Napolitano cautioned that this process "will not provide categorical relief for any group."

A related memorandum from U.S. Immigration and Customs Enforcement (ICE) issued in June on prosecutorial discretion notes:

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

The new focus on only deporting high-priority cases, such as criminals, does not amount to an amnesty program for others, as Secretary Napolitano noted. Nor does the new policy necessarily mean that people whose removal cases are stayed can obtain work permits. They will remain in immigration limbo: not in removal proceedings but not legal either. A consumer advisory warning immigrants about the limited nature of the administration's new policy is at <http://www.aila.org/content/default.aspx?docid=36705>.

Secretary Napolitano's letter is available at [http://blogs.suntimes.com/sweet/11-8949\\_Durbin\\_Dream\\_Act\\_response\\_08.18.11.pdf](http://blogs.suntimes.com/sweet/11-8949_Durbin_Dream_Act_response_08.18.11.pdf). The ICE memo is available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>. An ICE

FAQ about the new policy is at <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

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## **USCIS Announces Extension of Deferred Enforced Departure for Liberians**

U.S. Citizenship and Immigration Services (USCIS) announced on August 16, 2011, its intention to extend employment authorization automatically for Liberian nationals covered under deferred enforced departure (DED) through March 31, 2012. USCIS's announcement follows President Obama's announcement of his decision to extend DED through March 31, 2013, for qualified Liberians and those persons without nationality who last habitually resided in Liberia. The six-month automatic extension of existing employment authorization documents (EADs) for eligible Liberians will permit them to continue working while they file their applications for new EADs. The new EADs will be effective for the full 18 months of the DED extension.

Although DED was scheduled to end for Liberian nationals on September 30, 2011, the administration decided that there are compelling foreign policy reasons to continue deferring enforced departure.

Liberians not eligible for DED include:

- Those who did not have temporary protected status (TPS) on September 30, 2007, and are therefore not covered under current DED;
- Certain criminals (e.g., aggravated felons and persons convicted of two misdemeanors);
- Persons subject to the mandatory bars to TPS; and
- Other ineligible persons as described in the President's related memorandum.

In addition to automatically extending the validity of EADs for Liberian nationals covered under DED, USCIS published a notice in the Federal Register with instructions for these individuals on how to obtain employment authorization for the remainder of the DED extension. Liberian nationals covered under DED also must include the Application for Employment Authorization (Form I-765) and a filing fee of \$380 or a fee waiver request.

The USCIS announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=db50a859e04d1310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The President's memorandum is available at <http://www.whitehouse.gov/the-press-office/2011/08/16/memorandum-president-regarding-deferred-enforced-departure-liberians>. The Federal Register notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21842.htm>.

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## **ABIL Preparing Amicus Curiae Brief on Extraordinary Ability Case**

The Alliance of Business Immigration Lawyers (ABIL) is preparing an amicus curiae ("friend of the court") brief to the Administrative Appeals Office (AAO) in response to U.S. Citizenship and Immigration Services' (USCIS) recent request concerning the appeal of a denied immigrant petition for a foreign national seeking to be classified as an alien of extraordinary ability. This decision will critically affect the adjudication of immigrant petitions for persons of extraordinary ability, outstanding professors or researchers, and exceptional ability immigrants. In ABIL's view, USCIS misread the U.S. Court of Appeals for the Ninth Circuit when it reviewed an AAO

decision dismissing the appeal of an extraordinary ability petition. *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010).

Among other things, the *Kazarian* court firmly reminded both the USCIS and the AAO that they must carefully apply the statutory and regulatory requirements when performing their duties. Although the "extraordinary ability" visa requirements are restrictive, the AAO cannot impose arbitrary requirements on applicants. By forcing the USCIS and the AAO to make their determinations based on the regulations exactly as written, the Ninth Circuit has assured that the burden placed on future "extraordinary ability" visa applicants will not be higher than what the immigration regulations require. The *Kazarian* court scolded USCIS for making up and applying extra-regulatory evidentiary requirements, yet USCIS has responded by requiring a "final merits determination" analysis.

The amicus brief will be prepared by ABIL members Bernard Wolfsdorf, Cyrus Mehta, Robert Loughran, Charles Kuck, and Angelo Paparelli. Sadly, the implementation of USCIS's erroneous policy has resulted in almost one-third, or about 12,000, first preference immigrant visa numbers going "unused" last year as the top foreign nationals in the sciences, arts, education, business, or athletics have been turned away in droves, only to make other countries more competitive.

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### **USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants**

U.S. Citizenship and Immigration Services' new policy memorandum on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants does not change eligibility requirements for change of status to B-2, or extension of B-2 status. Rather, it clarifies that such a change and/or one or more extensions are appropriate in the exercise of discretion for household members, including the cohabitating partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.

When evaluating an application for change to or extension of B-2 status based on cohabitation, the memo states, the cohabitating partner's relationship to the principal nonimmigrant in another status will be considered a favorable factor in allowing the household member to obtain or remain eligible for B-2 classification. When considering a change of status and/or multiple extensions for the cohabitating partner or other household member, the finite nature of the stay, rather than the duration of the stay or number of extensions sought, is controlling with respect to nonimmigrant intent. For example, the visit should be considered temporary even if the status may be extended several times over several years to match an extended course of study undertaken by the principal. However, while the I-539 (B-2) application must be adjudicated on its own merits, the memo notes, a finding that the principal nonimmigrant lacks nonimmigrant intent is a negative factor in the exercise of discretion.

