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

JANUARY 2016 IMMIGRATION UPDATE

Posted on January 6, 2016 by Cyrus Mehta

Headlines:

1. USCIS Seeks Comments on Proposed Rule to Change Certain Employment-Based Visa Programs – USCIS seeks public comments on a proposed rule published on December 31, 2015, "Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers," that would change certain aspects of employment-based visa programs.

2. Omnibus Bill Includes Hefty Fee Increases for L-1 and H-1B Visas, EB-5 Regional Center Extension, Other Immigration-Related Provisions – The combined omnibus bill that Congress passed on December 18, 2015, includes several immigration measures.

3. Labor Dept. Issues Emergency Guidance on H-2B Changes – The Office of Foreign Labor Certification has provided emergency guidance to employers seeking to employ nonimmigrant workers in H-2B temporary or seasonal nonagricultural employment. The guidance is for employers seeking to obtain prevailing wage determinations and temporary labor certifications.

4. Secretary of State Kerry Sends Letter to Iranian Foreign Minister re Visa Waiver Issues – Kerry said, among other things, that the United States remained committed to lifting visa sanctions as provided under a recent nuclear deal with Iran.

5. House Votes for Stricter Visa Waiver Program Following Terror Concerns; Obama Announces Changes – Following recent terror attacks in

Paris, France, and San Bernardino, California, the U.S. House of Representatives voted to tighten restrictions on travelers under the VWP. Also, President Barack Obama announced new security measures for the VWP, including gathering more information from travelers about visits to Syria and Iraq.

6. Obama Orders Review of K-1 Fiancé(e) Visa Program Following California Attack – President Barack Obama has ordered a review of the K-1 fiancé(e) visa program in response to terrorism concerns following the mass shooting in San Bernardino, California.

7. DHS Considers Removing Hundreds of Newly Arrived Undocumented Families; Candidates React – According to reports, the Obama administration is considering removing hundreds of families who came to the United States without authorization and have been ordered to leave by an immigration judge. The vast majority are said to have fled violence in Central America.

8. OSC Opines on Terminating U.S. Workers and Hiring Contract Workers – An individual recently received a response to a question about whether an employer may terminate U.S. workers and rely instead on contract workers with temporary work visas.

9. OSC, ICE Issue Joint Guidance for Employers Conducting I-9 Audits – The guidance notes that although not required by law, an employer may conduct an internal audit of I-9 forms to ensure ongoing compliance with the employer sanctions provision of the INA. An employer may choose to review all or a sample of I-9 forms selected based on neutral and nondiscriminatory criteria.

10. USCIS Transfers Some Cases From Vermont Service Center – USCIS will notify those whose cases are transferred. The original receipt number will not change, and processing of the case will not be delayed "except for the additional time needed to transfer the file." The filing location and instructions for these forms will not change.

11. USCIS Updates Petition to Remove Conditions on Residence for Marriage-Based Green Cards – The new edition is dated 11/23/15.

12. USCIS Changes Filing Location for Notices of Motion or Appeal

Related to Citizenship Applications – Starting on January 1, 2016, those filing a Notice of Motion or Appeal in response to a decision on citizenship application must mail the I-290B to the Chicago Lockbox. USCIS will no longer accept these forms at local field offices.

13. BALCA Holds That Institutions of Higher Education Need Not Include Other Types of Entities in Wage Surveys – In Matter of University of Michigan, the BALCA ruled in favor of an employer that argued its wage survey of institutions of higher education was sufficient in determining the prevailing wage for a Senior Associate Regulatory Analyst.

14. Users Report Problems With New 9 FAM-e – Among other things, users report that the crosswalked citations for the new 9 FAM-e in some cases do not correspond appropriately to sections in the legacy 9 FAM.

15. Firm In The News…

Details:

1. USCIS Seeks Comments on Proposed Rule to Change Certain Employment-Based Visa Programs

U.S. Citizenship and Immigration Services (USCIS) seeks public comments on a proposed rule published on December 31, 2015, "Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers," that would change certain aspects of employment-based visa programs. USCIS is also proposing regulatory amendments "to better enable U.S. employers to hire and retain certain foreign workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents (LPRs)."

