CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# JANUARY 2014 IMMIGRATION UPDATE

*Posted on January 2, 2014 by Cyrus Mehta*

**Headlines:**

**1.** **DHS OIG Report on EB-5 Regional Center Program Stirs Controversy** - The Department of Homeland Security's Office of Inspector General has released a controversial new report on the EB-5 regional center program that includes four recommendations.

**2.** **OSC Reiterates That Employers May Not Institute a Hiring Preference for U.S. Citizens Unless Required To Do So** - The OSC encourages employers considering a restriction on hiring based on citizenship status to ensure that it is properly restricting the position. Not to do so is to risk the imposition of sanctions, penalty fines, reporting requirements, and back pay.

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**7.** **DHS, USCIS Personnel Changes Announced** - The U.S. Senate confirmed the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security; the Obama administration nominated Leon Rodriguez to lead USCIS.

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**Details:**

### 1. DHS OIG Report on EB-5 Regional Center Program Stirs Controversy

The Department of Homeland Security's Office of Inspector General (OIG) has released a controversial new report on the EB-5 regional center program that includes four recommendations.

OIG report highlights. As background, Congress enacted the employment-based fifth preference (EB-5) green card category in 1990 to stimulate the U.S. economy through direct job creation and capital investment by foreign investors. Congress added a regional center pilot program to the EB-5 category

in 1992 to pool investor money in a defined industry and geographic area to create both direct and indirect jobs.

An EB-5 investor must invest $500,000 if his or her investment is in a high unemployment area or a rural area. Otherwise the investor must invest $1 million. Each foreign investor must create or preserve at least 10 full-time jobs for qualifying U.S. workers within 2 years.

The OIG report notes several conditions that prevent U.S. Citizenship and Immigration Services (USCIS) from administering and managing the EB-5 regional center program effectively. First, the laws and regulations governing the program do not give USCIS authority to deny or terminate a regional center's participation based on fraud or national security concerns; the program extends beyond the current USCIS mission. Second, USCIS is unable to demonstrate the benefits of foreign investment in the U.S. economy.

Additionally, the report notes, USCIS has difficulty ensuring the integrity of the regional center program. USCIS does not always ensure that regional centers meet all program eligibility requirements, and USCIS officials differently interpret and apply regulations and policies. Also, USCIS did not always document its decisions and responses to inquiries, making the program vulnerable to perceptions about internal and external influences.

As a result, the report states, USCIS is limited in its ability to prevent fraud and national security threats and cannot demonstrate that the program is improving the U.S. economy and creating jobs for U.S. citizens, as intended by Congress.

OIG recommends that USCIS: (1) update and clarify its regulations; (2) develop memoranda of understanding with the Departments of Commerce and Labor and the Securities and Exchange Commission to provide expertise and involvement in the adjudication of applications and petitions for the EB-5 regional center program; (3) conduct comprehensive reviews to determine how EB-5 funds have actually stimulated growth in the U.S. economy in accordance with the intent of the program; and (4) establish quality assurance steps to promote program integrity and ensure that regional centers comply with regulatory requirements.

Reaction. IIUSA, the industry trade association that represents over 130 EB-5 regional centers that serve over 40 states and territories and account for over

95% of the capital flowing through the EB-5 regional center program, said it was "puzzled" by the OIG's findings and conclusions. IIUSA said that many of the reforms the OIG identified as necessary were already underway, and that USCIS had refuted other criticisms in its response to the report.

For example, IIUSA noted that USCIS has created a new Immigrant Investor Program Office staffed by trained economists, experts in business and immigration law, and fraud and national security specialists, now led by a former director of the Treasury Department's Financial Crimes Enforcement Network. USCIS plans for all EB-5 related adjudications to be relocated to this office over the next six months. IIUSA also noted that USCIS has clarified its guidance for adjudicators in a comprehensive EB-5 policy memorandum and has strengthened interagency relationships.

IIUSA said these and other rebuttals in the USCIS response "should raise significant questions about the credibility of the report," which was "further undermined by the recent resignation of , who himself was under investigation."

The OIG report notes that USCIS agreed with three of the four OIG recommendations. Details of the OIG's analysis and USCIS's response are included in the report, "United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program," OIG-14-19, available at http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf. IIUSA's statement in response to the report is available at http://iiusablog.org/government-affairs/iiusa-statement-eb5-program-report-dhs-oig/.

