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Feature Article

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BARRIERS TO ELECTRONIC TRAVEL AUTHORIZATION: AN OVERVIEW

This article provides an overview of barriers to electronic travel authorization in several countries.

Canada

The Canadian electronic travel authorization (eTA) is an electronic document that is required for most visa-exempt air travelers to Canada, as well as those transiting through Canada by air, with some exceptions. Air travelers to Canada who would otherwise be visa-exempt will face barriers in applying for an eTA in particular circumstances.

Among those who are barred from applying for an eTA are travelers who have been found to be inadmissible to Canada, such as those facing prior criminal convictions captured by the *Immigration and Refugee Protection Act* (IRPA), including impaired driving or cannabis-related crimes. Such individuals will generally only be allowed to enter the country with an alternative entry document, such as a temporary resident permit, if they are determined to have valid reasons to visit Canada. Individuals who have been granted an eTA and subsequently become the subject of a report on inadmissibility or are issued a temporary resident permit to overcome an inadmissibility become ineligible to hold an eTA, which may then be canceled by an immigration officer.

Applicants may also become ineligible for an eTA when they have received a prior refusal of a temporary resident visa, work permit, or study permit on the basis that the person was unlikely to leave Canada by the end of the authorized stay. Moreover, applicants who were previously issued an eTA and subsequently withdrew their application to enter Canada upon examination by an officer at a port of entry, or those who become the subject of a removal order, may also become ineligible to hold an eTA. Permanent residents (PRs) of Canada are also ineligible to apply for one and instead require a valid permanent residence card, or a permanent resident travel document—generally only valid for one entry—to return to Canada. eTA applications from Canadian PRs may either drop out of the automated process if they appear to be a PR or be manually reviewed by an officer, who should subsequently contact the applicant to determine if they wish to relinquish their status if this is unclear.

Finally, Canadian citizens, including those born abroad holding dual citizenship, cannot apply for an eTA to travel to Canada and require a valid Canadian passport to enter the country. If the automated process identifies an applicant as a Canadian citizen, it will be dropped out. Dual citizens without a Canadian passport with a flight to Canada scheduled in less than 10 days may apply for special authorization. If an applicant meets the eligibility criteria—including proof of citizenship and a valid non-Canadian passport from a visa-exempt country, among others—and is approved, this will enable them to board their flight and will be valid for only 4 days from the date of travel. Canadian-American dual citizens only need one of their passports to fly to Canada, but are recommended to travel with both.

Mexico

The electronic travel system is mandatory for Russian, Ukrainian, and Turkish nationals; recently Brazilians has also joined the list.

The applicant must have a valid passport, with a minimum validity of at least 6 months before traveling to Mexico.

The applicant must complete the application at the National Immigration Institute website: <https://www.inm.gob.mx/sae/publico/ru/solicitud.html>.

The applicant may receive:

- The electronic authorization to be printed with validity of 30 days to use it;
- A denial of the electronic authorization; or
- An answer stating that the electronic authorization is being reviewed.

A denial is the result of having migratory alerts.

For most minor criminal offenses, individuals are not specifically barred from entering Mexico. Those with outstanding warrants are unlikely to be allowed entry, and individuals on probation or parole are likely to have problems. The nature and history of the criminal record in question determines ease of entry into Mexico. It is also a question of whether the foreign authority, in this case entities like the U.S. Departments of Justice and Homeland Security, has issued an international warning to Mexican authorities on existing problems with an individual.

Schengen Area

Which criminal offenses will need to be reported by travelers under the new [European Travel Information and Authorisation System \(ETIAS\)](#)?

According to the Schengen Rules, entrance can be denied to non-European Union (EU) nationals who "are considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties and in particular where no alert has been issued in Member States' national data bases and in the Schengen Information System (SIS) (II) for the purposes of refusing entry on the same grounds."

Each Schengen country also has its own rules, conditions, and requirements for allowing entry to non-EU nationals.

