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## IMMIGRATION LAW UPDATE:

### NEW I-9 FORM

The USCIS (US Citizenship and Immigration Services) has announced a new I-9 Employment Verification Form. While older versions of the form are still valid (oldest is November 21, 1991), there are some helpful tips regarding acceptable documents and related website links on the [USCIS website](#).

### L-1B VISA UPDATE

The USCIS (US Citizenship and Immigration Services) has announced its guidelines for L-1B Intracompany Transferee Visas, in light of the new L-1 Visa Reform Act of 2004. This provision confirms it is unlawful for an employer to outsource or subcontract its L-1B employees to another company. This new law applies to any new L-1B case filed on or after June 5, 2005 and ALL L-1B extensions. USCIS has confirmed that the L-1B employee cannot have his/her work controlled or supervised by a different employer, or provide services to another employer as "local labor for hire". L-1B employees must continue to apply their "specialized knowledge" for the benefit of the petitioning employer.

As part of the new law, L-1's must now pay a \$500.00 anti-fraud fee for the Visa. Companies that have Blanket L-1 programs must pay this fee for EVERY L-1 VISA APPLICATION filed at a US Consulate, even extensions (recently confirmed by the US Department of State). Moreover, Blanket L-1's also require 1 year of employment with a related entity abroad, which is consistent with regular L-1 requirements. For more information on [L-1 Visas visit our website](#). See the [USCIS website](#) for a copy of the announcement.

### H-1B VISA UPDATE

USCIS has confirmed that H-1B Visas are still available for the fiscal years 2005 (ending September 30, 2005) and 2006 (beginning October 1, 2005). Specifically, USCIS confirmed that only 8,369 H-1B petitions have been approved (or are in the pipeline) which will be counted against the new 20,000 H-1B Visas for FY05, as established by the H-1B Visa Reform Act of 2004 (applicants must have an advanced degree from a US university to qualify for one of the additional FY05 H-1Bs). USCIS also confirmed that they currently have approximately 27,300 H-1B petitions approved or in the pipeline, against the 85,000 H-1B limit for FY06. Employers may find it beneficial to watch for possible H-1B applicants so applications can be filed quickly. For more information on H-1B's visit [the Clark Hill website](#).

### PERM UPDATE

We attended the American Immigration Lawyers Association in June in Salt Lake City, Utah. We had an opportunity for a private one-on-one discussion with William Carlson, Chief of the Office of National Programs, Foreign Labor Certification for the US Department of Labor. Mr. Carlson is responsible for the PERM Labor Certification regulations and implementation, as well as the Backlog Elimination Centers (BECs - which are responsible for cases filed prior to PERM). While users and attorneys continue to complain about instant case rejections and computer glitches, Mr. Carlson was very confident that within 6 months those issues would be solved. At Clark Hill, we remain very positive about the new PERM law and process, and believe that as concerns are addressed, these launch issues will be solved. Many attorneys did confirm that the PERM cases they filed were approved. For more information on PERM and green card filings, visit [the Clark Hill website](#).

We can also confirm that the majority of AILA attorneys have received approvals from the BECs in Philadelphia and Dallas. Only a handful of attorneys nationally indicated they received a denial. The BECs plan to have all cases entered into the system by September 2005, but it could still be 2 years or more before all cases are addressed. Our concerns over the continuing delays at the BECs, and the fact that cases are handled when they are received by the BEC and not when they were originally filed, were addressed with Mr. Carlson.

### **3RD PREFERENCE EMPLOYMENT BASED GREEN CARDS UNAVAILABLE**

Every application for an employment based green card (Adjustment of Status if within the US, or Immigrant Visa at a US Consulate if abroad) must have an Immigrant Visa available at the time of filing. For several years, all of the employment categories have been current, allowing applicants to avoid further processing delays by filing as soon as they are able. However, due to the USCIS backlog reduction efforts, the 3rd Employment Based visa category (EB3) is "unavailable" beginning in July, 2005; this excludes nurses. This means that EB3 applicants for Adjustment of Status or an Immigrant Visa cannot file a new case, or have their case approved until a Visa number is available. Pending cases will continue to be held, and work and travel authorization extensions are permitted. For the latest Visa Bulletin issued by the US Department of State, which is used to announce green card priority dates, visit [the US DOS website](#). For more information on employment based green cards see [the Clark Hill website](#).

