

WOLFSDORF IMMIGRATION NEWSLETTER SEPTEMBER 2008

1. Seminar

I-9 Compliance in an Era of Increased Worksite Enforcement
A seminar presented by Wolfsdorf Immigration Law Group

September 23, 2008

10:00 a.m. to 1:00 p.m.

Seminar Fee: \$150

Early Registration (by September 15, 2008): \$125

The Fairmont Miramar, Santa Monica, California

101 Wilshire Blvd.

Santa Monica, CA 90401

Malibu Bungalow

Complimentary continental breakfast will be served

The Department of Homeland Security has undertaken a massive enforcement effort directed at employers who fail to correctly verify the employment authorization of all employees, as well as those who hire undocumented workers.

While the SWAT team-like work site enforcement raids against employers who knowingly hire undocumented workers have been getting most of the publicity, the government is increasingly focusing on I-9 audits to ensure all employers are correctly checking the employment authorization of their work force. It is therefore important to ensure that the required paperwork is correctly completed for all employees, including U.S. citizens.

This seminar will help you set up an immigration compliance program that meets government standards.

The seminar will be presented by *Bernie Wolfsdorf* and *Tien-Li Like Walsh*, two of the top business immigration attorneys in Southern California. Both attorneys have extensive experience helping employers develop immigration compliance policies.

This important program will focus on training employers to ensure that they are following immigration regulations when hiring workers.

Do not miss this seminar that will cover:

- New Requirements for I-9 Compliance
- Avoiding Common Mistakes with I-9 Employee Verification
- Why an Immigration Compliance Program is Essential to Safeguard Your Company
- Civil and Criminal Penalties for Managers, Executives and Senior HR Personnel
- E-Verify and Other New Government Employment Eligibility Verification Programs
- What to Do When You Receive a Social Security No-Match Letter
- Protecting Against Discrimination Lawsuits when Complying with New Regulations.

Speakers:

Bernard Wolfsdorf is the President Elect of the American Immigration Lawyers Associations (AILA), an organization that has over 11,000 attorney members. He is also the founder of one of the top immigration firms in the United States, with offices in Santa Monica and New York City. He has been a California State Bar Certified Specialist in Immigration and Nationality law for over 20 years and is featured in current editions of Best Lawyer in America, Chambers World's Leading Lawyers for Business, California Super Lawyers, Martindale Hubbell's Preeminent Specialist Directory and the International Who's Who of Corporate Immigration Lawyers. Bernie Wolfsdorf can be contacted at Bernard@wolfsdorf.com.

Tien-Li Loke Walsh also practices exclusively in the area of Immigration and Nationality law with the Wolfsdorf Immigration Law Group. She is a former Vice Chair of the American Immigration Lawyers Association (AILA) Department of State (DOS) Liaison Committee, as well as the AILA/California Service Center (CSC) Liaison. Tien-Li Loke Walsh can be contacted at tloke@wolfsdorf.com

Registration application is available at

http://www.wolfsdorf.com/articles/Pages%20from%20W_TriFoldV5%20.pdf

2. Mississippi Raid Largest in U.S. History; ICE Arrests Hundreds in Other Raids

U.S. Immigration and Customs Enforcement (ICE) agents took nearly 600 plant workers into custody on August 25, 2008, in what is reportedly the largest immigration raid in U.S. history. The raid at the Howard Industries transformer

plant was the result of an investigation prompted by a tip from a union member. The workers were from Brazil, El Salvador, Germany, Guatemala, Honduras, Mexico, Panama, and Peru, ICE said. The agency also arrested 400 workers on May 12 at the Agriprocessors meatpacking plant in Iowa, and seized a number of fraudulent green cards from the company's human resources department.

Meanwhile, ICE arrested 42 undocumented men at Washington Dulles International Airport as part of a critical infrastructure protection (CIP) operation. ICE agents, with support of airport security agencies, arrested the men just inside the airport grounds at a checkpoint established to verify the identity and immigration status of workers entering a service gate.

ICE agents interviewed more than 200 individuals to verify their identities, immigration status, and eligibility for lawful employment in the U.S. Among those arrested were nationals of Argentina, Bolivia, El Salvador, Guatemala, Mexico, and Peru. Most of the individuals encountered worked on construction projects at the airport. Those detained are being interviewed, fingerprinted, photographed, and entered into Department of Homeland Security databases at a local ICE office.