Comments are due by February 29, 2016. To submit comments, follow the instructions in the notice.

Among other things, USCIS said it proposes to amend its regulations to:

- Clarify and improve longstanding agency policies and procedures

implementing sections of the American Competitiveness in the Twenty-First Century Act (AC21) and the American Competitiveness and Workforce Improvement Act (ACWIA) related to certain foreign workers, which will enhance USCIS's consistency in adjudication.

- Better enable U.S. employers to employ and retain certain foreign workers who are beneficiaries of approved employment-based immigrant visa petitions (I-140 petitions) while also providing stability and job flexibility to these workers. USCIS said the proposed rule will increase the ability of such workers to further their careers by accepting promotions, making position changes with current employers, changing employers, and pursuing other employment opportunities.
- Improve job portability for certain beneficiaries of approved I-140 petitions by limiting the grounds for automatic revocation of petition approval.
- Clarify when individuals may keep their priority date to use when applying for adjustment of status to lawful permanent residence, including when USCIS has revoked the approval of their approved I-140 petitions because the employer withdrew the petition or because the employer's business shut down.
- Allow certain high-skilled individuals in the United States in E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status to apply for one year of unrestricted employment authorization if they:

1. Are the beneficiaries of an approved I-140 petition;
2. Remain unable to adjust status due to visa unavailability; and
3. Can demonstrate that compelling circumstances exist that justify issuing an employment authorization document.

Such employment authorization may only be renewed in limited circumstances.

(Note: This provision has justifiably disappointed the beneficiaries of employment-based I-140 petitions who are caught in the backlogs. It will benefit a very limited amount of people, and the “compelling circumstances” standard is also extremely high. Furthermore, renewal of the employment authorization is only possible if the beneficiary’s priority date is within one year of the official cut-off date or if the beneficiary can once again show compelling circumstances)

Clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, extensions of status, determining cap exemptions and counting workers under the H-1B visa cap, H-1B portability, licensure requirements, and protections for whistleblowers.Establish a one-time grace period during an authorized validity period of up to 60 days for certain high-skilled nonimmigrant workers whenever their employment ends so that they may more readily pursue new employment and an extension of their nonimmigrant status.
These proposed changes do not take effect now. Instead, they would take effect on the date indicated in the final rule when the final rule is published in the Federal Register.

A detailed summary of the proposed rule is at http://www.visalaw.com/siskind-summary-the-i-140ac-21ead-proposed-regulation/. The proposed rule is at https://www.gpo.gov/fdsys/pkg/FR-2015-12-31/pdf/2015-32666.pdf.

2. Omnibus Bill Includes Hefty Fee Increases for L-1 and H-1B Visas, EB-5 Regional Center Extension, Other Immigration-Related Provisions

The combined omnibus spending bill that Congress passed on December 18, 2015, includes several immigration measures. Among other things, the supplemental fees for L-1 and H-1B petitions are increasing for companies that employ 50 or more employees in the United States and have more than 50 percent of their U.S. workforce in H-1B, L-1A, or L-1B nonimmigrant status. Specifically, the previously expired fees for L-1 petitions will increase from $2,250 to $4,500, and the fees for H-1B petitions will increase from $2,000 to $4,000. These supplemental fees must be paid on initial and extension petitions.

The bill also extends without substantive changes through September 30, 2016, four immigration programs: the EB-5 regional center program, the E-Verify program, the religious worker visa program, and the Conrad State 30 waiver program for certain foreign doctors on J-1 visas.

Also passed was a prohibition against foreign nationals in the Visa Waiver Program (VWP) if they have visited Syria or Iraq at any time on or after March 1, 2011. The new law also excludes from the VWP individuals who are nationals of

Iraq, Syria, Iran, or Sudan. The omnibus spending law exempts those performing military service in the armed forces of a VWP country or those carrying out official duties in a full-time capacity in the employment of a VWP country government. In addition, the U.S. government may waive exclusion from the VWP program if it would be in the law enforcement or national security interests of the United States.