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**2. OSC Reiterates That Employers May Not Institute a Hiring Preference for U.S. Citizens Unless Required To Do So**

In response to a query, Alberto Ruisanchez, Acting Deputy Special Counsel of the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), reiterated that employers may not institute a hiring preference for U.S. citizens unless required to do so to comply with a law, regulation, executive order, or government contract. Individuals protected from citizenship status discrimination include U.S. citizens, lawful permanent

residents, refugees, and asylees.

Mr. Ruisanchez said the OSC encourages employers considering a restriction on hiring based on citizenship status to ensure that it is properly restricting the position. Not to do so is to risk the imposition of sanctions, penalty fines, reporting requirements, and back pay.

Mr. Ruisanchez noted that the OSC cannot give an advisory opinion based on any particular set of facts. The query was from Gretta Rowold, Executive Director of Secure Research Operations for the University of Oklahoma's Office of Legal Counsel. She told the OSC that the university negotiates sponsored research agreements with non-university parties and periodically is asked to restrict participants to U.S. citizens only, and that the organizations sponsoring the research in some cases are unwilling or unable to provide justification for the requirement other than stating that the organization does sensitive work, or has a U.S. government customer who wouldn't like it if non-U.S. citizens were involved in their projects. She asked the OSC what exposure the university might have under the law, and what type of justification or documentation is appropriate to protect the university against liability.

The OSC's response letter, sent on November 20, 2013, is available at http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2014/OSC000177.pdf.

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### 3. OSC Clarifies I-9 Verification for Refugees, Asylees

In response to a query, Seema Nanda, Deputy Special Counsel of the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), clarified the application of documentation requirements related to Form I-9 work authorization verification for refugees and asylees. Eileen Scofield of Alston & Byrd asked what steps employers should take when an asylee or refugee worker presents for initial I-9 verification purposes a Form I-766, employment authorization document (EAD), that subsequently expires, considering the fact that asylees and refugees have unrestricted work authorization.

Ms. Nanda noted that when completing the I-9, a worker must select a box in Section 1 indicating his or her status. The selection applicable to "refugees and asyleesCalien authorized to work" has a field that requests "expiration date, if

applicable." The I-9 instructions provide that refugees or asylees may write "N/A"in the space provided for the expiration date in Section 1. After employees complete Section 1, they must present documents evidencing identity and employment eligibility for the employer to complete Section 2. USCIS guidance provides that refugee and asylee workers are not required to present an EAD for Section 2 to complete the

I-9. They may choose to present other documents, such as a driver's license (List B) and unrestricted Social Security card (List C), to satisfy the I-9 requirements. The I-9 instructions further provide that reverification of a worker's employment authorization does not apply to refugees and asylees "unless they chose to present evidence of employment authorization in Section 2 that contains an expiration date and requires reverification, such as Form 1-766, Employment Authorization Document." Thus, Ms. Nanda said, an employer that reverifies the employment authorization of an asylee or refugee who originally presented an EAD upon the EAD's expiration is following USCIS guidance. OSC therefore would be "unlikely to find a violation of the anti-discrimination provision unless the employer somehow acted in a discriminatory manner based on national origin or citizenship status," Ms. Nanda said.

Ms. Scofield also asked about refugee and asylee workers who are unable to present a new unexpired EAD by the date of expiration of their originally presented EAD. Ms. Nanda responded that for reverification, an employee may present unexpired documentation from either List A or List C showing he or she is still authorized to work. Employers cannot require the employee to present a List A document. Thus, she noted that a refugee or asylee who originally presented an EAD could, for example, present an unrestricted Social Security card at reverification. Furthermore, the receipt rule would allow a worker to present a receipt for a lost, stolen, or misplaced document for reverification purposes. To the extent an employer requires an employee to present a specific document, such as an unexpired EAD, for reverification purposes, it may violate the anti-discrimination provision's prohibition against document abuse, Ms. Nanda warned.

The OSC's response letter, which was sent on September 25, 2013, is available at
http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2013/172.pdf.

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## 4. DOL Postpones Action on Decision Vacating Supplemental Prevailing Wage Determinations

The Department of Labor (DOL) announced on December 20, 2013, that it is postponing action on a decision vacating supplemental prevailing wage determinations issued in light of an interim final H-2B wage rule.

