



## MID-AUGUST 2017 IMMIGRATION UPDATE

*Posted on August 16, 2017 by Cyrus Mehta*

### Headlines

1. [\*\*Labor Dept. Announces Revisions to H-1B, H-1B1, and E-3 Forms, Comment Period\*\*](#) – Pursuant to a June news release calling for proposed form changes "to better protect American workers, confront fraud, and increase transparency," the Department of Labor published a notice announcing its intent to revise its information collection for the H-1B, H-1B1 and E-3 programs.
2. [\*\*State Dept. Announces Oversubscription of EB-2 Category, Annual Numerical Limits for Immigration, Change-of-Address NVC Reporting Requirements\*\*](#) – The Department of State's Visa Bulletins for August and September 2017 include news on several topics.
3. [\*\*Ninth Circuit Rules Against Good Faith Exception for Unauthorized Worker Employment and I-9 Violations\*\*](#) – In a recent decision, the U.S. Court of Appeals for the Ninth Circuit found, among other things, that an employer could not make a good faith defense to a charge of continuing to employ unauthorized workers or failing to properly complete, retain, or produce I-9 employment verification forms.
4. [\*\*CBP Says Attorneys Not Allowed in Secondary Inspection Areas of Ports of Entry\*\*](#) – Attorneys report that CBP says that as of August 21, 2017, they will not be able to accompany clients in the secondary inspection area of any ports of entry, and that this is a national policy.
5. [\*\*Former Airline Staffing Executive Pleads Guilty in Unlawful Fees Case\*\*](#) – The executive admitted he falsely certified that he had received no payments, when in fact he had demanded and collected hundreds of thousands of dollars of unlawful fees from approximately 85 mechanics.
6. [\*\*CBP Deploys Facial Recognition Biometric Exit Technology at More Airports\*\*](#) – CBP has announced the deployment of facial recognition

biometric exit technology to several more airports, including McCarran International Airport in Las Vegas, Nevada, for one daily flight from the United States to Guadalajara, Mexico; and to William P. Hobby International Airport in Houston, Texas, for select flights.

## 7. **Firm in the News...**

### **Details:**

#### **1. Labor Dept. Announces Revisions to H-1B, H-1B1, and E-3 Forms, Comment Period**

Pursuant to the Secretary of Labor's June 6, 2017, news release calling for proposed form changes "to better protect American workers, confront fraud, and increase transparency," the Department of Labor has published a 60-day notice in the *Federal Register* announcing its intent to revise its information collection for the H-1B, H-1B1 and E-3 programs.

The revisions include the Labor Condition Application for Nonimmigrant Workers (LCA) Form ETA 9035/9035E (electronic), Form ETA 9035CP accompanying instructions, a new Appendix for the Form ETA 9035/9035E, and the Wage and Hour Division's WH-4 Nonimmigrant Worker Information Form collection.

The Department says it seeks revisions to the Form 9035/9035E and Form 9035CP Instructions to "streamline parts of the current information collection to assist the regulated community with form completion; provide greater clarity of existing employer obligations under the programs; and promote greater program transparency by collecting additional information on the employment of temporary nonimmigrant workers by U.S. employers." The Department also seeks revisions to the WH-4 "to provide the form in a LIVECYCLE document to improve accessibility and compliance" with the Rehabilitation Act and the Workforce Investment Act; to "assist the regulated community with form completion"; and to "collect additional information to facilitate complainant communication for the enforcement of Forms 9035 and 9035E."

Written comments must be submitted in accordance with the 60-day notice's instructions at

<https://www.gpo.gov/fdsys/pkg/FR-2017-08-03/pdf/2017-16293.pdf>. The August 3, 2017, announcement of the 60-day notice is at

<https://www.foreignlaborcert.doleta.gov/>. The related June 6, 2017, news

release noted above is at

<https://www.dol.gov/newsroom/releases/opa/opa20170606>.

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## **2. State Dept. Announces Oversubscription of EB-2 Category, Annual Numerical Limits for Immigration, Change-of-Address NVC Reporting Requirements**

The Department of State's Visa Bulletins for August and September 2017 include news on several topics.

The August bulletin notes the oversubscription of the employment-based second preference (EB-2) category. High demand for numbers for U.S. Citizenship and Immigration Services (USCIS) adjustment-of-status applicants has required the establishment of cut-off dates for August for Worldwide, El Salvador, Guatemala, Honduras, Mexico, and Philippines EB-2 visa numbers. The bulletin says this action will allow number use to be held within the Worldwide annual limit. The Department expects the date for these countries to once again become Current for October, the first month of fiscal year (FY) 2018.

The September bulletin notes that any changes of address for applicants processing their cases overseas should always be reported to the National Visa Center (NVC). The bulletin provides details about what to include in communications with NVC and contact information.

The September bulletin also notes the annual determination of the numerical limits on immigrants for FY 2017. The worldwide employment-based preference limit is 140,000. For FY 2017, the per-country limit is 25,620 and the dependent area annual limit is 7,320.

The August bulletin is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-august-2017.html>. The September bulletin is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-september-2017.html>.

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## **3. Ninth Circuit Rules Against Good Faith Exception for Unauthorized Worker Employment and I-9 Violations**

In a recent decision, the U.S. Court of Appeals for the Ninth Circuit found, among other things, that an employer could not make a good faith defense to a charge of continuing to employ unauthorized workers or failing to properly complete, retain, or produce I-9 employment verification forms.

