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ATTORNEYS

Immigration Inbox: News You Can Use

U.S. Immigration:

1. Obama Administration and Congress Set to Tackle Comprehensive Immigration Reform - Long awaited, now on the front burner, major reforms of the immigration law are proposed by the White House and Congress.

2. USCIS Final Rule Allows Provisional Unlawful Presence Waivers To Reduce Separations From Immediate Relatives – The final rule establishes a process that allows certain individuals to apply for a provisional unlawful presence waiver before they leave the United States to attend immigrant visa interviews in their countries of origin.

3. USCIS Revises Guidance on Adjudication of Late Jointly Filed I-751 Petitions for Conditional Permanent Residents – The new guidance supersedes existing guidance for the processing of late jointly filed I-751 petitions submitted without explanation for the late filing.

4. U.S. Embassies, Consulates in China Will Transition to New Visa Collection System in March – The U.S. embassy strongly advises all visa applicants to use all current CITIC fee receipts before they expire on March 14, 2013.

5. DHS Announces TPS Redesignation, 18-Month Extension for Sudan and South Sudan – Those who already have TPS must re-register during the 60-day re-registration period that began on January 9, 2013, and runs through March 11, 2013. Those who do not have TPS may apply during a six-month registration period that began on January 9, 2013, and runs through July 8, 2013.

6. DOL Announces New H-2A Adverse Effect Wage Rates for Each State, Establishes New Prevailing Wage Rates for Certain H-2A Occupations – The Department of Labor said it will publish a separate Federal Register Notice to announce the allowable charges for 2013 that employers seeking H-2A workers may charge for meals as well as the maximum travel subsistence reimbursement that a worker can claim.

7. USCIS to Implement New Immigrant Visa Fee February 1 – USCIS will begin collecting a new fee of $165 from foreign nationals seeking permanent residence in the United States.

8. USCIS Issues Operational Guidance for EB-5 Cases Involving Tenant Occupancy – The longawaited memorandum is intended to facilitate adjudication of cases involving issues related to the"tenant-occupancy" methodology for establishing job creation in EB-5 cases.

9. ICE Announces Removal Numbers, Issues New National Detainer Guidance, Discontinues State/Local 287(g) Partnership Agreements – Critics said the 287(g) immigration enforcement partnership program with state and local entities diverted resources away from crime-fighting and resulted in profiling of Latinos.

10. USCIS Extends TPS Re-Registration Period for Haitians – USCIS extended the re-registration period through January 29, 2013.

11. U.S., Canada Sign Visa and Immigration Info-Sharing Agreement – The agreement will enable Canada and the United States to share information from third-country nationals who apply for a visa or permit to travel to either country.

12. USCIS To Close Panama City Field Office – The Panama City Field Office had jurisdiction over USCIS applications and petitions from Panama, Ecuador, Colombia, Venezuela, Guyana, French Guiana, and Suriname.

Seyfarth Workforce Authorization Team (SWATeam)

1. USCIS Launches New E-Verify Employers Search Tool – The new online tool allows the user to find employers and federal contractors currently enrolled in E-Verify.

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U.S. Immigration

1. Obama Administration and Congress Set to Tackle Comprehensive Immigration Reform

Comprehensive Immigration Reform (CIR) is at last on Washington's agenda. A bipartisan group of eight senators (the "Gang of Eight") has proposed several CIR principles but no legislative text. At the core are (1) enhanced border security; (2) mandatory, nationwide use of the E-Verify database to confirm the work eligibility of new hires; (3) greater penalties for employers who knowingly hire unauthorized workers; (4) a path to a green card and eventual citizenship for unauthorized immigrants, after everyone legally in line first get green cards; (5) expedited green cards for students with degrees in STEM subjects (Science, Technology, Engineering and Math); and (5) new ways for foreign workers to enter the U.S. in the future. President Obama has proposed a similar set of "markers" and promises to send a bill to Congress if the legislators don't act soon. He would not require unauthorized immigrants to wait until border security is achieved before receiving green cards, would offer a Start-Up Visa category, and make the EB-5 Regional Center program permanent. Another group of legislators have proposed the Immigration Innovation Act of 2013 (I-Squared), S. 169, which would expand the H-1B visa quota, and promote other reforms to employment-based immigration.