The policy memorandum is available at [http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/Cohabiting\\_Partners\\_PM\\_081711.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/Cohabiting_Partners_PM_081711.pdf).

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### **USCIS Redesigns Customer Service Center 1-800 Options**

U.S. Citizenship and Immigration Services (USCIS) recently redesigned its Interactive Voice Response System (IVR), accessible via the National Customer Service Center. Among other things, USCIS shortened and reorganized the menu options. The new IVR has three main menu options, a decrease from the 10 options previously in place. The three new options are Immigration Services, Immigration Information, and Special Programs and Other Resources.

The NCSC main number is 1-800-375-5283. Those who are outside the United States and have filed an application or petition with a USCIS Service Center may call 785-330-1048 to check the status of their case via an automated system.

For more information, see <http://www.aila.org/content/default.aspx?docid=36776> and <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=943696981298d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=ddce0b89284a3210VgnVCM100000b92ca60aRCRD>.

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## New Publications and Items of Interest

[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* will be released on November 8. For more information or to order, visit [http://www.abil.com/green\\_card.cfm](http://www.abil.com/green_card.cfm).

[Reforming employment-based immigration](#). The National Foundation for American Policy recently published "Reforming America's Regulations and Policies on Employment-Based Immigration," a policy brief that makes recommendations and advocates making changes to the U.S. immigration system to attract and keep highly skilled foreign-born workers in the U.S. The report is available at <http://www.nfap.com/pdf/ReformingEmploymentBasedImmigration.NFAPPolicyBrief.Aug2011.pdf>.

[E-Verify "Self Check" available in Spanish, additional states](#). U.S. Citizenship and Immigration Services (USCIS) recently announced that "Self Check," a free online E-Verify service that allows workers to check their own employment eligibility status, is now available in Spanish and accessible to residents in 16 additional states: California, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Texas, Utah, and Washington. Self Check initially was launched in March 2011 for residents of Arizona, Colorado, Idaho, Mississippi, Virginia, and the District of Columbia. The USCIS announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=080477c3bdbc1310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The Spanish-language version of E-Verify Self Check is available at <http://www.uscis.gov/portal/site/uscis-es/menuitem.e693c9cf3c2f7d18d52fae1074a191a0/?vgnextoid=3ad29bacc22e0310VgnVCM100000082ca60aRCRD&vgnnextchannel=3ad29bacc22e0310VgnVCM100000082ca60aRCRD>.

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**Charles Kuck** (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US>) was quoted on CNN.com on August 26, 2011. A day after new Obama administration guidelines focusing removal efforts on high-risk cases were released, Mr. Kuck argued in court that his clients' cases should be dropped under the new guidelines. The clients were released from a detention center. "These kids were detained for months. We had previously asked for their release numerous times," he said. "It was only after the memo came out that they were released."

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has posted several new blog entries. The blog "Final Immigration Lesson from the Dismissal of the Strauss-Kahn Case" analyzes the concern that in the future immigrants may be more reluctant to come forward and press charges if they have been victims of sex crimes. The blog is available at <http://cyrusmehta.blogspot.com/2011/08/final-immigration-lesson-from-dismissal.html>. "Fewer People To Get Deported Under New Policy: Has the Administration Finally Come To Its Senses?" discusses a new policy to identify low-priority removal cases for the exercise of prosecutorial discretion. The blog is available at <http://cyrusmehta.blogspot.com/2011/08/fewer-people-to-get-deported-under-new.html>.

**Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm?c=US>) has posted several new blog entries. The blog "A Cancer Within the Immigration Agency" discusses USCIS's new Fraud Detection and National Security Directorate. The blog is available at <http://www.nationofimmigrants.com/enforcementusice/a-cancer-within-the-immigration-agency/index.html>. "In Praise of Immigrant DREAMers" discusses undocumented youth who dream of living out their aspirations in the U.S. The blog is available at <http://www.nationofimmigrants.com/immigration-reform/in-praise-of-immigrant-dreamers/>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in the August 18, 2011, edition of the *New York Times* ("Fewer Youths To Be Deported in New Policy"). Commenting on the Obama administration's new policy of focusing on high-priority threats to public safety when making removal decisions, Mr. Yale-Loehr said the new policy could benefit "illegal immigrants who were stopped for traffic violations and thrown into deportation proceedings, as well as people whose only violation of immigration law is that they stayed beyond the expiration of their visas or worked here illegally." The article is available at <http://www.nytimes.com/2011/08/19/us/19immig.html>.

**Mr. Yale-Loehr** co-wrote an article that was referenced in "Reforming America's Regulations and Policies on Employment-Based Immigration," released on August 17, 2011, by the National Foundation for American Policy. Mr. Yale-Loehr's article, "Attracting the Best and Brightest: A Critique of Current U.S. Immigration System," was originally published in 38 *Fordham Urban Law Journal* 183 (2010).

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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](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](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/>.*

### **Disclaimer/Reminder**

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