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DOS Announces Major Developments in Availability of China EB-5 Visa Numbers – Effective immediately, the EB-5 category is "unavailable" for investors born in China. Visa numbers will become available again when the new federal fiscal year starts on October 1, 2014.

DOS Changes Fees for Visa and Citizenship Services – DOS is amending the Schedule of Fees for Consular Services for certain nonimmigrant visa application processing fees, certain immigrant visa application processing and special visa services fees, and certain citizenship services fees.

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USCIS Advises on Ebola-Related Relief for Nationals of Guinea, Liberia, and Sierra Leone in the United States – USCIS is offering relief measures to nationals of those three countries who are currently in the United States.

International Employee Recruiter Sentenced to Two Years for Visa Fraud – A U.S. District Judge recently sentenced a Bulgarian national residing in Maryland to two years in prison for visa fraud, and ordered him to forfeit \$100,000.

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DOS Announces Major Developments in Availability of China EB-5 Visa Numbers

At an immigration law conference sponsored by the American Immigration Lawyers Association on August 23, 2014, Charles Oppenheim of the U.S. Department of State (DOS) announced that effective immediately, the employment-based fifth preference category (EB-5) is "unavailable" for investors born in China. Visa numbers will become available again when the new federal fiscal year starts on October 1, 2014.

The practical implications of this announcement are quite minimal for Chinese investors who are on track to complete the immigrant visa process within the next few months. EB-5 applicants from China who have already been scheduled for their initial immigrant visa interviews in August and September 2014 will still attend and may be issued visas. U.S. Citizenship and Immigration Services (USCIS) will still accept I-485 applications to adjust status for EB-5 applicants in the United States.

Long-term implications for EB-5 investors from China are more consequential. Mr. Oppenheim advised that in the spring of 2015, DOS will probably establish a cut-off date for EB-5 China, meaning that the category will "retrogress." Mr. Oppenheim estimated that the initial backlog will be about two years. Based on the number of I-526 EB-5 petitions currently pending at USCIS (approximately 10,300), the current I-526 approval rate of 77%, and the speed and rate of adjudication (13 to 16 months), predictions are that the EB-5 cut-off date for China may quickly increase to three years, given the substantial number of cases already in process.

The DOS announcement does not affect EB-5 investors from other countries.

These developments are expected to significantly affect the EB-5 program as a whole, given that investors from China make up more than 80% of all EB-5 cases. Investors from China will have to wait longer to obtain their visas. The delays will also affect U.S. developers who rely on EB-5 money in their projects. If you are an EB-5 investor or project developer, contact your Alliance of Business Immigration Lawyers attorney for more detailed advice.

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DOS Changes Fees for Visa and Citizenship Services

Effective September 6, 2014, the Department of State is amending the Schedule of Fees for Consular Services for certain nonimmigrant visa application processing fees, certain immigrant visa application processing and special visa services fees, and certain citizenship services fees. Included are two categories of petition-based nonimmigrant visas and the tiered application processing fees for immigrant visas. The interim final rule also amends the security surcharge for immigrant visa services and the fees for certain immigrant visa services. Lastly, the rule raises the application processing fee for renunciation of U.S. citizenship and lowers the hourly consular officer time charge. The Department of State said it is adjusting the fees in light of the findings of a recent Cost of Service study to ensure that the fees for consular services better align with the costs of providing those services.

Some of the changes include:

- The processing fee for E treaty trader and treaty investor visa applications will decrease from \$270 to \$205.
- The processing fee for an employment-based visa application (based on an approved I-140 alien worker or I-526 alien entrepreneur petition) will decrease from \$405 to \$345.
- Other immigrant visa application fees (including for I-360 self-petitioners, special immigrant visa applicants, and all others) will decrease from \$220 to \$205.

- Certain qualifying Iraqi and Afghan special immigrant visa applicants are statutorily exempt from paying any visa-related fees.
- The Immigrant Visa Security Surcharge, paid by all applicants except those who are statutorily exempted from paying fees, will increase from \$75 to \$100.
- The fee for processing an application for waiver of the two-year residence requirement for J-1 exchange visitors will decrease from \$215 to \$120.
- The affidavit of support fee will increase from \$88 to \$120.
- The fee for processing renunciation of U.S. citizenship requests will increase from \$450 to \$2,350.

Comments on the interim final rule, which was published in the Federal Register on August 28, 2014, are due by October 21, 2014. The rule, which includes information on additional fee changes and the rationale for the changes, is available at <https://www.federalregister.gov/articles/2014/08/28/2014-20516/schedule-of-fees-for-consular-services-department-of-state-and-overseas-embassies-and>.