For the "Gang of Eight" proposal, *click here*.

For the Obama Administration proposal, *click here*.

For the Immigration Innovation Act of 2013 (I-Squared), S. 169, *click here*.

For an article co-authored by Seyfarth partner, Angelo Paparelli, "Comprehensive Immigration Reform Is Waiting in the Wings," *click here*.

2. USCIS Final Rule Allows Provisional Unlawful Presence Waivers To Reduce Separations From Immediate Relatives

U.S. Citizenship and Immigration Services has published a final rule that reduces the time U.S. citizens are separated from their immediate relatives (defined as including a spouse, children, and parents) who are in the process of obtaining visas to become lawful permanent residents of the United States, under certain circumstances. The final rule establishes a process that allows certain individuals to apply for a provisional unlawful presence waiver before they leave the United States to attend immigrant visa interviews in their countries of origin. The process takes effect March 4, 2013.

To obtain a provisional unlawful presence waiver, the applicant must be an immediate relative of a U.S. citizen, inadmissible only on account of unlawful presence, and demonstrate that denial of the waiver would result in extreme hardship to his or her U.S. citizen spouse or parent. USCIS will publish a new form, Form I-601A, Application for a Provisional Unlawful Presence Waiver, for individuals to use when applying for a provisional unlawful presence waiver under the new process.

Under the new provisional waiver process, immediate relatives must still depart the United States for the consular immigrant visa process; however, they can apply for a provisional waiver before they depart for their immigrant visa interview abroad.

Individuals who file the Form I-601A must notify the Department of State's National Visa Center that they are or will be seeking a provisional waiver from USCIS.

"This final rule facilitates the legal immigration process and reduces the amount of time that U.S. citizens are separated from their immediate relatives who are in the process of obtaining an immigrant visa," said Secretary of Homeland Security Janet Napolitano in an announcement on January 2, 2013. USCIS Director Alejandro Mayorkas said, "The law is designed to avoid extreme hardship to U.S. citizens, which is precisely what this rule achieves. The change will have a significant impact on American families by greatly reducing the time family members are separated from those they rely upon."

USCIS said it received more than 4,000 comments in response to the April 2, 2012, proposed rule and considered all of them in preparing the final rule.

Under current law, immediate relatives of U.S. citizens who are not eligible to adjust status in the United States to become lawful permanent residents must leave the country and obtain an immigrant visa abroad. Individuals who have accrued more than six months of unlawful presence while in the United States must obtain a waiver to overcome the unlawful presence inadmissibility bar before they can return to the United States after departing to obtain an immigrant visa. Under the existing waiver process, which remains available to those who do not qualify for the new process, immediate relatives cannot file a waiver application until after they have appeared for an immigrant visa interview abroad and the Department of State has determined that they are inadmissible.

USCIS said more information about the filing process will be made available in the coming weeks. The announcement is available *here*.

The final rule, which was published on January 3, 2013, is available *here*.

Secretary Napolitano's statement is available *here*.

A related FAQ is available *here*.

3. USCIS Revises Guidance on Adjudication of Late Jointly Filed I-751 Petitions for Conditional Permanent Residents

A new U.S. Citizenship and Immigration Services (USCIS) policy memorandum revises and clarifies guidance issued on October 9, 2009, relating to late filing of a joint Form I-751, Petition to Remove the Conditions of Residence, and authorizes immigration services officers (ISOs) to issue Requests for Evidence (RFEs) for untimely filed joint I-751s. The new guidance supersedes existing guidance for the processing of late jointly filed I-751 petitions submitted without explanation for the late filing.

USCIS noted that the conditional permanent resident (CPR) and the petitioning spouse must jointly file an I-751 during the 90-day period immediately preceding the second anniversary of the date the CPR acquired conditional resident status. USCIS may accept I-751 joint petitions filed after this 90-day period if the CPR establishes good cause and extenuating circumstances for the failure to timely file.