The new law also allows certain workers previously counted against the H-2B cap to return to the United States without being counted against the cap a second time.

The text of the new law is at http://docs.house.gov/billsthisweek/20151214/CPRT-114-HPRT-RU00-SAHR2029-AMNT1final.pdf. Summaries are at http://democrats.appropriations.house.gov/sites/democrats.appropriations.house.gov/files/wysiwyg_uploaded/Summary%20of%20FY16%20Omnibus_0.pdf (Democrats) and http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=394337 (Republicans).

3. Labor Dept. Issues Emergency Guidance on H-2B Changes

Responding to new requirements contained in the 2016 Department of Labor Appropriations Act, which was signed into law on December 18, 2015, as part of the omnibus spending bill mentioned in the prior article, the Labor Department's Office of Foreign Labor Certification (OFLC) has provided emergency guidance to employers seeking to employ nonimmigrant workers in H-2B temporary or seasonal nonagricultural employment. The operational guidance is for employers seeking to obtain prevailing wage determinations and temporary labor certifications under the H-2B nonimmigrant visa classification.

Among other things, the guidance notes that certain provisions in the Appropriations Act require non-substantive modifications to ETA Form 9165. To comply with the law, OFLC has requested emergency approval from the Office of Management and Budget (OMB) on non-substantive changes to the form. The guidance states that until a notice of action is issued by the OMB, the Certifying Officer (CO) cannot issue a prevailing wage determination where use of a private

survey has been requested.

The new provisions also require non-substantive modifications to Appendix B of the Form ETA-9142B. Specifically, the current Appendix B contains references to an employer's compliance with the wage offer guarantee, corresponding employment, three-fourths guarantee, and the definition of temporary need under 20 CFR § 655.6. To comply with the new law, OFLC has requested emergency approval from OMB on non-substantive changes to the Appendix B. Until a notice of action is issued by OMB, the CO cannot issue any certification determinations on H-2B applications for temporary labor certification.

When a certification decision is issued, the CO will provide the employer with a copy of the revised Appendix B approved by OMB as well as a Final Determination Letter containing instructions for submitting all appropriate documentation to U.S. Citizenship and Immigration Services. Until OMB approves a revised Appendix B, employers may continue to file H-2B applications with the prior version of Appendix B. After receipt of the notice of action from the OMB, the OFLC will provide a revised Appendix B to the employer with a certification decision.

The OFLC said it will issue a further announcement as soon as the agency has received the notices from the OMB. The guidance is at https://www.foreignlaborcert.doleta.gov/pdf/Emergency_Guidance_2016_DOL_Appropriations_Act.pdf. Additional guidance on prevailing wage determinations, issued December 29, 2015, is at https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Prevailing_Wage_FAQs_DOL_Appropriations_Act.pdf.

4. Secretary of State Kerry Sends Letter to Iranian Foreign Minister re Visa Waiver Issues

U.S. Secretary of State John Kerry sent a letter on December 19, 2015, to Iranian Foreign Minister Mohammad Javad Zarif assuring him that the United States remains committed to lifting visa sanctions as provided for under the Joint Comprehensive Plan of Action (JCPOA). The JCPOA is a diplomatic agreement intended to ensure that Iran’s nuclear program remains peaceful. Among other things the JCPOA will eventually lift certain economic and visa sanctions on Iran.

Secretary of State Kerry noted that the Obama administration has the authority to waive recent changes in visa requirements passed in Congress as part of the omnibus spending bill. See the omnibus article in this issue, above. Secretary Kerry expressed confidence that the visa provisions in the omnibus spending bill "will not in any way prevent us from meeting our JCPOA commitments, and that we will implement them so as not to interfere with legitimate business interests of Iran." To this end, he noted that the United States has "a number of potential tools available to us, including multiple entry ten-year business visas, programs for expediting business visas, and the waiver authority provided under the new legislation." He said he would be "happy to discuss this further and provide any additional clarification."

The text of the letter is at http://www.niacouncil.org/text-sec-kerry-letter-to-zarif-regarding-visa-waiver-reform/. For more on JCPOA, see http://www.state.gov/e/eb/tfs/spi/iran/jcpoa/. The visa provisions are set forth in JCPOA Annex 2.