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CBP Responds to I-94 Web Portal and ESTA Questions

The American Immigration Lawyers Association (AILA) held a teleconference with Suzanne Shepherd, Director of the Electronic System for Travel Authorization (ESTA) at U.S. Customs and Border Protection, on August 6, 2014, on issues with the I-94 Web portal and travel history information. Topics included incomplete or inaccurate data on the portal, redress for falsely recorded departures, and automated I-94 corrections.

According to AILA's teleconference minutes, Ms. Shepherd said that the information on the I-94 website is taken from the I-94 database, not from any other databases related to a traveler's admissions/departures. CBP has plans to create a crossing history for U.S. lawful permanent residents and U.S. citizens. Ms. Shepherd said this will be a difficult task, however. CBP will need to determine how to query and retrieve data, and resolve privacy issues. CBP does not have a launch date or a set plan yet.

Ms. Shepherd noted that CBP has reached out to U.S. Citizenship and Immigration Services (USCIS) regarding USCIS denials based only on I-94 database information. She said USCIS is training its service center adjudicators not to use I-94 database information alone to make any decisions. Ms. Shepherd asked that examples of USCIS issuing decisions based on I-94 database information alone be sent to CBP through the AILA liaison.

In response to questions about inaccuracies in the system, Ms. Shepherd noted that data entry error can result in a no-match. Matching algorithms should alleviate this problem, she said. For example, if a traveler's name is spelled wrong on one or more occasions, a different travel history may be created under the alternate spelling. She said that if this happens, the ESTA office or a Deferred Inspection office can correct this by combining the two data sets.

Regarding those whose travel histories are unavailable or unlisted in the online system, Ms. Shepherd noted that the online records include only instances in which an actual I-94, whether paper or electronic, was issued. Therefore, Canadians entering at a land border will not have a crossing history, nor will anyone not issued an I-94 before the electronic I-94 system was implemented.

Ms. Shepherd said that if someone needs a complete travel history, including data that is not reported online, a Freedom of Information Act (FOIA) request is still the way to request a complete report.

In response to a question about whether non-controlled admissions records for Canadians are available in the online system, Ms. Shepherd noted that if a traveler is issued or has surrendered an I-94, the information will be available. If not, it will not be available. She pointed out that this may result in oddities in records. For example, at the land border, if a traveler surrendered an old I-94 at the time of admission rather than upon the previous departure, and was issued a new I-94 on same day, the I-94 website will show the departure and arrival on same day.

Several AILA members have reported instances in which people who had purchased plane tickets to depart the United States but then never used the ticket to depart nevertheless were recorded as having departed. In one of those cases, the person went to Deferred Inspection office, and the officer there, upon viewing the unused plane ticket that corresponded with the incorrectly recorded departure date, was able to correct the I-94 record to delete the erroneous departure.

In the event of a discrepancy between the information in the entry-exit database and either a paper I-94 or an admission stamp (e.g., they show different expiration dates), Ms. Shepherd said that most of the time this will be due to CBP officer error and that Deferred Inspection is an appropriate way to attempt to resolve such an inconsistency.

Ms. Shepherd asked AILA to provide specific examples of any difficulties with correcting erroneous information or with Deferred Inspection.

More information on ESTA is available at <https://esta.cbp.dhs.gov/esta/>.

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USCIS Clarifies Policy on Using Expedited Delivery Services

U.S. Citizenship and Immigration Services (USCIS) has clarified aspects of its recent notice announcing that certain applicants and petitioners may select expedited delivery service to receive certain documents.

USCIS noted that those whose petitions or applications are processed at a USCIS Service Center or the National Benefits Center who wish to receive certain documents by overnight delivery service must include a valid prepaid air bill or shipping label with their filing. The agency also noted that this option is only available for receiving the following types of documents from certain USCIS facilities:

USCIS Service Centers or the National Benefits Center: Advance parole documents (not including the combination Employment Authorization Document/Advance Parole Card), re-entry permits, and refugee travel documents.

USCIS Service Centers only: Approval notices and notices of denial.

To ensure that overnight delivery requests are not delayed, USCIS advises:

- Including a valid prepaid air bill or shipping label when submitting an application, petition, or response to a request for evidence. "Providing a prepaid shipping label directly from the delivery service is the best way to avoid delivery errors. You will not need to write in an account number if you use a shipping label," USCIS noted.
- Entering the name in both the "to" and "from" fields on the air bill or shipping label.
- Never listing USCIS as the sender and not marking "bill to sender."

- Paying all delivery costs in advance, and including the prepaid air bill or shipping label with the submission (as noted above).