Under the new guidance, when an ISO adjudicates a late jointly filed I-751 petition, the ISO will check for a written explanation of the late filing. If the I-751 petition is submitted with an explanation for the late filing, the ISO will review the explanation for the untimely filing in relation to the length of time the application was untimely filed, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing. If the CPR did not include a written explanation for the late filing, the ISO will issue an RFE, requesting a reasonable explanation for the late filing and corroborating evidence. If the ISO receives a response to the RFE, the ISO will evaluate the explanation, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing. Corroborating evidence is not necessary if the explanation is acceptable on its face. After receiving a response to the RFE, the ISO may transfer the I-751 file for an interview if the documentary evidence leads to an inconclusive result and the determination of good cause for the late filing would benefit from a live interview. If the ISO does not receive a response to the RFE, the ISO will deny the I-751 for failure to comply with the filing requirements.

The interim policy memorandum is available *here*.

4. U.S. Embassies, Consulates in China Will Transition to New Visa Collection System in March

The U.S. embassy and consulates general in China will transition to a "new and improved" visa fee collection system for Chinese applicants in mid-March 2013. As a result of this new system, the U.S. visa fee receipts that applicants currently purchase from select CITIC Bank branches will be phased out and will not be valid after March 14, 2013. There will be no fee increase associated with these changes. The U.S. embassy strongly advises all visa applicants to use all current CITIC fee receipts before they expire on March 14, 2013. "After the expiration date, we will be unable to accept receipts issued before March 14 and refunds for expired receipts will not be available. Visa applicants who plan to apply close to or after March 14 should wait to pay their visa fees until after this date." The U.S. embassy in Beijing said that specific details on this new way for applicants to pay their visa fees will be announced closer to the transition date.

The announcement is available *here*.

5. DHS Announces TPS Redesignation, 18-Month Extension for Sudan and South Sudan

The Department of Homeland Security has redesignated Sudan and South Sudan for temporary protected status (TPS) and extended their existing TPS designations from May 3, 2013, through November 2, 2014. Those who already have TPS must re-register during the 60-day re-registration period that began on January 9, 2013, and runs through March 11, 2013. Those who do not have TPS may apply during a six-month registration period that began on January 9, 2013, and runs through July 8, 2013.

The announcement is available *here*.

The Federal Register notice for Sudan is available *here*.

The Federal Register notice for South Sudan is available *here*.

6. DOL Announces New H-2A Adverse Effect Wage Rates for Each State, Establishes New Prevailing Wage Rates for Certain H-2A Occupations

The Department of Labor (DOL) has announced new adverse effect wage rates (AEWRs) for each state based on the Farm Labor Survey conducted by the U.S. Department of Agriculture. The AEWRs are the minimum hourly wage rates the DOL has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular agricultural job and area so that the wages of similarly employed U.S. workers will not be adversely affected.

The DOL said it will publish a separate Federal Register Notice to announce the allowable charges for 2013 that employers seeking H-2A workers may charge for meals as well as the maximum travel subsistence reimbursement that a worker can claim. Until that Federal Register notice is published, the agency said that employers should continue to use the current meal charges and maximum travel subsistence at *http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm*.

The Federal Register notice announcing the new AEWRs is *here*.

The DOL also has published a notice establishing new prevailing wage rates for certain occupations processed under H-2A special procedures. The wage rates established by this Federal Register notice apply only to open range production of livestock, itinerant animal shearing, sheepherding and goat-herding, and custom combine operations. The notice is published *here*.

7. USCIS To Implement New Immigrant Visa Fee February 1

On February 1, 2013, U.S. Citizenship and Immigration Services (USCIS) will begin collecting a new fee of $165 from foreign nationals seeking permanent residence in the United States. This new fee was established in USCIS's final rule adjusting fees for immigration applications and petitions announced on September 24, 2010.

The agency said it has worked closely with the Department of State (DOS) to implement the new fee, which will allow USCIS to recover the costs of processing immigrant visas in the United States after immigrant visa-holders receive their visa packages from DOS. This includes staff handling and the cost of producing and delivering the permanent resident card. Applicants will pay online through the USCIS website after they receive their visa packages from DOS and before they leave for the United States. DOS will provide applicants with information on how to submit the payment when they attend their consular interviews. The new fee is in addition to fees charged by DOS associated with an individual's immigrant visa application.