5. House Votes for Stricter Visa Waiver Program Following Terror Concerns; Obama Announces Changes

Following recent terror attacks in Paris, France, and San Bernardino, California, the U.S. House of Representatives voted on December 8, 2015, to tighten restrictions on travelers under the Visa Waiver Program (VWP). The VWP allows people from 38 countries to enter the United States for up to 90 days without obtaining a visa. The bill passed 407 to 19. The bill would require visitors to obtain a visa if they traveled to Syria, Iraq, Iran, or Sudan during the past five years, and would increase information-sharing among the United States and other participating VWP countries, among other things. The Senate has not yet voted on the legislation.

Also, President Barack Obama announced new security measures for the VWP, including gathering more information from travelers about visits to Syria and Iraq. The administration is also considering pilot programs for collecting biometric information from VWP travelers, and is urging Congress to allow an increase in fines against air carriers that do not properly verify passport data and to require all travelers to use passports that include security chips. These measures come

amid pressure separately from many U.S. governors against allowing in an additional 10,000 Syrian refugees.

The U.S. Travel Association, which supports the House-passed measure, noted that the VWP facilitates international travel to the United States, generating billions of dollars in economic output and supporting U.S. jobs. International travelers stay longer and spend more while here, the association noted, with an average of 18 nights and nearly $4,400 per person per trip. For every 35 overseas travelers who decide to visit the United States, an additional U.S. job is created, the association reported. In 2014, more than 20.4 million travelers arrived through the VWP (59% of overseas visitors), generating $190 billion in economic output and supporting nearly one million jobs. "This is why, largely as a result of the VWP, travel is our nation's number one services export, generating a trade surplus of $74 billion in 2014," the association said.

See https://vwp.ustravel.org/ for more information, including a chart showing differences between nonimmigrant visas and the VWP in eligibility requirements, the application process, pre-arrival procedures, and port of entry requirements.

6. Obama Orders Review of K-1 Fiancé(e) Visa Program Following California Attack

President Barack Obama has ordered a review of the K-1 fiancé(e) visa program in response to terrorism concerns following the mass shooting in San Bernardino, California, that killed 14 people and injured many others on December 2, 2015. A husband-and-wife team launched the attack following the wife's admission to the United States several years ago as a K-1 fiancée. President Obama said he ordered the Departments of State and Homeland Security to review the program.

Recent reports have noted, among other things, that security checks on the wife, Tashfeen Malik, for admission to the United States on a K-1 visa failed to uncover her support on social media of violent jihad and her statements that she wanted to participate in it. Social media is not routinely reviewed as part of Homeland Security checks. How such reviews of social media postings could occur, and whether they are appropriate, is reportedly a topic of debate within the U.S. government.

Approximately 35,925 people entered the United States in fiscal year 2014 on fiancé(e) visas. For statistics on FY 2014 nonimmigrant visas issued by country and type of visa, see http://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY14NIVDetailTable.pdf.

7. DHS Considers Removing Hundreds of Newly Arrived Undocumented Families; Candidates React

According to news reports, the Obama administration is considering removing hundreds of families who came to the United States without authorization since early 2015 and have been ordered to leave by an immigration judge. The vast majority are said to have fled violence in Central America.

The reports of possible removals, or "raids," are providing fodder for controversy among the candidates for President. Republican frontrunner Donald Trump took credit for the possible deportations: "Wow, because of the pressure put on by me, ICE TO LAUNCH LARGE SCALE DEPORTATION RAIDS. It's about time!" Democratic frontrunner Hillary Clinton's campaign spokesperson said, "Hillary Clinton has real concerns about these reports, especially as families are coming together during this holiday season. She believes it is critical that everyone has a full and fair hearing, and that our country provides refuge to those that need it. And we should be guided by a spirit of humanity and generosity as we approach these issues." Democratic candidate Bernie Sanders said, "I am very disturbed by reports that the government may commence raids to deport families who have fled here to escape violence in Central America. We need to take steps to protect children and families seeking refuge here, not cast them out."

