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Headlines:

SEC Charges Immigration Attorneys With Defrauding Investors Seeking U.S. Residence; SEC-USCIS Issue Joint Alert – SEC and USCIS caution potential EB-5 investors about phony regional centers posing as legitimate investment opportunities.

Justice Dept. Settles Lawsuit Against Texas Bus Company for Discrimination – The lawsuit alleged that the company discriminated against U.S. workers by preferring to hire workers on temporary H-2B visas for its bus driver positions.

President Extends Staggered Crossings of Seafood Workers Through December 11, 2014 – No staggered entry of H-2B workers after December 11, 2014, will be permitted absent further legislative extensions.

USCIS Issues Instructions for DED Liberians on Applying for 24-Month Extension of Work Authorization – USCIS published a notice in the Federal Register providing instructions for eligible Liberians on how to apply for the full 24-month extension of employment authorization through September 30, 2016.

Pro Bono Success Story: Miller Mayer Helps Nuns Obtain R-1 Religious Visa – ABIL member firm Miller Mayer in Ithaca, New York, successfully represented a religious organization of nuns in its religious worker (R-1) nonimmigrant visa petition on behalf of a foreign national nun who serves at churches in upstate New York.

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SEC Charges Immigration Attorneys With Defrauding Investors Seeking U.S. Residence; SEC-USCIS Issue Joint Alert

The Securities and Exchange Commission recently charged a Los Angeles, California-based immigration attorney, his wife, and his law firm partner with conducting an investment scheme to defraud foreign investors trying to come to the United States through the EB-5 Immigrant Investor Program.

The SEC alleges that Justin Moongyu Lee, Rebecca Taewon Lee, and Thomas Edward Kent raised nearly \$11.5 million from two dozen investors seeking to participate in the EB-5 program. The Lees and Mr. Kent informed investors that they would be EB-5-eligible if they invested in an ethanol production plant that they would build and operate in Ulysses, Kansas. However, they misappropriated the investors' money for other uses instead. They never built the plant and never created the promised jobs, and the Lees and Kent continued to misrepresent to investors that the project was ongoing.

In a parallel action, the U.S. Attorney's Office for the Central District of California announced criminal charges against Justin Lee.

According to the SEC's complaint filed in U.S. District Court for the Central District of California, the investors defrauded by the Lees and Kent were primarily of Chinese and Korean descent. Justin Lee and Mr. Kent applied to U.S. Citizenship and Immigration Services (USCIS) in 2006 for designation as a regional center under the EB-5 program. They claimed there would be "substantial economic benefit" and "thousands" of new jobs for the area in southwest Kansas. However, by mid-2008, construction of an ethanol plant at the site was no longer economically feasible, and the Lees and Mr. Kent concealed their failure to generate the jobs required by the EB-5 program by submitting false documents to USCIS.

In the meantime, the SEC alleges, when Justin Lee was running low on cash and having difficulty obtaining financing, he took money out of investor escrow accounts without the investors' knowledge before the approval of their applications for U.S. residence. Mr. Lee and his wife subsequently misused several million dollars raised from the ethanol plant investors for other undisclosed purposes, such as financing an iron ore project in the Philippines and repaying investors in other unrelated offerings.

According to the SEC's complaint, the Lees set up and conducted investor seminars in Los Angeles at which the purported ethanol plant project was the main focus of the presentation, despite the halt of construction in 2008. Mr. Kent, who visited the site frequently in 2008 and 2009 and knew no construction was taking place, also participated in the seminars. Investors continued to be misled that the proceeds from their investment were being used to construct an ethanol plant. In particular, the business plan updated in June 2010 and distributed to investors falsely represented that construction was "ongoing" and that the plant would be in operation before November 2011.

The SEC's complaint charges the Lees, Mr. Kent, and five companies founded and controlled by Justin Lee (American Immigrant Investment Fund I, Biofuel Venture IV, Biofuel Venture V, Nexland Investment Group, and Nexsun Ethanol) with violations of §§ 17(a)(1), (2), and (3) of the Securities Act of 1933 and § 10(b) of the Securities and Exchange Act of 1934 as well as Rule 10b-5(a) and (c). Justin Lee, Mr. Kent, and the entities also are charged with violating Rule 10b-5(b). The SEC's complaint seeks disgorgement, prejudgment interest, and penalties along with permanent injunctions.

The Association to Invest In the USA (IIUSA), a trade association representing more than 200 EB-5 regional centers, released a statement supporting the SEC's actions in this case.