USCIS processes approximately 36,000 immigrant visa packages each month. Prospective adoptive parents whose child will enter the United States under the Orphan or Hague processes are exempt from the new fee.

The Federal Register notice, published at 77 Fed. Reg. 74490 (Dec. 14, 2012), is available *here*.

8. USCIS Issues Operational Guidance for EB-5 Cases Involving Tenant Occupancy

U.S. Citizenship and Immigration Services (USCIS) released long-awaited operational guidance for EB-5 cases involving tenant occupancy on December 20, 2012. USCIS said the memorandum is intended to facilitate adjudication of cases involving issues related to the "tenant-occupancy" methodology for establishing job creation in EB-5 cases. The agency noted that the guidance "has been formulated following careful internal deliberation [and] consultation with sister government agencies," along with a "review of responses to requests for evidence (RFEs) issued in February 2012 to a number of outstanding Regional Center applicants who relied on the tenant-occupancy methodology." USCIS will apply the guidance to pending cases and cases filed on or after December 20, 2012, that rely on the tenant-occupancy methodology.

The guidance does not rescind or supersede other EB-5 guidance.

USCIS noted that among the issues raised in the February 2012 RFEs, USCIS sought evidence that the projected jobs attributable to prospective tenants (which would occupy the commercial space created by the EB-5 capital) would represent newly created jobs, not jobs that the tenant had merely relocated. The agency said that such determinations are necessary to assess whether there is a "reasonable causal link" between the EB-5 enterprise and the job creation that would allow for the attribution of the tenant jobs to the EB-5 enterprise. The RFEs "suggested the types of evidence applicants could submit to make this showing."

In regional center cases that rely on tenant occupancy models, USCIS requires evidence that the claimed jobs result, directly or indirectly, from the economic activity of the EB-5 commercial enterprise. With respect to indirect job creation, applicants and petitioners must project the number of newly created jobs that would not have been created but for the economic activity of the EB-5 commercial enterprise. "In making that projection, they are to use economically and statistically valid forecasting tools," USCIS noted.

The agency said that whether an applicant or petitioner has demonstrated that an EB-5

enterprise caused the creation of indirect tenant jobs requires case-by-case determinations and generally also requires an evaluation of the verifiable detail provided and the overall reasonableness of the methodology as presented. The guidance memo gives additional details about the types of evidence and approaches applicants and petitioners may use, and discusses the appropriate language in approval notices regarding the assumptions underlying the approval.

USCIS said it will issue separate guidance on crediting jobs when more than one EB-5 entity may be seeking credit for an identical position.

The memo is available *here*.

9. ICE Announces Removal Numbers, Issues New National Detainer Guidance, Discontinues State/Local 287(g) Partnership Agreements

U.S. Immigration and Customs Enforcement (ICE) Director John Morton announced on December 21, 2012, the agency's fiscal year (FY) 2012 year-end removal numbers, highlighting trends that underscore the administration's focus on removing from the country convicted criminals and other individuals that fall into priority areas for enforcement.

To further focus ICE resources on the most serious criminal offenders, ICE also issued new national detainer guidance on

the same day. This guidance limits the use of detainers to individuals who meet the department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses, such as traffic offenses and other petty crimes, to ensure that available resources are focused on apprehending felons, repeat offenders, and other ICE priorities. The new guidance applies to all ICE enforcement programs, including the federally administered Secure Communities. ICE priorities include identifying and removing those who have committed crimes, pose threats to national security, have crossed the border recently without authorization, and/or repeatedly violate immigration law. Overall in FY 2012, ICE's Office of Enforcement and Removal Operations removed 409,849 individuals. Of these, approximately 55 percent, or 225,390, of the people removed were convicted of felonies or misdemeanors. This was almost double the number of criminals removed in FY 2008. The convictions included 1,215 for homicide; 5,557 for sexual offenses; 40,448 for crimes involving drugs; and 36,166 for driving under the influence.