Details:

- "Can You Enter the Schengen Area If You Have Past Criminal Convictions?", Mazzeschi S.r.l. <https://www.mazzeschi.it/can-you-enter-the-schengen-area-if-you-have-past-criminal-convictions/>

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Country Updates

CANADA and ITALY

A new bilateral agreement is in force since November 1, 2022, for Italian and Canadian citizens between the ages of 18 and 35.

The new Agreement aims to promote, among the new Italian and Canadian generations, a better knowledge of culture, society, and languages through travel experiences, work, and life in the other country.

What does the agreement stipulate?

The bilateral youth mobility agreement between Italy and Canada offers professional training opportunities to young Italian and Canadian citizens between the ages of 18 and 35 who are entering the world of work.

For 2023, there will be 2,000 young people per country who will be able to benefit from this agreement. The new agreement replaces the 2006 Memorandum of Understanding between Italy and Canada on "Working Holidays" and expands its scope, with the Italian extension of the work permit to 12 months and the introduction of new categories of participants.

What new categories are now available?

In particular, the agreement includes the following three categories:

- "Working Holiday," for those who intend to travel to the host country and temporarily work during their stay;
- "Young worker," for those who have already obtained an employment contract in the host country, in support of their professional development or pertaining to their previous field of study; and
- "International internship," aimed at students enrolled in a course at a post-secondary level institute of study who have obtained an internship relevant to their field of study in the host country, as a requirement of their academic curriculum. Visa applicants must have a valid travel document with an expiration date of at least three months longer than that of the requested visa.

Interested parties must be between the ages of 18 and 35, inclusive, on the date on which the application is received.

The validity of the visa will be commensurate with the expected duration of the stay, in any case not exceeding 12 months.

Details:

- "Agreement on Youth Mobility Between Italy and Canada," Italian Government, https://www.esteri.it/en/opportunita/scambi_giovanili/accordo-in-materia-di-mobilita-giovanile-tra-litalia-e-il-canada/

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MEXICO

Mexico has introduced a new online process for the multi-purpose immigration form.

Due to recent adjustments implemented by the immigration authorities (National Immigration institute), the FMM form (multi-purpose immigration form that was usually delivered by airlines to travelers to Mexican national territory or handed out at any port of entry) will no longer be delivered and only the usual entry stamp will be stamped in the traveler's passport indicating the date of entry and the maximum number of days of authorized stay.

Foreigners who require an FMM form to carry out an immigration procedure may scan a QR code that is located at the port of entry. Once the QR code has been scanned and the foreigner has entered the corresponding website, he or she must create an account and provide the requested data and documents to obtain an Electronic Migratory Multiple Form.

Upon entering Mexican territory, the foreigner must clearly state the purpose of the trip to the immigration authorities and show the corresponding documentation. Otherwise, the immigration officer may register an incorrect immigration status that would prevent the foreigner from continuing with the immigration process, if applicable.

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RUSSIA

PCR tests upon entry are no longer required. Also, Russia requires notification to the Ministry of Internal Affairs when Russian citizens receive citizenship or permanent residence from a foreign country.

PCR Tests No Longer Required for Entry

As of October 21, 2022, the requirement to provide a negative PCR test for COVID-19 for entry to Russia were abolished for all foreign citizens. Previously, most foreign nationals were required to provide a negative PCR test, taken within 48 hours before crossing the border.

Also PCR tests were abolished for Russian citizens returning from abroad. Previously, they were required to complete the test within three calendar days upon entry into Russia and upload the results to *Gosuslugi*.

The requirement to complete the [arrival questionnaire](#) upon arrival is still in force for both foreigners and Russian citizens.

Notification Regarding Citizenship or Permanent Residence in a Foreign Country

Citizens of the Russian Federation (with the exception of those who permanently reside outside the Russian Federation) must submit written notification of the receipt of a residence permit or other document for the right of permanent residence in a foreign state to the territorial body of the Ministry of Internal Affairs of Russia at the place of residence within 60 days from the date of receipt of the relevant document.

If a citizen is located outside of the Russian Federation, they must submit this notification within 30 calendar days from the date of entry into the Russian Federation.