In another action, 57 undocumented workers at Mills Manufacturing Corporation (MMC) in Asheville, North Carolina, were arrested by ICE special agents. MMC is a Department of Defense contractor responsible for the manufacturing of parachutes for the U.S. military. Among those arrested were nationals of Mexico, Guatemala, Ecuador, and Honduras.

The arrests were based on an ICE investigation that revealed, ICE said, that the workers had used fraudulent social security numbers to obtain employment. The agency said the company has been fully cooperative and is not a target of the ICE investigation.

All of those arrested were transferred to the Henderson County Sheriff's Office for immigration processing, and all were placed into removal proceedings for being in violation of U.S. immigration law. Those arrested were interviewed by ICE agents to determine if they had medical, caregiver, or other humanitarian issues. ICE identified approximately 29 individuals who qualified for humanitarian release and will be required to appear before a federal immigration judge.

In fiscal year 2008, ICE agents have made more than 700 administrative arrests and 100 criminal arrests at critical infrastructure facilities. As of July 2008, ICE has made more than 3,800 administrative arrests overall for immigration violations during worksite enforcement operations.

The Mississippi announcement is available at <http://www.ice.gov/pi/nr/0808/080826laurel.htm>. The Dulles announcement is available at <http://www.ice.gov/pi/nr/0808/080813washington.htm>. The MMC announcement is available at <http://www.ice.gov/pi/nr/0808/080812asheville.htm>.

3. New Passport Card Is Acceptable For Employment Eligibility Verification

U.S. Citizenship and Immigration Services (USCIS) announced that the new U.S. passport card may be used in the employment eligibility verification (Form I-9) process.

Last month, the Departments of State and Homeland Security announced that the new passport card was in full production. The new card "provides a less expensive and more portable alternative to the traditional passport book, and will expedite document processing at United States land and sea ports-of-entry for U.S. citizens traveling to Canada, Mexico, the Caribbean, and Bermuda," the agencies said.

The new passport card is limited in its uses for international travel (e.g., it may not be used for international air travel), but it is a valid passport that attests to the U.S. citizenship and identity of the bearer. Accordingly, USCIS said, the card may be used for the I-9 process and can also be accepted by employers participating in the E-Verify program.

The passport card is considered a "List A" document that may be presented by newly hired employees during the employment eligibility verification process to show work authorized status. "List A" documents are those used by employees to prove both identity and work authorization when completing the I-9.

The notice is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8daff5a7ebd9b110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

4. E-Verify Provokes Controversy

The Department of Homeland Security's plan to expand the E-Verify online work authorization verification program to all federal contractors has led to controversy.

Randy Johnson, the U.S. Chamber of Commerce's Vice President for Labor, Immigration, and Employee Benefits, told Federal News Radio that "[i]f they go forward with the final rule and don't respond to our concerns, I think very well we'll go into court. I think there's a good chance we'll go into court anyway[] because...the Congressional statute actually says that the program is voluntary and, in our view, making it a condition of a federal contract, in fact, renders it

mandatory in violation of the underlying Congressional statute." He said the expansion was "too quick" and untested, noting that "frankly, there's some legal problems with regard to whether or not the agencies even have the legal authority to do it."

Mr. Johnson said the Government Accountability Office needs to study E-Verify further. He noted that some companies "are concerned about this regulation because of immigration concerns, but then there's another raft of companies, such as major contractors who are household names, that are concerned about it because it's just going to slow down the procurement process and already make it more complicated." He noted that colleges and universities that have federal contracts also have raised concerns.

Jennifer Kerber, Senior Director of ITAA's Federal and Homeland Security Programs, told Federal News Radio that ITAA would welcome E-Verify but is concerned about "the scalability of the system, the accuracy of the underlying data and the increased burden on federal contractors and government agencies." She noted that "today, according to the E-Verify system officials, there's an eight percent no-match rate. So, you take eight percent for 61,000 people using it [now], and you put eight percent on 7.4 million people using it [if it becomes mandatory] -- what kind of increased delays in government contract performance are we going to have?"

The Department of Homeland Security plans to offer a half-day information session on the E-Verify program. The session will include a live demonstration of the E-Verify system followed by a question-and-answer session. Dates and times have not yet been announced. For more information on the seminar, see <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=539248ea3a72b110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD>. General information about E-Verify is available at <http://www.uscis.gov/e-verify>.