In addition, ICE has also decided not to renew any of its agreements with state and local law enforcement agencies that operate task forces under the 287(g) program. ICE said it has concluded that "other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases." The 287(g) program allowed a state or local law enforcement entity to enter into a partnership with ICE to receive delegated authority for immigration enforcement within its jurisdiction. Critics said it diverted resources away from crime-fighting and resulted in profiling of Latinos. As of October 16, 2012, there were 57 such agreements.
The press release is available *here*.

10. USCIS Extends TPS Re-Registration Period for Haitians

On December 27, 2012, U.S. Citizenship and Immigration Services (USCIS) announced an extension of the re-registration period for Haitian nationals who have already been granted temporary protected status (TPS) and seek to maintain that status for an additional 18 months. Because of the impact Hurricane Sandy has had on regions where Haitians reside, USCIS extended the re-registration period through January 29, 2013.

USCIS strongly encourages Haitian TPS beneficiaries to apply as soon as possible. Under this extension, USCIS also will accept applications from eligible individuals who have already applied after the close of the re-registration period on November 30, 2012, and will continue to accept applications through January 29, 2013.

Approximately 60,000 Haitian nationals (and people having no nationality who last habitually resided in Haiti) are eligible for TPS re-registration. TPS is not available to Haitian nationals who entered the United States after January 12, 2011. The initial 60-day re-registration period was established after the Department of Homeland Security (DHS) announced in October 2012 an 18-month extension of the TPS designation of Haiti, from January 23, 2013, through July 22, 2014.

In the October notice, DHS also automatically extended by six months, through July 22, 2013, the validity of employment authorization documents (EADs) for eligible Haitian TPS beneficiaries. USCIS said this will allow sufficient time for eligible TPS beneficiaries whose reregistration is timely to receive an EAD without any lapse in employment authorization.

To re-register, TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization. Individuals seeking to reregister do not need to pay the I-821 application fee. However, a biometric services fee (or a fee-waiver request) is required for all re-registrants 14 years of age and older. All re-registrants seeking employment authorization through July 22, 2014, must submit the Form I-765 fee (or a fee-waiver request). Re-registrants who do not want employment authorization are not required to submit the I-765 fee but must still submit a completed I-765. Failure to submit the required filing fees or a properly documented fee-waiver request will result in the rejection of the reregistration application, USCIS said.

The notice published in the Federal Register, which contains more details on the re-registration period's extension, is available *here*.

11. U.S., Canada Sign Visa and Immigration Info-Sharing Agreement

The United States and Canada signed the U.S.-Canada Visa and Immigration Information-Sharing Agreement on December 13, 2012. The agreement will enable Canada and the United States to share information from third-country nationals who apply for a visa or permit to travel to either country. The Department of State said the agreement is intended to help both countries confirm applicants' identities and identify risks and inadmissible persons at the earliest opportunity.

The agreement authorizes development of arrangements under which the United States may send an automated request for data to Canada, such as when a third-country national applies to the United States for a visa or claims asylum. Such a request would contain limited information, such as the name and date of birth in the case of biographic sharing, or an anonymous fingerprint in the case of biometric sharing. If the identity matches that of a previous application, immigration information may be shared, such as whether the person previously was refused a visa or removed from the other country. The same process would apply in reverse when a third-country national applies to Canada for a visa or claims asylum.

Biographic immigration information sharing is set to begin in 2013, and biometric sharing in 2014. Under the agreement, information will not be shared regarding U.S. or Canadian citizens or permanent residents.

The announcement is available *here*.

12. USCIS To Close Panama City Field Office

U.S. Citizenship and Immigration Services (USCIS) announced on December 18, 2012, that it will permanently close its field office in Panama City, Panama, on February 1, 2013. The Panama City Field Office had jurisdiction over USCIS applications and petitions from Panama, Ecuador, Colombia, Venezuela, Guyana, French Guiana, and Suriname. After February 1, 2013, these countries will be in the jurisdiction of existing USCIS field offices, as follows:

- Ecuador, Colombia, Venezuela, Guyana, French Guiana, and Suriname will be in the jurisdiction of the USCIS Field Office in Lima, Peru.
- Panama will be in the jurisdiction of the USCIS Field Office in San Salvador, El Salvador.
- After February 1, 2013, applications or petitions previously accepted at the Panama City Field Office should be filed as directed in the announcement *here*.