SEC-USCIS joint alert. In response to similar cases, in 2014 SEC and USCIS issued a joint alert cautioning potential EB-5 investors about phony regional centers posing as legitimate investment opportunities. The joint alert includes information about steps to take to research any offering that purports to be affiliated with the EB-5 program. For example, would-be investors should:

- Confirm that the regional center has been designated by USCIS;
- Obtain copies of documents provided to USCIS;
- Request investment information in writing;
- Ask if promoters are being paid;
- Seek independent verification;
- Examine structural risk;
- Consider the developer's incentives; and
- Look for warning signs of fraud.

The joint alert notes that hallmarks of fraud may include:

- Promises of a visa or becoming a lawful permanent resident—investing through EB-5 makes a person eligible to apply for a conditional visa, but there is no guarantee that USCIS will grant a conditional visa or subsequently remove the conditions on lawful permanent residence. USCIS noted that it carefully reviews each case and denies cases where eligibility rules are not met. "Guarantees of the receipt or timing of a visa or green card are warning signs of fraud," the alert notes;
- Guaranteed investment returns or no investment risk;
- Overly consistent high investment returns;
- Unregistered investments;
- Unlicensed sellers; and
- Layers of companies run by the same individuals.

The SEC's announcement is available at

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542843452#.VDnK4JDD-71>.

The SEC's complaint is available at <http://www.sec.gov/litigation/complaints/2014/comp-pr2014-184.pdf>. IIUSA's statement is available at <https://iiusa.org/blog/category/press-room/press-releases/>.

The SEC-USCIS joint alert is available at http://www.sec.gov/investor/alerts/ia_immigrant.htm.

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Justice Dept. Settles Lawsuit Against Texas Bus Company for Discrimination

The Department of Justice (DOJ) recently reached a settlement with Autobuses Ejecutivos LLC, doing business as Omnibus Express, a bus company based in Houston, Texas. The settlement resolved a lawsuit filed in August 2013 by the DOJ under the Immigration and Nationality Act's (INA) antidiscrimination provision. The lawsuit alleged that the company discriminated against U.S. workers by preferring to hire workers on temporary H-2B visas for its bus driver positions.

Under the settlement agreement, Omnibus Express will establish a \$208,000 fund to compensate victims of its discriminatory practices, pay \$37,800 in civil penalties to the United States, and be subject to monitoring of its hiring and recruiting practices for a two-year period.

The announcement is available at <http://www.justice.gov/opa/pr/justice-department-settles-lawsuit-against-texas-bus-company-discriminating-against-us>.

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President Extends Staggered Crossings of Seafood Workers Through December 11, 2014

On January 17, 2014, President Barack Obama signed into law the Consolidated Appropriations Act of 2014, which included a provision permitting the staggered entry of H-2B workers employed by seafood industry employers under certain conditions. Following passage of the Continuing Appropriations Resolution, 2015, this provision was extended to December 11, 2014. Accordingly, no staggered entry of H-2B workers after December 11, 2014, will be permitted absent further legislative extensions.

To use the "staggered crossing" provision, seafood industry employers must download, complete, and sign the official attestation and provide it to the H-2B nonimmigrant worker for presentation, upon request, to Department of State consular officers and/or the Department of Homeland Security's Customs and Border Protection officers.

According to a related FAQ, all employers submitting an H-2B application for temporary employment certification must accurately indicate their temporary need, including the starting and ending dates of need for the period in which they intend to employ H-2B nonimmigrant workers. However, the 2014 Appropriations Act permits employers in the seafood industry to bring into the United States, in accordance with an approved H-2B petition, nonimmigrant workers at any time during the 120-day period on or after the employer's certified start date of need, if certain conditions are met.

The 2014 Appropriations Act contained two primary conditions that employers must meet. First, the rule applies only to employers engaged in a business in the seafood industry that permit or require their H-2B nonimmigrant workers to enter the United States up to 120 days after the certified start date of need. Second, any seafood industry employer that permits or requires its H-2B nonimmigrant workers to enter the United States between 90 and 120 days after the certified start date of need must complete a new assessment of the local labor market during the period that begins at least 45 days after the certified start date of need and ends before the 90th day after the certified start date of need.

Seafood industry employers who conduct the additional recruitment required by the 2014 Appropriations Act should not submit proof of the additional recruitment to the Office of Foreign Labor Certification. Instead, they must retain the additional recruitment documentation, along with their pre-filing recruitment documentation, for three years from the date of certification.