Failure to file this notification is a criminal offense and is punishable by a fine of up to 200,000 rubles or in the amount of the convicted person's salary or other income for a period of up to one year or compulsory work for up to 400 hours.

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SWITZERLAND

Nationals of countries with which Switzerland holds permanent residence agreements now must also show local language proficiency when applying for permanent residence.

Language competence is generally considered to be the ability to communicate in a national language in everyday life. The Swiss legislature attaches considerable importance to the minimum linguistic integration of foreigners in Switzerland, considering it to be of strong public interest to ensure the acquisition of a minimum knowledge of one of the three official languages: French, German, and Italian. These are central to the integration of immigrant foreigners and to the cohesion of Swiss society.

Foreign nationals who come from a country with which a permanent residence agreement or a settlement treaty exists are entitled to a permanent residence permit after an uninterrupted residence of five years if the integration criteria are met and there are no grounds for revocation.

Switzerland has permanent residence agreements with Belgium, Germany, Denmark, France, Liechtenstein, Greece, Italy, Netherlands, Austria, Portugal, and Spain.

Foreign nationals must prove that they have oral language skills at least at reference level A2 and written language skills at least at reference level A1 in the local official language spoken at their place of residence in order to obtain permanent residence. Nationals of countries with which permanent residence agreements exist must also provide evidence of language skills in accordance with recent case law of the Federal Supreme Court (ruling BGer 2C_881/2021 of 9 May 2022 E. 4.2. and 4.3).

Previously, nationals from the countries noted above did not need to prove language proficiency to obtain a permanent residence permit in Switzerland. This change has been incorporated into the guidelines that the State Secretariat for Migration publishes for the benefit of executing authorities, such as the cantonal migration offices, as well as the interested public, in its newest iteration as of October 1, 2022 ([4 Aufenthalt mit Erwerbstätigkeit \(admin.ch\)](#)), available in the three official national languages).

Test results showing local language proficiency at the required levels should be submitted when applying for permanent residence. For those nationals who speak the relevant local language already by virtue of having grown up in a country where the same language is spoken, documentation showing years spent in the schooling system or studying at a university are an alternative.

The language-skill requirement does not always apply. In case of disability, illness, or other weighty personal circumstances, it may be waived. On a last and lighter note, there is no requirement to learn and speak Swiss-German, a dialect which, to the relief of many, is not an official national language.

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UNITED KINGDOM

The Home Office has reduced some of the reporting requirements for sponsors and made other helpful changes.

Highlights of the main updates in the new [Home Office guidance](#) include:

Delayed Work Start Dates

Many sponsors are familiar with the reporting requirements where the United Kingdom work start date for a Skilled Worker application becomes delayed. Changes in the guidance include:

- **Only report if the delay is over 28 days.** Rather than always having to report any delayed work start date, now sponsors only need to do so if the delay is over 28 days. The delay must be reported no more than 10 working days after the end of the 28-day period.
- **More flexibility for delays over 28 days.** Before this new guidance, if the work start date was delayed by more than 28 days, the sponsor needed to cancel the sponsorship. The only exception was if the worker was working out a contractual notice period with their previous employer. The new guidance includes further "acceptable reasons" for a delay over 28 days. The new list includes:
 - Travel disruption due to a natural disaster, military conflict, or pandemic;
 - The worker must work out a contractual notice period for their previous employer;
 - The worker requires an exit visa from their home country and there have been administrative delays; or
 - Illness, bereavement, or other compelling family or personal circumstances.

This is not an exhaustive list and each case will be judged on its merits, but sponsors should be aware that the sponsored worker's permission to work could later be canceled if the reason stated in the delayed start date report is not deemed acceptable by the Home Office.

When the 28-day period starts. The previous guidance stated that once a sponsored worker's visa application had been approved, they needed to start working in the UK within 28 days of the later of: (1) the start date in their certificate of sponsorship; (2) the valid-from date of the visa; or (3) the date of approval of the application. The new guidance changes the last option from the date of approval to the date on which the worker is notified of the decision.