USCIS said it will not honor shipping labels sent after the initial filing. "If the delivery costs are not paid in full, or if you do not choose to send us a prepaid air bill or shipping label, we will send the documents to you by regular U.S. mail," USCIS said. Also, the agency noted that using a prepaid air bill or shipping label does not speed up adjudication and will not always result in faster delivery of the notice.

USCIS's clarifying announcement is available at <http://www.uscis.gov/news/alerts/clarification-uscis-customers-can-select-delivery-service-receive-certain-documents>.

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USCIS Advises on Ebola-Related Relief for Nationals of Guinea, Liberia, and Sierra Leone in the United States

U.S. Citizenship and Immigration Services (USCIS) announced that it is closely monitoring the Ebola disease outbreak in West Africa and is offering relief measures to nationals of those three countries who are currently in the United States. Immigration relief measures that "may be available if requested" include:

- Change or extension of nonimmigrant status for an individual currently in the United States, even if the request is filed after the authorized period of admission has expired;
- Extension of certain grants of parole made by USCIS;
- Expedited adjudication and approval, where possible, of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited processing of immigrant petitions for immediate relatives (currently in the United States) of U.S. citizens;
- Expedited adjudication of employment authorization applications, where appropriate; and
- Consideration for waiver of fees associated with USCIS benefit applications.

The announcement is available at <http://www.uscis.gov/news/alerts/ebola-outbreak-related-immigration-relief-measures-nationals-guinea-liberia-and-sierra-leone-currently-united-states>.

For more information about similar measures for those affected by unforeseen circumstances in their home countries, see <http://www.uscis.gov/humanitarian/special-situations>.

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International Employee Recruiter Sentenced to Two Years for Visa Fraud

U.S. District Judge Paul W. Grimm recently sentenced Milen Radomirski, a Bulgarian national residing in Germantown, Maryland, to two years in prison for visa fraud. Judge Grimm also ordered Radomirski to forfeit \$100,000.

"American businesses are permitted to sponsor foreign workers to enter the United States lawfully under the H-2B visa program, but Milen Radomirski undermined that program by falsely vouching for hundreds of aliens who were not expected to comply with the terms of the visa," said U.S. Attorney Rod J. Rosenstein.

According to the USCIS announcement, from 2003 to August 2013, Mr. Radomirski worked for a pool service company in Maryland that provided lifeguards and pool maintenance in the Washington, DC, metropolitan area. As part of his employment, Mr. Radomirski recruited international workers that his company could sponsor to work in the United States on H-2B

visas and other short-term visas. Mr. Radomirski admitted that he fraudulently obtained more than 100 H-2B temporary worker visas.

From 2006 through 2011, Mr. Radomirski's company submitted applications for approximately 789 H-2B visas. His company certified to the U.S. Department of Labor that it had not sought or received payment from the workers to obtain the visas, and specified to USCIS the jobs in which the foreign nationals would be employed. Sponsored workers could not be employed by any other company. The company was required to notify DHS if any H-2B workers failed to report to work within five days after their specified start dates or if workers absconded or were terminated.

Mr. Radomirski admitted that he charged visa beneficiaries money in exchange for including them on his company's petitions for H-2B visas. He knew that many of the visa beneficiaries would not work for his company at all, would only work at his company for a short period of time, or would work for other employers in addition to his company.

The announcement is available at <http://www.uscis.gov/news/news-releases/international-employee-recruiter-sentenced-two-years-prison-visa-fraud>.

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New Publications and Items of Interest

The 2014 edition of the *Global Business Immigration Practice Guide* has been released by LexisNexis. Dozens of members of the Alliance of Business Immigration Lawyers (ABIL) co-authored and edited the guide, which is a one-stop resource for dealing with questions related to business immigration issues in immigration hotspots around the world.

The 2014 edition adds a chapter on Singapore. Other chapters cover Australia, Belgium, Brazil, Canada, China, Costa Rica, the European Union, France, Germany, Hong Kong, India, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Nigeria, Russia, South Africa, Spain, Switzerland, Turkey, the United Kingdom, and the United States.

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."

Charles Gould, Director-General of the International Co-operative Alliance, said the guide is "an invaluable resource for both legal practitioners and business professionals. The country-specific chapters are comprehensive and answer the vast majority of questions that arise in immigration practice. Its clear and easy-to-follow structure and format make it the one volume to keep close at hand."

This comprehensive guide is designed for:

- 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.

The list price is \$299, but discounts are available. Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584; or go to <http://www.lexisnexis.com/store/promotions/promolanding.jsp?couponId=GLOBAL15>.