U.S. Immigration and Customs Enforcement recently released statistics showing a steep drop in removals in fiscal year (FY) 2015. In FY 2012, there were 409,849 removals; by FY 2015, the number had dropped to 235,413. Detailed statistics are at https://www.ice.gov/removal-statistics.

8. OSC Opines on Terminating U.S. Workers and Hiring Contract Workers

An individual recently received a response to a question about whether an employer may terminate U.S. workers and rely instead on contract workers with

temporary work visas. Bruce A. Morrison, chairman of the Bethesda, Maryland-based Morrison Public Affairs Group, also asked whether a violation can be established where an employer replaces a protected employee with a nonprotected employee provided by a third-party company rather than by directly hiring a replacement from outside of the protected class. The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice, responded on December 22, 2015.

Among other things, OSC noted that citizenship status discrimination occurs when protected individuals are denied or deprived of employment because of their real or perceived immigration or citizenship status. U.S. citizens and nationals, refugees, asylees, and recent lawful permanent residents are protected from citizenship status discrimination under the Immigration and Nationality Act (INA), the OSC noted, adding that the INA grants OSC jurisdiction over citizenship status discrimination claims involving employers with four or more employees.

OSC explained that except in very narrow circumstances, an employer violates the antidiscrimination provision if it terminates workers or hires their replacements because of citizenship or immigration status. This is true, OSC said, regardless of whether the employer takes the discriminatory employment actions itself through direct hiring or contracts as a joint employer with an outside agency to implement its discriminatory staffing plan. Whether an employer has violated the antidiscrimination provision through its use of contract workers will depend upon the facts of each case, OSC noted, including: (1) whether there is evidence of intentional discrimination in the selection of employees for discharge or rehire; (2) the circumstances surrounding the selection of the third-party staffing contractor; and (3) the extent to which the original employer could be considered a joint employer of the contract workers. In addition, OSC pointed out that nothing prevents the filing of a charge against the contractor for potential citizenship status discrimination, or prevents OSC from independently investigating the contractor for potential discrimination if OSC receives information indicating a possible violation.

The OSC's response is at http://www.justice.gov/crt/file/801721/download.

9. OSC, ICE Issue Joint Guidance for Employers Conducting I-9 Audits

U.S. Immigration and Customs Enforcement (ICE) and the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) jointly issued new "Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits" on December 17, 2015. The guidance notes that although not required by law, an employer may conduct an internal audit of I-9 forms to ensure ongoing compliance with the employer sanctions provision of the INA. An employer may choose to review all or a sample of I-9 forms selected based on neutral and nondiscriminatory criteria. If a subset of I-9 forms is audited, "the employer should consider carefully how it chooses Forms I-9 to be audited to avoid discriminatory or retaliatory audits, or the perception of discriminatory or retaliatory audits," the guidance notes. Penalties for violations "may be imposed even if an internal audit has been performed." The guidance states that internal audits should not be conducted on the basis of an employee's citizenship status or national origin, or in retaliation against any employee for any reason. An employer "should also consider whether the audit is or could be perceived to be discriminatory or retaliatory based on its timing, scope or selective nature."

The guidance recommends a "transparent process" for interacting with employees during any internal audit. This includes informing employees in writing that the employer will conduct an internal audit of I-9 forms, explaining the scope and reason for the internal audit, and stating whether the internal audit is independent of or in response to a government directive. The guidance states that when a deficiency is discovered in an employee's Form I-9, the employer should notify the affected employee, in private, of the specific deficiency. The employer should provide the employee with copies of his or her Form I-9, any accompanying documents, and any other documentation showing the alleged deficiency. If the employee is not proficient in English, the employer should communicate in the appropriate language where possible. The employer should also provide clear instructions to employees with questions or concerns related to the internal audit on how to seek additional information from the employer to resolve those questions or concerns.

An employer cannot correct errors or omissions in Section 1 of the I-9 form, only in Sections 2 or 3, the guidance notes. The employer should ask the employee to correct any errors in Section 1. The guidance states that the best way to correct

such an error is to have the employee draw a line through the incorrect information, enter the correct or omitted information, and initial and date the corrected or omitted information. A preparer or translator can help by making the correction or helping the employee to make the correction.