On December 3, 2013, the Board of Alien Labor Certification Appeals (BALCA) issued an *en banc* decision in *Matter of Island Holdings LLC* (2013-PWD-00002). That decision vacated the supplemental prevailing wage determinations issued in light of the DOL's interim final H-2B wage rule (78 Fed. Reg. 24047, Apr. 24, 2013). A class action complaint has been filed in the district court in the Eastern District of Pennsylvania, challenging the *Island Holdings* decision*, CATA v. Perez*, 13-CV-07213.

The DOL's Office of Foreign Labor Certifications (OFLC) said that after a full review of the *Island Holdings* decision and the district court complaint, the DOL has decided to postpone action on the *Island Holdings* decision pending judicial review. "This action is in the interest of justice, given the confusion and substantial disruption that would be created if the Department implemented the decision and it was subsequently overturned by the district court," the OFLC noted. Accordingly, all OFLC actions related to the resolution of appeals in the supplemental prevailing wage decisions will be stayed pending the resolution of the district court action.

The announcement is available at http://www.foreignlaborcert.doleta.gov/.

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## 5. Philippines Requests TPS Designation

The government of the Philippines has asked the Obama administration to designate the Philippines for temporary protected status (TPS) in the wake of Typhoon Yolanda/Haiyan, which killed more than 6,000 people and displaced millions. The request was relayed to the Department of Homeland Security (DHS). Not only would this give an estimated 1 million Filipinos in the United States the opportunity to stay and work, but it would also allow them to send remittances back home. As of the date of publication of this newsletter, the DHS has not acted on the request.

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## 6. SSA Updates Operations Manual Re Same-Sex Marriages in Foreign Jurisdictions

The Social Security Administration (SSA) has added a new section to its Program Operations Manual System (POMS) providing instructions for obtaining legal opinions on the validity of foreign same-sex marriages in light of the Supreme Court's decision in *United States v. Windsor*. The new POMS instructions include policy, process, and procedures for processing same-sex marriage cases.

The SSA noted that under *Windsor*, the agency is no longer prohibited from recognizing same-sex marriages for purposes of determining benefits. Consequently, all claims filed on or after June 26, 2013, or that were pending final determination at the time of that decision are subject to *Windsor* instructions. The SSA said it is working with the Department of Justice to interpret the decision.

The new POMS instructions are available at https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013093759AM, https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013094242AM, and https://secure.ssa.gov/apps10/public/reference.nsf/links/12132013094652AM. The decision in *United States v. Windsor* is available at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf.

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## 7. DHS, USCIS Personnel Changes Announced

The U.S. Senate confirmed the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security on December 20, 2013, by a vote of 54-41. Mr. Mayorkas has been head of U.S. Citizenship and Immigration Services (USCIS) since 2009.

Meanwhile, the Obama administration nominated Leon Rodriguez to lead USCIS. Since 2011, Mr. Rodriguez has served as the Director of the Office for Civil Rights at the Department of Health and Human Services. From 2010 to 2011, he served as Chief of Staff and Deputy Assistant Attorney General for Civil Rights at the Department of Justice (DOJ). Previously, Mr. Rodriguez was County Attorney for Montgomery County, Maryland, from 2007 to 2010. He was a

principal at Ober, Kaler, Grimes & Shriver in Washington, DC, from 2001 to 2007. He served in the U.S. Attorney's Office for the Western District of Pennsylvania from 1997 to 2001, first as Chief of the White Collar Crimes Section from 1998 to 1999 and then as First Assistant U.S. Attorney until his departure. Before joining the U.S. Attorney's Office, Mr. Rodriguez was a trial attorney in the DOJ's Civil Rights Division from 1994 to 1997 and a Senior Assistant District Attorney at the Kings County District Attorney's Office in New York from 1988 to 1994. He received a B.A. from Brown University and a J.D. from Boston College Law School.

The White House announcement for Mr. Rodriguez is available at http://www.aila.org/content/default.aspx?docid=46806. For more on Mr. Mayorkas, see http://www.uscis.gov/about-us/leadership/alejandro-mayorkas-director-us-citizenship-and-immigration-services.