Other Changes

The new Home Office guidance also includes some other changes for sponsors:

- **Sponsored worker on unpaid leave for more than 4 weeks.** If a sponsored worker is absent from work and unpaid for over four weeks in a calendar year, the sponsorship needs to end. In the previous guidance there was a defined list of exceptions such as parental leave or sick leave. Now the new guidance goes further, as "compelling or compassionate circumstances" will also be considered. Again, once the reason is stated in the report, it could be that the sponsored worker's permission to work will be canceled if the Home Office is not satisfied with the reason.
- **Immigration Skills Charge concession for certain Senior or Specialist Worker applications.** Subject to approval of the legislation (this change is not in effect yet), starting January 1, 2023, the Immigration Skills Charge (normally £1,000 per year of the visa) for certain Senior or Specialist Worker (previously known as Intra-Company Transfer) applications will not need to be paid. This is for international transfers within

the same corporate group for up to three years, where the sponsored worker is a European Union (EU) or Latvian non-citizen (not a citizen of Iceland, Norway, Liechtenstein, or Switzerland) and transferring from a business established in the EU.

Details:

- "Workers and Temporary Workers: Guidance for Sponsors, Part 2: Sponsor a Worker," Gov.UK. <https://bit.ly/3AwebF8>

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New Publications and Items of Interest

Alliance of Business Immigration Lawyers: <https://www.abil.com/>

- ABIL is also available on Twitter: <https://twitter.com/abilimmigration>

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ABIL Member/Firm News

Charles Kuck (bio: <https://www.abil.com/abil-lawyers/charles-kuck/>) authored a new blog post: "Attention Georgia Companies: How NOT to Recruit a Foreign Workforce," published by Global Atlanta as part of **Kuck Baxter Immigration's** sponsorship.

<https://www.globalatlanta.com/attention-georgia-companies-how-not-to-recruit-a-foreign-workforce/>

Mr. Kuck was quoted by *Law360* in "Feds Grant Ukrainians, Afghans Immediate Work Authorization." Mr. Kuck, who helps lead the IMMPact Litigation team representing Ukrainians in a lawsuit, said he was pleased that USCIS changed its policy. However, he said his clients also sought a court order forcing USCIS to repay Ukrainians who had already paid the work permit application fee. "We are exceptionally happy that USCIS finally did almost the right thing [and] we look forward to them doing the complete right thing shortly, or litigation will continue," he said. The litigation had not covered Afghans who fled Afghanistan, but Mr. Kuck said his team intended to revise the case to include Afghans based on a September 2021 congressional measure that entitled Afghans to refugee benefits.

<https://www.law360.com/articles/1552063/feds-grant-ukrainians-afghans-immediate-work-authorization> (registration required)

Gomberg Dalfen was recognized by *The Globe and Mail* as one of Canada's Best Law Firms 2023. <https://www.theglobeandmail.com/business/rob-magazine/article-best-law-firms-canada/>; company link: <https://gombergdalfen.ca/>

Klasko Immigration Law Partners, LLP, published a new blog post: "I Have an H-1B Visa and Just Got Laid Off. What Do I Need to Know?" <https://www.klaskolaw.com/h-1b-employment/h-1b-layoff-infographic-for-employees/>

Mazzeschi S.r.l. launched a new website dedicated to the investor visa for Italy. <https://www.investorvisaitaly.it/>

Mazzeschi S.r.l. released the November 2022 issue of Italian Immigration & Citizenship. <https://www.mazzeschi.it/mazzeschi-asiadesk/wp-content/uploads/2022/10/Magazine-Nov-2022-compressed.pdf>