Seyfarth Workforce Authorization Team (SWATeam)

1. USCIS Launches New E-Verify Employers Search Tool

U.S. Citizenship and Immigration Services (USCIS) has launched a new E-Verify Employers Search Tool that allows the user to find employers and federal contractors currently enrolled in E-Verify.

The search tool includes the capability to filter, sort, and export employer results. It replaces the lists of E-Verify employers and federal contractors that previously appeared on the E-Verify website. It includes currently enrolled employers and federal contractors through December 15, 2012. Federal contractors self-report whether their contracts have the E-Verify FAR clause. The search tool includes the business name, federal contractor identifier, federal contract employee verification, city, state, zip code, and workforce size. The search tool includes only employers and federal contractors that have self-reported that their company has five or more employees.

The E-Verify Employers Search Tool, and links to the User Guide and questions and answers, are available *here*.

Seyfarth Immigration Events and News

Seyfarth Shaw Upcoming Events

On February 13, 2013, the Washington, DC office of Seyfarth Shaw will host the Breakfast Briefing: Immigration Update. Pavan Dhillon, Jason Burritt, and Dyann DelVecchio will present an overview of the looming landscape for immigration law and offer updates on immigration hot topics including: current backlogs in green card processing; policies for "conversion" from EB-3 to EB-2 and EB-1; and expansion of E-Verify. Pavan will provide an overview on why every employer should be concerned about Canadian immigration policies – even if the employer does not have a presence in Canada -- based on increased scrutiny of business visitors.

For more information, or to register for this event, please click *here*.

Seyfarth Immigration Attorneys' Recent Media Exposure

Angelo Paparelli was quoted in a December 12, 2012 article in McClatchy News, "Is Senate filibuster rule to blame for immigration impasse?" Angelo commented on the absurdity of a minority of Senators holding up meaningful immigration reform, stating, "When a small minority can overcome the will of a larger consensus, merely by obstruction tactics, the nation's immigration policies and best practices are held hostage."

Read the article *here*.

In addition, Angelo Paparelli has posted several new blog entries on his *Nation of Immigrators* public policy blog:

The 2012 Nation of Immigrators Awards - The IMMIs

Angelo publishes his long-awaited, third annual IMMI award list -- honoring the highs and lows of the past year in America's dysfunctional immigration ecosphere. Find out who Angelo "honored" for his ***Constitutional Illiteracy***, ***Hopeful Baby Steps***, ***Worst Immigration Law*** and ***Head in the Derriere*** awards, as well as a host of other honors. As always, all categories and awardees are chosen by Angelo. Click *here* to review, comment, and offer alternative awardees.

A New Immigration Recipe: Specialty Chefs Need a Dream Act Too

Friend of Angelo, Immigration attorney Nathan Waxman, pens a guest blog that revisits his *2005 post* in Nation of Immigrators. In 2005, Nathan lamented the impact of draconian immigration law and policy on the ethnic restaurant business, and the resulting lack of quality ethnic dishes in New York City. Fast-forward nearly eight years, and our immigration program still does not have a straightforward solution for immigrant culinary professionals, or for Nathan's refined palate for authentic ethnic food.

Read the entire blog *here*.

House GOP Says Immigrant Suffering Hurts Less Than Citizen Suffering

Members of both parties in Congress were vocal in their displeasure with House leadership in delaying relief for Hurricane Sandy victims for political reasons. Angelo points out that these words could have also been applied with equal vehemence and accuracy to the House's other major year-end failure -- its refusal to vote on renewing and expanding the Violence against Women Act. Read more *here*.

By: *Angelo Paparelli, Elizabeth Wheeler* and *John Quill*

Angelo Paparelli is a partner and *Elizabeth Wheeler* is a staff attorney in Seyfarth's Downtown Los Angeles office. *John Quill* is senior counsel in the firm's Boston office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Angelo Paparelli at *apaparelli@seyfarth.com*, Elizabeth Wheller at *ewheeler@seyfarth.com*, John Quill at *jquill@seyfarth.com* or any *Business Immigration* attorney on our website.