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## 8. Supreme Court Hears Oral Argument in CSPA Case; USCIS Issues Policy Guidance

The Supreme Court heard oral argument in *Mayorkas v. Cuellar de Osorio* on December 10, 2013. The case challenges a Board of Immigration Appeals (BIA) interpretation of the Child Status Protection Act (CSPA) with respect to children aging out before a visa becomes available. The CSPA provides continuing eligibility for immigration benefits to the beneficiaries of certain petitions when the beneficiary has "aged out" by turning 21. U.S. Citizenship and Immigration Services (USCIS) issued related policy guidance just before the Supreme Court argument.

Highlights of the argument and the guidance follow.

Supreme Court case. *Mayorkas v. de Osorio* questions whether all children of immigrant visa applicants, or only some, who turn 21 while awaiting a visa may retain their original priority date or must wait at the back of a new visa line. The case arose in the context of a family-based green card petition, but the Court's decision will also affect beneficiaries of employment-based green card petitions.

In *Matter of Wang*, the relevant BIA case, the Board held that the automatic conversion and priority date retention provisions of the CSPA did not apply to a

person who aged out of eligibility for an immigrant visa as the derivative beneficiary of a family-based fourth preference visa petition, and on whose behalf a second preference green card petition was later filed by a different petitioner.

The petitioner urged a broad interpretation of the CSPA. The brief by amici curiae in *Wang* similarly maintained that the provision amended by the CSPA, ¤ 203(h)(3) of the Immigration and Nationality Act (INA), is ameliorative and inclusive and does not limit its automatic conversion and priority date retention provisions to family-based preference petitions. In contrast, the USCIS urged a narrower interpretation, arguing that established regulatory practice requires that the original priority date will be retained only if the second visa petition is filed by the same petitioner. Thus, USCIS maintained that to effect an "automatic conversion" under the CSPA, the petitioner also must have been the petitioner on the earlier green card petition. According to the USCIS, such an interpretation of the statute avoids open-ended petitions with no timeliness considerations.

The Supreme CourtXs decision is expected by late June.

USCIS policy guidance. Shortly before the Supreme Court argument in *Mayorkas v. Cuellar de Osorio*, USCIS issued a policy guidance memorandum on the CSPA.

The memo notes that the CSPA addresses certain "age out" consequences in those instances where "aging out" of eligibility for classification as a child is caused by a delay in the adjudication of the petition or application. The CSPA applies widely to petitions for family-based immigrants and also applies to employment-based immigrants, diversity visa immigrants, refugees, and asylees when delays in processing petitions would cause a beneficiary to lose the ability to immigrate as a child due to reaching 21 years of age.

The memo specifically addresses automatic conversion and priority date retention as set forth in INA ¤ 203(h)(3). The memo notes that this provision authorizes certain immigrant visa petitions to "automatically be converted to the appropriate category andЙretain the original priority date." The memo provides guidance for assigning priority dates in those instances where a petitioner requests that the priority date from a separate, previously filed petition be applied to a later filed family-based second-preference "B" petition (F-2B) or seeks adjustment of status in the F-2B category, based upon an originally filed family-based second-preference "A" petition (F-2A) under the

CSPA.

The guidance quotes the following related update to the USCIS *Adjudicator's Field Manual* for officers considering eligibility for priority date retention:

"(A) If the beneficiary was previously found eligible as a derivative on an approvable F2A category petition ("petition #1") that has not been revoked or otherwise terminated, and the subsequent petition ("petition #2") was filed by the same petitioner as in petition #1, USCIS will apply the earlier priority date to petition #2 (regardless of whether the second petition is initially filed in the F-2B or F1 classification).

(B) If the beneficiary was previously the subject of an approved F-2A petition and that petition has not been revoked or otherwise terminated, any subsequent petition filed by the same petitioner, which is approved by USCIS shall be entitled to the older priority date and approval of the new petition shall be considered a reaffirmation of the previous approval, as provided in 8 CFR ¤ 204.2(h)(2).

(C) If the principal beneficiary of an F-2B petition (petition #2) was *previously* the derivative beneficiary of a petition filed pursuant to sections 203(a)(1), (3), (4), or 203(b), and the petitioner of petition #2 was not the petitioner on the previous petition (petition #1), then petition #2 is NOT entitled to the older priority date. See 8 CFR ¤ 204.1(b); 22 CFR ¤ 42.53(a). Instead, petition #2 should be assigned a priority date based on the date of filing. Send the standard notice of denial of priority date retention provided through the appropriate chain of command. Continue to otherwise adjudicate the petition on its merits in accordance with applicable law, regulations, and policies.