[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

The following ABIL members were recognized in Best Lawyers (<http://www.bestlawyers.com/>):

U.S. members:

Francis Chin (bio: <http://www.abil.com/lawyers/lawyers-chin.cfm>)

Laura Danielson (bio: <http://www.abil.com/lawyers/lawyers-danielson.cfm?c=CN>)

Steve Garfinkel (bio: <http://www.abil.com/lawyers/lawyers-garfinkel.cfm>)

Kenneth Ing (bio: <http://www.abil.com/lawyers/lawyers-ing.cfm>)

Mark Ivener (bio: <http://www.abil.com/lawyers/lawyers-ivener.cfm>)

H. Ronald Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>)

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>)

Vincent Lau (bio: <http://www.abil.com/lawyers/lawyers-lau.cfm>)

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>)

Sharon Mehlman (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>)

John Nahajzer (bio: <http://www.abil.com/lawyers/lawyers-nahajzer.cfm>)

Julie Pearl (bio: <http://www.abil.com/lawyers/lawyers-pearl.cfm>)

William Reich (bio: <http://www.abil.com/lawyers/lawyers-reich.cfm>)

Bernard Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>)

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>)

Global member:

Avi Gomberg (bio: <http://www.abil.com/lawyers/lawyers-gomberg.cfm?c=CA>)

In other news...

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) co-authored a recent blog entry, "Do We Really Have To Wait For Godot?: A Legal Basis For Early Filing Of An Adjustment Of Status Application," available at <http://blog.cyrusmehta.com/2014/08/do-we-really-have-to-wait-for-godot.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) was quoted extensively in a Bureau of National Affairs article on problems in H-1B adjudications, published on August 21, 2014. The article notes reports that U.S. Citizenship and Immigration Services (USCIS) has narrowed the "specialty occupation" definition, which is making it very difficult for some to obtain H-1B highly skilled visas. Mr. Paparelli noted, among other things, that this is "a long and festering problem that has not gotten much media attention. Most of the focus is on the shortage of visa numbers, but when you lift up the cover and look under the hood, that's only the beginning." He said the employer's standard, rather than the Department of Labor's *Occupational Outlook Handbook* (OOH), should apply. He also noted that sometimes the OOH standards are applied incorrectly. The article is available at no charge by registering at <https://ca.linexsystems.com/register>.

Mr. Wolfsdorf was quoted on *CNN Money* in an article on the shortage of EB-5 investor visas due to an influx of Chinese applicants. "It's like the movie house is sold out—there are no spare tickets left. Pretty much all the visas for this year are accounted for," he said. The article is available at <http://money.cnn.com/2014/08/27/news/economy/china-us-visa/index.html?iid=Lead>.

Mr. Paparelli and **Mr. Yale-Loehr** participated in a webinar on August 28, 2014, sponsored by IIUSA, the trade association of EB-5 regional centers. The webinar focused on current trends and forecasts in the EB-5 program, including I-526, I-829, and I-924 petitions. To obtain an audio recording of the webinar, go to <https://iiusa.org>.

Mr. Yale-Loehr was quoted on Ozy.com in an article on EB-5 investing in sports stadiums and arenas as a way of coming to the United States. Mr. Yale-Loehr noted that "[m]any [EB-5 investors] are coming primarily to make sure their children have a high-quality U.S. education." The article is available at <http://www.ozy.com/fast-forward/wealthy-immigrants-could-be-funding-the-next-us-sports-arenas/33381.article>.

Mr. Yale-Loehr was quoted in the *Wall Street Journal* on August 27, 2014, in an article on the shortage of EB-5 investor visas due to an influx of Chinese applicants. He said the likelihood that the visas will be snapped up even more quickly in the next fiscal year "reflects the increasing popularity of the EB-5 program." The article is available at <http://online.wsj.com/articles/investor-visas-soaked-up-by-chinese-1409095982>.

Mr. Yale-Loehr was quoted in the *Los Angeles Times* on August 30, 2014, in an article on the shortage of EB-5 investor visas due to an influx of Chinese applicants. He predicted that the influx would slow down. "It's been like a four-lane expressway and now it's going back down to two," he said. Mr. Yale-Loehr also noted that the visa program's use as a funding mechanism for local development projects could mean that the prospect of longer waits for visas will reduce the program's usefulness for developers trying to complete their projects on tight deadlines: "For businesses that rely on EB-5 money to finance their projects, it will become difficult to start and finish their work." The article is available at <http://www.latimes.com/local/la-me-0830-chinese-visas-20140830-story.html>.

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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

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