The guidance recommends that before conducting an audit, an employer should consider the purpose and scope of the audit and how it will communicate information to employees, such as the reasons for the internal audit and what employees can expect from the process. An employer should consider the process it will have for fielding questions or concerns about the audit, how it will inform the employees of that process, how it will document its communications with employees, and how it will ensure consistent standards when addressing any I-9 deficiencies revealed by the audit, the guidance notes.

Among other things, the guidance also notes that an employer is not required to terminate employees who, as a result of the employer's internal I-9 audit, disclose that they were previously not work-authorized, even though they are currently work-authorized. An employer may continue to employ the employee upon completion of a new I-9 noting the authorizing document(s), and should attach the new I-9 to the previously completed I-9 together with a signed and dated explanation, the guidance states.

The guidance also notes that an employer should not use the Social Security Number Verification Service (SSNVS) during an internal I-9 audit. The Social Security Administration (SSA) will verify Social Security numbers and names solely to ensure that the records of current or former employees are correct for the purpose of completing Internal Revenue Service (IRS) Form W-2 (Wage and Tax Statement). Additionally, any notification about a mismatch makes no statement about an employee's immigration status. Rather, it simply indicates an error in either the employer's records or SSA's records "and should not be used as a basis to take adverse action against an employee. In other words, SSNVS is not intended to be used to verify employment authorization in connection with the Form I-9 process," the guidance notes.

Additional information, such as how to correct other types of errors and determining whether documentation is acceptable, is included in the guidance at http://www.justice.gov/crt/file/798276/download. For further information about

the proper use of SSNVS, see the SSNVS Handbook at https://www.ssa.gov/employer/ssnvs_handbk.htm.

10. USCIS Transfers Some Cases From Vermont Service Center

U.S. Citizenship and Immigration Services (USCIS) recently began transferring some casework from the Vermont Service Center (VSC) to the California Service Center (CSC) and the Nebraska Service Center (NSC) "to balance workloads."

The CSC will now process Forms I-539, Application to Extend/Change Nonimmigrant Status. The NSC will process Forms I-765, Application for Employment Authorization, filed by asylum applicants with pending asylum applications filed on or after January 4, 1995. The eligibility category for the application is (c)(8).

USCIS will notify those whose cases are transferred. The original receipt number will not change, and processing of the case will not be delayed "except for the additional time needed to transfer the file." The filing location and instructions for these forms will not change.

USCIS noted that an individual's case status can be checked at Case Status Online by entering the receipt number. Applicants can also sign up to receive automatic case status updates by email, and can submit an inquiry if they do not receive a decision within the published processing time. Inquiries may be made at 800-375-5283 (TDD 800-767-1833), or online at https://egov.uscis.gov/e-request/Intro.do.

The notice is at http://www.uscis.gov/news/workload-transfer-vermont-service-center-california-service-center-and-nebraska-service-center.

11. USCIS Updates Petition to Remove Conditions on Residence for Marriage-Based Green Cards

U.S. Citizenship and Immigration Services (USCIS) has published an update to

Form I-751, Petition to Remove Conditions on Residence. The new edition is dated 11/23/15.

Beginning on February 29, 2016, USCIS will accept only the 11/23/15 edition. The edition date is at the bottom of every page of the form and instructions. The expiration date at the top says 11/30/2017.

The latest form and instructions are at http://www.uscis.gov/i-751.

12. USCIS Changes Filing Location for Notices of Motion or Appeal Related to Citizenship Applications

U.S. Citizenship and Immigration Services (USCIS) announced that starting on January 1, 2016, those filing a Form I-290B, Notice of Motion or Appeal, in response to a decision on a Form N-600 (Application for Certificate of Citizenship) or N-600K (Application for Citizenship and Issuance of Certificate Under Section 322) must mail the I-290B to the Chicago Lockbox. USCIS will no longer accept these forms at local field offices.