(D) If an individual files an application for adjustment of status in the F-2B or F-1 classification based on previous F-2A *derivative* classification, but the petitioner did not file a new (subsequent) petition on behalf of the individual, the individual may be eligible for adjustment of status if:

(i) he or she was previously the derivative beneficiary of an approvable F-2A petition;

(ii) he or she qualifies as the son or daughter of the original petitioner (take particular care that step-relationships were created before the applicant turned 18); and

(iii) all other eligibility requirements are met.

(E) If an application for adjustment of status is pending and eligibility is solely contingent upon a request for priority date retention for which he or she is not eligible, hold the application pending the U.S. Supreme Court's ruling on *Mayorkas v. Cuellar de Osorio* and applicable guidance issued pursuant to that ruling. If, however, the applicant has another basis of eligibility for adjustment, adjudication based on the alternate basis of eligibility should not be delayed.

(F) If a denied applicant for adjustment of status files a motion to reopen or reconsider, or if such a motion is pending, and eligibility is solely contingent upon a request for priority date retention for which he or she is not eligible, hold the motion pending the U.S. Supreme Court's ruling on *Mayorkas v. Cuellar de Osorio* and applicable guidance issued pursuant to that ruling. If the applicant demonstrates another basis of eligibility for adjustment that was not properly considered before denial, the application should be reopened and adjudication based on the alternate basis of eligibility should not be delayed."

*Matter of Wang* is available at http://www.justice.gov/eoir/vll/intdec/vol25/3646.pdf. Links to various related filings in *Mayorkas v. de Osorio* are available at http://www.scotusblog.com/case-files/cases/mayorkas-v-cuellar-de-osorio/ and http://www.americanbar.org/publications/preview_home/12-930.html. The USCIS policy guidance memo, which includes example scenarios, is available at http://www.uscis.gov/sites/default/files/files/nativedocuments/PM-602-0094_Family-Based_Priority_Date_Retention_Final_Memo.pdf. More CSPA information is available at http://www.uscis.gov/sites/default/files/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-30799.html.

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## 9. Court Approves Final Settlement on Employment Authorization for Asylum Seekers

U.S. Citizenship and Immigration Services announced that on November 4, 2013, the U.S. District Court for the Western District of Washington granted final approval of the revised ABT settlement agreement, closing class action litigation that began in December 2011, in a case called *B.H. v. United States Citizenship and Immigration Services*, No. CV11-2108-RAJ (W.D. Wash.). The

settlement agreement provides that certain individuals who intend to file, or have already filed, an asylum application may have their eligibility for employment authorization determined using new procedures.

These changes generally relate to eligibility for an Employment Authorization Document (EAD) for asylum applicants, and to calculation of the 180-day "Asylum EAD Clock" for ABT class members.

USCIS explained that the 180-day Asylum EAD Clock measures the time period during which an asylum application has been pending with the USCIS asylum office and/or the Executive Office for Immigration Review. USCIS service centers adjudicate the Form I-765, Application for Employment Authorization, and calculate the 180-day Asylum EAD Clock to determine eligibility for employment authorization. Asylum applicants who applied for asylum on or after January 4, 1995, must wait 150 days before they can file an I-765 if the application remains pending. An asylum applicant cannot receive an EAD until his or her asylum application has been pending for at least 180 days. This 180-day period does not include any delays that applicants request or cause while their applications are pending with an asylum office or immigration court, USCIS explained.

The agreement was revised in September 2013 to clarify two points:

1. Following the remand of an asylum case to an immigration judge, for employment eligibility purposes the asylum applicant will be credited with time going forward, excluding delays requested or caused by the applicant.
2. Remand Claim relief would be implemented under the six-month time frame provided in most other provisions of the agreement. Due to the government shutdown, the six-month time frame was extended by several weeks and implementation began by December 3, 2013.