### **US VISIT REMINDER**

All foreign nationals who have a nonimmigrant (temporary) US Visa are required to report their US entries and exits through a process called US VISIT. This applies to everyone traveling in and out of the US (via air, land or sea) with a temporary Visa (not green card holders) in their passport, and all persons traveling on the Visa Waiver. Canadian citizens are generally exempt (however, Canadians with E Visas are required to comply). For more information visit [the US Department of Homeland Security website](#).

### **ADJUSTMENT PORTABILITY OPTION**

Employers should bear in mind that potential new candidates may be eligible for hire if they meet the requirements of Adjustment Portability. This provision of the law allows foreign nationals who have an employer sponsored green card (Adjustment of Status) pending for 6 months or more, to begin a job with a new employer in a same or similar position. For more information visit [the Clark Hill website](#). A recent memo greatly expanded the flexibility of this provision for employers and prospective candidates, particularly if the I-140 Immigrant Worker Petition has not yet been approved. While memos are non-binding, this information is an indication of how the (yet to be released) regulations will probably be worded. For a copy of the memo visit [the USCIS website](#).

### **PRIVACY AND SOCIAL SECURITY NUMBERS**

Michigan Law has been amended with the passage of the [Michigan Social Security Privacy Act, MCL 445.81](#). With this new law, employers can face severe penalties for failing to protect the privacy of the social security numbers of their employees. For more information on this new law, see the [May 2005 Clark Hill Employment Law Alert](#). Michigan's Attorney General has provided some helpful tips on protecting yourself from identity theft on [his office's website](#).

### **MICHIGAN DRIVERS LICENSES**

Foreign nationals residing in Michigan may not require a Michigan Drivers Licenses if they are a citizen of France or Germany. While possession of a Michigan drivers license provides other benefits, foreign nationals from these countries are authorized to operate a vehicle in Michigan as long as they have a valid drivers licenses from Germany or France. For more information visit the [Michigan Secretary State's website](#).



## Group Listing

### **Immigration**

**Michael P. Nowlan** (313) 965-8666  
*Co-Practice Group Leader*  
**Elissa Noujaim Pinto** (313) 965-8579

### **Employment and Labor Law**

**Fred W. Batten** (313) 965-8804  
**Joseph C. Bennett** (248) 988-5850  
**P. Robert Brown, Jr.** (313) 965-8311  
**Jennifer S. Buckley** (313) 965-8371  
**Stephanie J. Clifford** (313) 965-8368  
**F.R. (Fritz) Damm** (313) 965-8241  
**Cara Epp** (248) 988-1829  
**Maria C. Fracassa** (248) 988-5899  
**John L. Gierak** (248) 988-5845  
**Danon D. Goodrum** (313) 965-8817  
**Michael W. Groebe** (313) 965-8818  
**Edward Hammond** (248) 988-1821  
**Ralph Houghton, Jr.** (248) 988-1822  
**Mary A. Kalmink** (313) 965-8263  
**Robert A. Lusk** (248) 988-5847  
**Mark W. McInerney** (313) 965-8383  
**William A. Moore** (313) 965-8674  
**Robert Nyovich** (248) 988-5843  
**Rachelle G. Silberberg** (313) 965-8379  
**Reginald M. Turner** (313) 965-8318  
**Florence M. Vincent** (248) 988-5854  
**Barbara A. VanZanten** (313) 965-8290

### **Employee Benefits**

**Edward C. Hammond** (248) 988-1821  
**Florence M. Vincent** (248) 988-5854

**CLARK HILL**  
*PLC*  
ATTORNEYS AT LAW

<p><b>Birmingham:</b> 255 S. Old Woodward Ave. Third Floor Birmingham, MI 48009 248.642.9692 248.642.2174 fax</p>	<p><b>Detroit:</b> 500 Woodward Ave. Suite 3500 Detroit, MI 48226 313.965.8300 313.965.8252 Fax</p>	<p><b>Lansing:</b> 212 East Grand River Avenue Lansing, MI 48906 517.318.3100 517.318.3099 Fax</p>
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