USCIS will provide a 30-day grace period from January 1-30, 2016, for those who file an I-290B with the local office. Local field offices that receive a Form I-290B during this time will forward it to the Chicago Lockbox. After January 30, 2016, local field offices will return all I-290Bs for Forms N-600 or N-600K they receive and advise applicants to file instead at the Chicago Lockbox.

For those filing via the U.S. Postal Service, the address is:

USCIS
P.O. Box 805887
Chicago, IL 60680-4120

For those filing via USPS express mail/courier, the address is:

USCIS
Attn: FBAS
131 S. Dearborn, 3rd Floor

Chicago, IL 60603-5517

The USCIS announcement is at http://www.uscis.gov/news/customers-must-mail-form-i-290b-form-n-600-or-form-n-600k-chicago-lockbox.

13. BALCA Holds That Institutions of Higher Education Need Not Include Other Types of Entities in Wage Surveys

In *Matter of University of Michigan*, 2015-PWD-00006 (Nov. 18, 2015), the Department of Labor's Board of Alien Labor Certification Appeals (BALCA) ruled in favor of an employer, the University of Michigan, that argued its wage survey of institutions of higher education was sufficient in determining the prevailing wage for a Senior Associate Regulatory Analyst. The Center Director (CD) had required that other types of entities be included in the employer's wage survey, but the employer noted, among other things, that it had no obligation to provide such a survey.

The BALCA observed that the regulation at 20 CFR § 656.40(e) states that in computing the prevailing wage for an employee of an institution of higher education, or an affiliated or related nonprofit entity, a nonprofit research organization, or a governmental research organization, the prevailing wage level takes into account the wage levels of employees only at such institutions and organizations in the area of intended employment. This regulation was based on § 415 of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA).

Under the regulations, the BALCA noted, an ACWIA wage for an institution of higher education may sample only other institutions of higher education. "The CD's insistence that the Employer provide a survey that sampled each type of ACWIA entity is inconsistent with the Department's interpretation of the regulation and therefore constitutes an abuse of discretion," the BALCA held. The BALCA overruled the CD and remanded the case to the CD for further processing consistent with the BALCA's order.

The decision is available at

http://www.oalj.dol.gov/Decisions/ALJ/PWD/2015/EMPLOYMENT_AND_TRAIN_v_UNIVERSITY_OF_MICHIG_2015PWD00006_(NOV_18_2015)_130018_CADEC_SD.PDF.

14. Users Report Problems With New 9 FAM-e

Some users are reporting problems with the new 9 FAM-e, which replaced the legacy Volume 9 of the Foreign Affairs Manual (9 FAM) on November 18, 2015, and is the "authoritative source for visa guidance," according to the Department of State's (DOS) December 2015 Visa Bulletin.

DOS developed crosswalk tables correlating old citations with new, so that users could match new 9 FAM-e sections with former locations in the legacy 9 FAM. Users report, however, that the citations in some cases do not correspond appropriately. Also, some of the 9 FAM-e sections listed in the crosswalk do not yet show up in the online 9 FAM-e and are listed as "unavailable." The legacy 9 FAM is no longer available online. There are also concerns about the cross-references disappearing over time. Users are raising these concerns with DOS.

The announcement is in section F of the December 2015 Visa Bulletin at http://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-december-2015.html.

15. Firm In The News

Cyrus Mehta was a Speaker at the following events:

- *Making Sense of the Visa Bulletin*, Legal Support Unit, Legal Services NYC, New York, NY, December 14, 2015.
- *Emerging Developments at the State Department and American Consulates and Marriage and the Family*, 48th Annual Immigration & Naturalization Institute, Practising Law Institute, New York, NY, December 3-4, 2015.
- *Ethical Issues that Counting Sheep May Not Resolve*, 18th Annual AILA New York Chapter Immigration Law Symposium, AILA New York Chapter, New York, NY, December 1, 2015

Cora-Ann V. Pestaina was a Speaker, *Sleep Like A Baby From PERM Through I-140*, 18th Annual AILA New York Chapter Immigration Law Symposium, AILA

New York Chapter, New York, NY, December 1, 2015