An explanation of how to determine who is an ABT class member is available at http://www.uscis.gov/humanitarian/refugees-asylum/asylum/determining-who-abt-class-member. U.S. Citizenship and Immigration Services' announcement is at http://www.uscis.gov/news/alerts/abt-revised-settlement-agreement-granted-final-approval-implementation-begin-dec-3-2013. Additional information is available at http://www.uscis.gov/humanitarian/refugees-asylum/asylum/abt-settlement-ag

reement. The related notice is at http://www.uscis.gov/humanitarian/refugees-asylum/asylum/abt-settlement-agreement. Details on how the agreement affects adjudication of asylum and EAD applications is at http://www.uscis.gov/humanitarian/refugees-asylum/asylum/how-agreement-affects-adjudication-asylum-and-ead-applications.

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### 10. USCIS Releases New E-Verify MOUs Tied to Access Method

On December 8, 2013, U.S. Citizenship and Immigration Services (USCIS) released revised Memoranda of Understanding (MOUs) for E-Verify browser users and new MOUs for users accessing E-Verify through Web services.

USCIS said that current E-Verify users are not required to execute a new MOU but are bound by any enhancements to the E-Verify program, including the new or revised MOU that applies to their access method. Current users should become familiar with the new or revised MOU that applies to their access method. The effective date of the MOU for existing users is January 8, 2014.

Employers who join the E-Verify program on or after December 8, 2013, will execute a new or revised MOU (Revision Date 06/01/2013) during enrollment. E-Verify revised and added new MOUs in response to feedback and to update the MOUs with policy and process changes. The new and revised MOUs include several updated provisions, such as enhanced privacy protections and instructions for reporting privacy and security breaches. The new versions are also intended to apply the Federal Government's "plain language" principles to make them easier to understand.

The E-Verify MOUs released on December 8, 2013, have a revision date of June 1, 2013. The revision date may be found at the bottom of each MOU page. The announcement is available at http://www.uscis.gov/e-verify/about-program/whats-new. The new memoranda are available at http://www.uscis.gov/e-verify/publications/memos/publications-memorandums. A related fact sheet is available at http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Fact-Sheet-E-Verify-MOU.pdf.

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### 11. USCIS Revises Mandatory Posters for E-Verify and Right-to-Work in Response to Crowdsourced Feedback

U.S. Citizenship and Immigration Services (USCIS) has revised the posters that employers must display in their places of business. USCIS said the posters now require less ink to print, in response to requests on "E-Verify Listens," USCIS's crowdsourced feedback site. The previous versions are still acceptable.

The new posters are available in English and Spanish at http://www.uscis.gov/e-verify/publications/participation-posters/e-verify-participation-posters. E-Verify Listens is available at http://www.e-verifylistens.ideascale.com/.

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### 12. U.S. Embassy London Hosts Visa Webchat

The U.S. Embassy in London conducted a webchat on November 26, 2013. Highlights of the webchat include:

1. U.S. government policy is under review regarding "criminal cautions" in the United Kingdom. Applicants having a caution may experience lengthy delays during the application process. These delays will affect applicants with a caution even if they may have received a visa in the past. The U.S. Embassy London recommends applying as soon as possible and not making final travel plans until receiving a visa.
2. Visa applicants are advised to notify the embassy via a contact form if they leave the United Kingdom while additional processing is pending. The contact form is available at http://london.usembassy.gov/niv/contact_page.html.
3. The embassy noted that the presumption of innocence has little place in the visa application process. According to the embassy, if one applies for a visa during a pending prosecution, "you should be aware that it may not be possible to adjudicate your visa application until the disposition of your criminal case is known." See 9 FAM 40.21(a) N3.3.
4. Waiver applications take six months to process even if the applicant has received a previous waiver. Frequent travelers to the United States may choose to apply more than six months before the expiration date of their current visa so that the next visa may be ready to be issued without a gap. A current visa with a valid waiver will not be canceled during the interview

before the expiration date.

5. Immigrant visas are issued with a validity period that expires six months from the date of the medical exam, rather than six months from the date of the immigrant visa interview.

The transcript of the Webchat is available at http://photos.state.gov/libraries/unitedkingdom/164203/cons-visa/20131126VCUNIVWebchat.pdf.

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### 13. Firm In the News

**Cyrus Mehta** was the Discussion Leader, *Ethics – Steering Clear of the Iceberg: Dealing with Mistakes and How to Avoid Them!* 16th Annual AILA New York Chapter Symposium, New York, NY December 2, 2013.

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