Cyrus Mehta (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) was quoted by the *Times of India* in "Laid-Off Indian H-1B Workers Plead for Help as Clock Ticks." He noted that when an H-1B worker is laid off or terminated, they get a 60-day grace period that allows them to remain in the H-1B status to find a new job. "The new employer must file the H-1B within the 60-day period. This 60-day period may not be enough to find a new job. The H-1B worker should negotiate that their employment with the company that is terminating them be extended as long as possible as the 60-day grace period will only trigger when the paid employment is terminated." An Indian worker, he said, is disadvantaged because of green card backlogs caused by per-country limits. Mr. Mehta said that the Biden administration can help by changing the 60-day grace period rule to allow more time for H-1B workers to remain in the United States, but he noted that a rule change would take time. "The administration must also be inclined to do this," he said. <https://timesofindia.indiatimes.com/business/india-business/laid-off-indian-h-1b-workers-plead-for-help-as-clock-ticks/articleshow/95497003.cms>

Mr. Mehta authored several new blog posts: "Guide to Terminated Noncitizen Workers: Preserving Nonimmigrant Status and Permanent Residency Options," <http://blog.cyrusmehta.com/2022/11/guide-to-terminated-nonciitzen-workers-preserving-nonimmigrant-status-and-pemrnaent-residency-options.html>; "Why the AILA Law Journal Is Important," <http://blog.cyrusmehta.com/2022/11/3907.html>

Mr. Mehta and **Kaitlyn Box** co-authored several new blog posts: "DOL Fails to Side With H-1B Worker Who Claimed Back Wages Against Employer After Being Terminated," <http://blog.cyrusmehta.com/2022/10/dol-fails-to-side-with-h-1b-worker-who-claimed-back-wages-against-employers-after-being-terminated.html>; "A Tale of Two Cases: Washtech v. DHS and Texas v. USA: To What Extent Can the Executive Branch Allow Noncitizens to Remain and Work in the U.S.," <https://bit.ly/3yIHqfK>; and "Layoffs Will Hurt Nonimmigrant Workers the Most, Especially Indian Born, But the Biden Administration Can Provide Relief," <http://blog.cyrusmehta.com/2022/11/layoffs-will-hurt-nonimmigrant-workers-the-most-especially-indian-born-but-the-biden-administration-can-provide-relief.html>

Mr. Mehta and **Jessica Paszko** co-authored a new blog post: "USCIS Guidance Enabling STEM Graduates to Obtain O-1 Extraordinary Visas Should Apply Equally to EB-1 Extraordinary Ability Petitions for Green Cards." <https://bit.ly/3T9OhO3>

Cyrus D. Mehta & Partners PLLC published a new blog authored by **Stacy Caplow**: "Biden's Pardons: The First Drops in a Big Bucket of Criminal Reform." <http://blog.cyrusmehta.com/2022/10/bidens-pardons-the-first-drops-in-a-big-bucket-of-criminal-reform.html>

Siskind Susser, PC announced its formal collaboration with Fastcase on a new case management system built around the content of the *Cookbook* co-authored by **Ari Sauer** and **Greg Siskind**. In addition to checklists, client questionnaires, and process steps, the product will have document templates, sample government forms, "cheat sheets" to help lawyers avoid submitting cases before every necessary step is taken, and detailed overviews of the law applicable to a particular case type. A limited version of the product is expected to be available in early 2023, with full release anticipated later in the year. <https://www.fastcase.com/blog/visalaw-immigration-law-firm-partners-with-fastcase-to-develop-novel-ai-software/>

Wolfsdorf Rosenthal LLP released a webinar video, "I-9 Form Process & Updates Part 2." WR immigration attorneys **Kimberley Best Robidoux** and **Michelle Harmon** review the process used to complete Form I-9 work authorization verification, especially for foreign national employees and in those unusual instances when individuals provide a receipt notice or

documents not specifically listed on the list of Acceptable Documents to show identity and/or work authorization. <https://wolfsdorf.com/webinar-i-9-form-process-updates-part-2/>

WR Immigration released a webinar video: "H-1B Cap Season—How the Current Economic Climate Will Affect This Season." Topics include the current labor and recruiting environment; key H-1B registration, lottery, and petition filing timelines; understanding current trends; and organization strategies and tips. <https://wolfsdorf.com/webinar-h-1b-cap-season-how-the-current-economic-climate-will-affect-this-season/>