The announcement is available at <http://www.foreignlaborcert.doleta.gov/news.cfm>. The official attestation form is available at <http://www.foreignlaborcert.doleta.gov/form.cfm>. The FAQ is available at http://www.foreignlaborcert.doleta.gov/pdf/FAQs_Seafood_Staggering_2014_Approps_final_040114.pdf.

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USCIS Issues Instructions for DED Liberians on Applying for 24-Month Extension of Work Authorization

On September 26, 2014, U.S. Citizenship and Immigration Services (USCIS) extended for an additional 24 months the deferred enforced departure (DED) of certain Liberians and provided

for work authorization during that period. The DED extension runs from October 1, 2014, through September 30, 2016. USCIS published a notice in the Federal Register on October 1, 2014, providing instructions for eligible Liberians on how to apply for the full 24-month extension of employment authorization. The notice also provides instructions for DED-eligible Liberians on how to apply for permission to travel outside the United States during the 24-month DED period.

USCIS said it will issue new employment authorization documents (EADs) with a September 30, 2016, expiration date to Liberians whose DED has been extended under the Presidential Memorandum of September 26, 2014, and who apply for EADs under this extension. Given the time frames involved with processing EAD applications, the Department of Homeland Security (DHS) said it recognized that not all DED-eligible Liberians would have received new EADs before their current EADs expired on September 30, 2014. Accordingly, the notice also automatically extends for six months (through March 30, 2015) the validity of DED-related EADs that had an expiration date of September 30, 2014, and explains how Liberians covered under DED and their employers may determine which EADs are automatically extended and their impact on employment eligibility verification (Form I-9) and E-Verify processes.

The notice is available at <https://www.federalregister.gov/articles/2014/10/01/2014-23507/filing-procedures-for-employment-authorization-and-automatic-extension-of-existing-employment>.

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Pro Bono Success Story: Miller Mayer Helps Nuns Obtain R-1 Religious Visa

Alliance of Business Immigration Lawyers member firm Miller Mayer in Ithaca, New York, represented a religious organization of nuns in its religious worker (R-1) nonimmigrant visa petition on behalf of a foreign national nun who serves at churches in upstate New York. This was the organization's first successful R-1 petition with U.S. Citizenship and Immigration Services (USCIS), which required Miller Mayer to prepare the sisters for a USCIS fraud detection site visit. Miller Mayer performed the work pro bono.

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New Publications and Items of Interest

[OFLC statistical fact sheets](#). The Department of Labor's Office of Foreign Labor Certification has posted updated program fact sheets containing FY 2014 fourth-quarter selected statistics for the Permanent Labor Certification Program, Prevailing Wage Determination Program, H-1B Temporary Visa Program, H-2A Temporary Agricultural Visa Program, and H-2B Temporary Non-Agricultural Visa Program. Reports are derived from program data as of August 31, 2014. The updated program fact sheets are posted on OFLC's Performance Data page at <http://www.foreignlaborcert.doleta.gov/performancecdm>.

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

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) recently co-authored several new blog entries. "Ebola and Inadmissibility" is available at <http://blog.cyrusmehta.com/2014/10/ebola-and-inadmissibility.html>. "Kerry v. Din: An Opportunity for the Supreme Court to Reconsider the Doctrine of Consular Non-Reviewability" is available at <http://blog.cyrusmehta.com/2014/10/kerry-v-din-opportunity-for-supreme.html>.

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) recently authored a new blog entry. "The 'When' of Immigration" is available at <http://www.nationofimmigrators.com/>.

Robert F. Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) spoke to the Metropolitan Breakfast Club at the University of Texas. The presentation, "The Facts, and Nothing But the Facts, About Our Immigration Crisis," focused on current events and issues in U.S. immigration.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in the *Real Deal*, a real estate news site, in an article on Chinese property investment in New York City. Among other things, he noted that those who want green cards for their children to get an education still consider the United States "the top destination." The article is available at <http://therealdeal.com/blog/2014/10/01/5-factors-that-could-impact-chinese-property-investment-in-nyc/>.

Several ABIL members are speaking at the IIUSA's 4th Annual EB-5 International Investment Economic Development Forum in San Francisco, California, on October 23-24, 2014. IIUSA is the trade association of EB-5 regional centers. **H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) will speak on ever-evolving USCIS EB-5 policies and interpretations. **Bernard Wolfsdorf** (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) will speak on Chinese visa availability and EB-5 retrogression issues. **Mr. Yale-Loehr** will speak on I-829 removal of condition issues. More information about the conference is available at <http://marketplace.iiusa.org/collections/2014-eb-5-international-investment-economic-development-forum-san-francisco-ca>.

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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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