5. USCIS Issues Work Authorization Application Version Reminder

U.S. Citizenship and Immigration Services (USCIS) issued a reminder to use the correct version of the Application for Employment Authorization (Form I-765) dated 05/27/08. The edition date appears in the lower right hand corner of the form as "Form I-765 (Rev. 05/27/08) N."

Submission of an earlier version of the I-765 may result in rejection of the application, USCIS said.

The I-765 instructions and application are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6>

[d1a/?vgnnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD).

The notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=e8de36ad2e9cb110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

6. Electronic VWP Application System Now Available

The Electronic System for Travel Authorization (ESTA) is now accessible online for citizens and eligible nationals of Visa Waiver Program (VWP) countries to apply for advance authorization to travel to the United States under the VWP. Effective January 12, 2009, all VWP travelers will be required to obtain an electronic travel authorization before boarding a carrier to travel by air or sea to the U.S. under the VWP.

To use the system, log onto the ESTA Web site at <https://esta.cbp.dhs.gov> and complete an online application in English. Travelers are encouraged to apply early. The Web-based system will prompt you to answer basic biographical and eligibility questions typically requested on a paper I-94W form. Basic information on ESTA is available in Dutch, English, French, German, Italian, Japanese, Portuguese, Spanish, and Swedish.

Applications may be submitted at any time before traveling. The Department of Homeland Security recommends, however, that applications be submitted at least 72 hours before traveling. In most cases, the DHS promises, you will receive one of the following responses "within seconds":

1. Authorization Approved: Travel is authorized.
2. Travel Not Authorized: The traveler must obtain a nonimmigrant visa at a U.S. Embassy or Consulate before traveling to the U.S.
3. Authorization Pending: The traveler will need to check the ESTA Web site for updates within 72 hours to receive a final response.

An approved travel authorization via ESTA is:

- Required for all VWP travelers before boarding a carrier to travel by air or sea to the U.S. under the VWP beginning January 12, 2009;
- Valid, unless revoked, for up to two years or until the traveler's passport expires, whichever comes first;
- Valid for multiple entries into the U.S. As future trips are planned, or if an applicant's destination addresses or itineraries change after

authorization has been obtained, the applicant may update that information through the ESTA Web site; and

- Not a guarantee of admissibility to the U.S. at a port of entry. ESTA approval only authorizes a traveler to board a carrier for travel to the U.S. under the VWP.

Additional information is available in "For International Visitors" at <http://www.CBP.gov/travel>.

The ESTA Web site is at http://www.cbp.gov/xp/cgov/travel/id_visa/esta/esta_intro/.

7. Global Entry Program Expands

The U.S. Department of Homeland Security recently announced the expansion of the "Global Entry" pilot program to four additional airports: Los Angeles International, Hartsfield-Jackson Atlanta International, Chicago O'Hare International, and Miami International.

Upon arrival at the airport, Global Entry-approved participants bypass the regular passport control line and proceed directly to the Global Entry kiosk. At the kiosk, Global Entry travelers activate the system by inserting their passports or U.S. permanent resident cards into a document reader. The kiosk directs travelers to provide digital fingerprints and compares them with the fingerprints on file.

The new Global Entry sites are expected to be operational in the fall of 2008, and will be equipped with kiosks for expedited processing. As part of the program's expansion, U.S. Customs and Border Protection (CBP) will install Global Entry kiosks at additional international terminals at John F. Kennedy International Airport (JFK). The Global Entry pilot program began June 10 at JFK, George Bush Intercontinental Airport, and Washington Dulles International Airport. Approximately 1,100 members have already enrolled and about 370 Global Entry members have used kiosks at the existing pilot locations.

Global Entry travelers are photographed and prompted to answer declaration questions on the kiosk's touch-screen. A transaction receipt is issued upon completion, which must be presented to CBP officers before leaving the inspection area.

The dates of the expansion of the Global Entry pilot program to the individual airports will be announced at <http://www.cbp.gov>. For more information on the program, see http://www.cbp.gov/xp/cgov/travel/trusted_traveler/global_entry/. The expansion was announced in a Federal Register notice available at <http://edocket.access.gpo.gov/2008/pdf/E8-18724.pdf>.

8. USCIS Extends TPS to Sudan

U.S. Citizenship and Immigration Services (USCIS) announced that it is extending temporary protected status (TPS) to nationals of Sudan or people having no nationality who last habitually resided in Sudan. The extension covers an estimated 500 Sudanese who have already applied for and received benefits under TPS since the October 7, 2004, re-designation. The extension will last 18 months, through May 2, 2010. Applicants must file during the 60-day re-registration period (August 14, 2008, through October 14, 2008).