DLS Precision Fab LLC, a Phoenix, Arizona-based custom sheet metal fabrication company doing business as Di-Matrix Precision Manufacturing, had dealt with the sudden growth of its workforce due to an expansion of a Department of Defense program by hiring a well-credentialed human resources director to ensure compliance with applicable state and federal employment laws. Instead of doing so, however, the HR director shirked his responsibilities to the point of "literally stuffing the government's correspondence in a drawer and never responding," according to DLS. U.S. Immigration and Customs Enforcement subsequently inspected DLS's I-9 forms and other relevant business information and served DLS with notices of suspect documents and intent to fine.

The court noted that the good faith defense, as argued by DLS, did not apply here. DLS conceded that its violations were substantive but contended that the "peculiar facts of this case" justified extending the good faith defense to the substantive violations because DLS had made a good faith effort to comply with the law's employment requirements by hiring an HR director, but the HR director exhibited bad faith by neglecting his duty to keep DLS compliant. The court was not persuaded. Among other things, the court pointed out that under the law, such a defense might apply to technical or procedural, but not substantive, violations. Also, the court said, "DLS is not the first employer to hire an employee with the expectation that he or she will comply with the law only to be disappointed, nor is it likely to be the last. More broadly, DLS asks us to disregard the company's responsibility for hiring and supervising its own employees. The HR director was acting as DLS's agent, and his failure to perform his responsibility may properly be imputed to DLS."

The full text of the opinion, *DLS Precision Fab LLC v. U.S. Immigration & Customs Enforcement*, 2017 S.O.S. 14-71980 (Aug. 7, 2017), is at <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/08/07/14-71980.pdf>.

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#### **4 CBP Says Attorneys Not Allowed in Secondary Inspection Areas of Ports of Entry**

According to reports from attorneys serving clients in New York, the Buffalo office of U.S. Customs and Border Protection is advising that effective August 21, 2017, attorneys cannot accompany clients in the secondary inspection area of any ports of entry, and that this is a national policy.

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### **5. Former Airline Staffing Executive Pleads Guilty in Unlawful Fees Case**

Following a U.S. Citizenship and Immigration Services (USCIS) investigation, Eleno Quinteros, Jr., former vice president of operations for two airline mechanic staffing companies, pled guilty on August 10, 2017, to charges of making false statements in support of lawful permanent resident petitions for dozens of the companies' mechanics.

Mr. Quinteros admitted he falsely certified that he had received no payments, when in fact he had demanded and collected hundreds of thousands of dollars of unlawful fees from approximately 85 mechanics. According to the plea agreement, Quinteros collected as much as \$567,480 from employees, even though employers are prohibited by law from demanding payment for their fees. Mr. Quinteros used some of the money to pay attorneys assisting with the applications and pocketed the rest.

The employees performed heavy maintenance on aircraft at a variety of locations nationwide. Mr. Quinteros was responsible for recruiting Mexican airline mechanics to work in the United States, and for helping recruits to obtain work visas such as TN or H-2B visas. According to the indictment, Mr. Quinteros first assisted recruits in obtaining work visas to come to the United States. He then agreed to help at least 85 of them pursue lawful permanent residence in exchange for substantial, unlawful fees. He instructed many employees to deposit money in his wife's bank account or provide him with blank money orders to conceal the source of the unlawful funds.

Mr. Quinteros pleaded guilty to a single count of making a false claim in support of an immigration application. He admitted in his plea, however, that the underlying scheme involved more than 25 immigration documents. His sentencing is set for November 6, 2017.

USCIS's announcement is at

<https://www.uscis.gov/news/uscis-investigation-results-guilty-plea-former-airline-staffing-executive>.

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## 6. CBP Deploys Facial Recognition Biometric Exit Technology at More Airports

U.S. Customs and Border Protection (CBP) has announced the deployment of facial recognition biometric exit technology to several more airports, including McCarran International Airport in Las Vegas, Nevada, for one daily flight from the United States to Guadalajara, Mexico; and William P. Hobby International Airport in Houston, Texas, for select flights. This follows recent deployments of the technology to Washington Dulles International Airport; George Bush Intercontinental Airport in Houston, Texas; and O'Hare International Airport in Chicago, Illinois. An initial pilot was also conducted at Hartsfield-Jackson Atlanta International Airport. Additional deployments are planned in the near future.

John Wagner, CBP's Deputy Executive Assistant Commissioner for Field Operations, said, "With the expansion of this technology we will be looking at different flights, airports, lighting conditions, and internal IT configurations to demonstrate to our stakeholders that this solution is flexible, reliable and easy for travelers to use." Using the flight manifest, CBP builds a flight-specific photo gallery using photographs from the travel document the traveler provided to the airline. CBP then compares the live photo against the document photo in the gallery to ensure that the traveler is the true bearer of the document. If the photo captured at boarding is matched to a U.S. passport, the traveler—having been confirmed as a U.S. citizen—is automatically determined to be out of scope for biometric exit purposes and the photo is "discarded after a short period of time," CBP said, adding that it "remains committed to protecting the privacy of all travelers."

The announcement is at

<https://www.cbp.gov/newsroom/local-media-release/cbp-deploys-biometric-exit-technology-las-vegas-mccarran-international>.

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## 7. Firm in the News

**Cyrus D. Mehta** published [RAISE Act Will Hurt Immigrants, American & America](#) on August 6, 2017.

**David Isaacson** published [Watson v. United States: The Second Circuit Tells U.S.](#)

[Citizens Improperly Detained by ICE to File Their Claims for Damages While Their Immigration Court Case is Ongoing](#) on August 15, 2017.

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