WR Immigration was ranked National and Regional Tier 1 in the 2023 U.S. News & World Report's "Best Law Firms." WR Immigration was ranked Metropolitan Tier 1 in Boston, Los Angeles, and San Diego, and Metropolitan Tier 2 in New York City and San Francisco. <https://wolfsdorf.com/wr-immigration-ranked-in-2023-best-law-firms/>

WR Immigration published a new blog post and webinar: "H-1B Cap Season: Employer Considerations in the Event of a Recession." A link to the webinar is at the end of the blog post. <https://wolfsdorf.com/h-1b-cap-season-employer-considerations-in-the-event-of-a-recession/>

WR Immigration published a new blog post: "EB-5 Project Due Diligence, After the EB-5 Reform and Integrity Act of 2022." <https://wolfsdorf.com/eb-5-project-due-diligence-after-the-eb-5-reform-and-integrity-act-of-2022/>

Stephen Yale-Loehr (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) was quoted by the *Wall Street Journal* in "Afghan Evacuees in Limbo While Seeking Permanent Legal Status in the U.S." He said, "While some members of the public think everyone from Afghanistan should get asylum, our system just doesn't work that way." <https://on.wsj.com/3UKhoZB>

Mr. Yale-Loehr was quoted by the Associated Press in "Posts Misrepresent Border Encounters With People on Terror Watchlist." The article discusses misleading claims by House Republican leader Kevin McCarthy and others that almost 100 people on the watchlist recently entered the United States across the border. The article notes that U.S. Customs and Border Protection (CBP) reported 98 Border Patrol encounters with non-U.S. citizens on the watchlist who crossed the southwest border between U.S. ports of entry in fiscal year 2022. Every person counted as part of that tally, however, was stopped and detained by CBP, and that figure possibly included people who crossed multiple times. "To say that 98 terrorists made it into the U.S. is an exaggeration. These 98 were all caught," Mr. Yale-Loehr said. <https://apnews.com/article/fact-check-border-terrorist-watchlist-630330935018>

Mr. Yale-Loehr was quoted by FactCheck.org in "Misleading Attack About Democrats and Criminal Immigrants." The article discusses an ad from a conservative group, Citizens for Sanity, that misleadingly claims that "every Senate Democrat voted against deporting criminal illegal immigrants," and mischaracterizes the criminal record of an undocumented person. Mr. Yale-Loehr noted that the Trump administration considered anyone who broke an immigration law to be deportable. On the heels of President Trump's policy changes, the article notes, the number of such interior arrests rose 30% in fiscal year 2017 and rose again the following year before falling a bit in fiscal 2019, according to the Pew Research Center. But even at its peak, the number was still "far lower than during President Barack Obama's first term in office." Mr. Yale-Loehr also pointed out that a rise in people put into immigration proceedings does not mean they were immediately deported, because such cases can take years to adjudicate. <https://www.factcheck.org/2022/10/misleading-attack-about-democrats-and-criminal-immigrants/>

Mr. Yale-Loehr spoke at a webinar on recent administrative changes to help immigrant workers in STEM fields. The free webinar, sponsored by the American Immigration Council, was held October 25, 2022/ See https://aila-org.zoom.us/webinar/register/WN_DdU_yCSYR5CdNeuUe2145w

Mr. Yale-Loehr and **Janine Prantl** co-authored an op-ed, "Let Private Citizens Sponsor Refugees," published in the *New York Daily News*. <https://www.nydailynews.com/opinion/ny-oped-let-private-citizens-sponsor-refugees-20221015-dtepnanthfeqnpf6anjirwt3by-story.html>

Mr. Yale-Loehr was quoted by the *Gothamist* in "For New York City 'Dreamers,' Now is the Time to Act on Immigration Reform." He said immigrant rights advocates are "working hard behind the scenes" to get legislation passed after the midterm elections. "One possible legislative package might include [Deferred Action for Childhood Arrivals] plus border security reforms," he said. <https://gothamist.com/news/for-new-york-city-dreamers-now-is-the-time-to-act-on-immigration-reform>

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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 425 member lawyers and their more than 1,400 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' website is at <http://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.

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