Sudanese currently registered under TPS who desire an extension must re-register by filing both an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765), with the appropriate fees or fee waiver requests. The I-821 has been revised and applicants must use the version dated 10/17/2007 or later. The I-765 also has been revised and applicants must use the version dated 5/27/2008 or later. Failure to use these versions of the forms may result in rejection of the application. Certain nationals of Sudan who have not previously applied for TPS may be able to apply under the late initial registration process.

A notice announcing the TPS extension is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=c024c623f8dbb110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

A fact sheet is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=5f27c623f8dbb110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

9. USCIS Proposes Changes to H-2B Temporary Nonagricultural Worker Program, Withdraws Earlier Proposed Rule

U.S. Citizenship and Immigration Services (USCIS) published a proposed rule on August 20, 2008, that would streamline procedures for hiring workers under the H-2B program, supplementing the changes the agency proposed last spring. The H-2B nonimmigrant temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs for which U.S. workers are not available.

The most important changes include:

- The employer's "temporary need" for a worker could be as long as three years. Until now, it has been believed widely that the need could not exceed nine months per stay, followed by a hiatus of at least three months. This has

- limited the number of assignments for which the H-2B is attractive, but many employers have projects that could end within three years, followed by a three-month absence from the US. Specifically, USCIS proposes changing the definition of "temporary employment" to include jobs for which the work will end in the near, definable future and to eliminate the requirement that employers show "extraordinary circumstances" to be eligible to hire H-2B workers for up to three years.
- The wait outside the U.S. for those who want to switch from H-2B to H-1B or L-1 visas would be reduced to three months (instead of the current six months).

These two changes, if implemented, would make the H-2B visa a viable option for many more jobs with U.S. employers, including professional occupations with project-based timelines. Several other provisions are proposed for purposes of fraud prevention in the H-2B program.

The agency also withdrew an earlier proposed regulation published in 2005 that would have established a one-step petition process for U.S. employers seeking H-2B temporary workers, eliminating the need for employers to apply for a labor certification; required electronic filing of the Petition for a Nonimmigrant Worker, Form I-129, within 60 days in advance of the requested employment start date; eliminated the use of agents as H-2B petitioners; and established new management mechanisms. In light of the public's comments, USCIS said it is no longer moving forward with the proposed rule as designed and will publish a new proposed rule for public comment. <http://edocket.access.gpo.gov/2008/pdf/E8-19322.pdf>.

USCIS will accept public comments until September 19, 2008, on the new proposed rule, which is published at <http://edocket.access.gpo.gov/2008/pdf/E8-19306.pdf>.

The notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5d07a176642cb110VgnVCM1000004718190aRCRD&vgnnextchannel=3381c0ed71f85110VgnVCM1000004718190aRCRD>.

A fact sheet is available at <http://www.uscis.gov/files/pressrelease/h-2-faq-15Aug08.pdf>.

10. New Naturalization Test Implemented; USCIS Updates Processing Times

U.S. Citizenship and Immigration Services (USCIS) will begin administering the redesigned (new) naturalization test on October 1, 2008. The revised test

emphasizes the fundamental concepts of American democracy and the rights and responsibilities of citizenship.

USCIS has released a chart showing who may take the current or the new test. For the chart and additional details, including links to the test and the naturalization application, see

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ebf1bece24e7b110VgnVCM1000004718190aRCRD&vgnnextchannel=ebf1bece24e7b110VgnVCM1000004718190aRCRD>.

USCIS also announced that it anticipates naturalization application processing will average 10-12 months nationally by the end of September 2008. Last year, its estimated average processing time was 16-18 months.

Estimated naturalization times as of September 2008, broken down by field office, are available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=72fd5d63502bb110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

11. Third Preference Category Unavailable for September

Many other employment-based dates are current for September 2008 but the third preference and "other workers" categories are unavailable. The cut-off date for both the China-mainland born and India second preference categories is August 1, 2006.

The Mexico employment third preference category is unavailable for September, the State Department's Visa Office said, because the fiscal year 2008 annual limit has been reached. The Visa Office initially anticipated that this would be temporary until the start of the new fiscal year in October. Continued heavy demand may require the establishment of a cut-off date earlier than anticipated, the Visa Office noted. The October cut-off dates have not yet been announced.

The September 2008 Visa Bulletin is available at

http://travel.state.gov/visa/frvi/bulletin/bulletin_4328.html.

12. Canada Introduces Fast Track to Permanent Residence

The Canadian Experience Class, a new proposed avenue for immigration for certain temporary foreign workers and foreign student graduates with Canadian work experience, would allow an applicant's Canadian experience to be considered a key selection factor when immigrating to Canada, according to Citizenship and Immigration Canada.

The Canadian Experience Class would allow certain temporary foreign workers and certain foreign student graduates with managerial, professional, or technical or trade work experience to apply to become permanent residents, and eventually Canadian citizens. All applicants, depending on their occupational skill level, would be required to demonstrate either basic or moderate language skills. .

"The Canadian Experience Class is one more measure this government is proposing to make our immigration system more attractive and accessible to individuals with diverse skills from around the world, and more responsive to Canada's labour market needs," said Minister of Citizenship and Immigration Diane Finley. "This new proposed avenue for immigration would also go further to spread the benefits of immigration into smaller centres across Canada." Temporary foreign workers and foreign students are generally spread out across Canada and contribute to the growth of smaller communities as well as metropolitan areas. Individuals applying for permanent residence through this new avenue could apply from within Canada while continuing to work and to contribute to their local communities.

The Canadian Experience Class comes after a number of recent initiatives the Canadian government has undertaken to help newcomers succeed and to help make Canada a more attractive destination for skilled individuals from around the world, the agency said. These initiatives include changes to the Post-Graduation Work Permit Program; the establishment of the Foreign Credentials Referral Office; increased investments in language training and other programs and services aimed at helping newcomers settle and integrate into their new communities successfully; and, most recently, changes to the immigration system that would allow for priority processing of certain skilled applicants and reduced wait times for those wanting to immigrate to Canada.

"Choosing newcomers based on knowledge of our labour market and experience within Canadian society would make Canada a more attractive destination for skilled individuals from around the world," noted Minister Finley. "International students and skilled workers would be more likely to choose Canada if they knew their time in Canada and contribution to Canadian society would assist in their eligibility to apply to stay permanently."

The announcement is available at
<http://www.cic.gc.ca/english/department/media/releases/2008/2008-08-12.asp>.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:

<https://egov.uscis.gov/cris/jsps/ptimes.jsp>

Department of Labor processing times and information on backlogs:

<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

Recent Firm News & Upcoming Events:

Who's Who of Business Immigration Lawyers Gives Top Rating to Wolfsdorf Immigration Law Group

The peer reviewed Who's Who of Business Immigration lawyers has published its 2008 research and Bernie Wolfsdorf was amongst the top 5 "Most Highly Regarded Individuals in Global Business Immigration" worldwide.

The Who's Who research listed the Wolfsdorf Immigration Law Group first amongst the "most highly nominated California firms" and the research finds that, "Los Angeles immigration specialist Wolfsdorf Immigration Law Group increases its contingent to four lawyers in this edition.

American Immigration Lawyers Association (AILA) president elect Bernard Wolfsdorf 'knows his stuff back to front', according to competitors. He is 'top in dealing with US consulates'. Wolfsdorf is well known for his consular law expertise, also 'excellent' for consular matters, Avi Friedman impressed, as did Tien-Li Loke Walsh, who is 'fabulous for visa work', and Rita Kushner Sostrin, who 'specializes in the immigration of academics and international medical graduates.' "

Obtaining Your Visa in Canada or Mexico Instead of Your Home Country

We travel frequently to the border posts in Canada and Mexico to assist Third Country National (TCN) visa applicants (including B-1/B-2, E-1/E-2, F-1, H-1B, I, J-1, L-1, O-1, P, and R visas). If you are interested in having attorney representation/assistance with your nonimmigrant visa application in Canada,

Mexico, or worldwide, please contact Attorney Avi Friedman at 1-800-VISA-LAW or afriedman@wolfsdorf.com.

Upcoming travel dates:

September 25, 2008

October 30, 2008 (tentative date)

Birth Announcements

We are proud to announce the birth of two additions to the Wolfsdorf Immigration Law Group family.

Noah Luke Yutan was born to Lisa Yu and Paul Yutan on Saturday, August 23, 2008 at 9:51 a.m. 7 pounds, 3 ounces and 21 inches.

Jonathan was born to Shirley Gu and Jeff Zhu on Tuesday, August 5, 2008 at 9:57 a.m. 7 pounds, 14 ounces and 22 inches.