



## IMMIGRATION LAW UPDATE

CLARK HILL  
*PLC*  
ATTORNEYS AT LAW

An Update from Clark Hill's Immigration Law Professionals

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### IMMIGRATION LAW UPDATE:

#### Change in Driver's License Requirements

On February 19th, Governor Jennifer Granholm signed into law a change to the Michigan Vehicle Code to ensure that persons lawfully present in the US can secure a Michigan driver's license, if they meet the other State of Michigan residency requirements. The new law is [Public Act 7 of 2008 \(HB 4505\)](#). As we reported in a [previous Immigration Update](#), the Michigan Attorney General, Michael Cox, issued an opinion on December 27, 2007 that stated that illegal aliens were not permitted to secure a Michigan driver's license. The law was signed to correct the problems experienced by foreign nationals from the Secretary of State's implementation of this opinion. The Secretary of State required first-time applicants for a Michigan driver's license to prove they were "green card" holders or US citizens, and accordingly this excluded a large number of lawfully present foreign nationals.

This new law restores the ability of legally present foreign nationals to obtain a Michigan drivers' license. The requirements to secure a Michigan driver's license have been changed on the [Secretary of State's website](#), but we have concerns that their new process still does not comply with the new law. Among other concerns, the provision requires both a valid visa and I-94 card (when only an I-94 card is required to maintain US status). We will continue to work to resolve this issue.

Clark Hill's [Immigration Practice](#) and [Government Policy and Practice](#) Groups were very involved in discussions with businesses, foreign nationals affected, legislators, and the Michigan agencies to ensure the new law was broad enough to include as many foreign nationals as possible.

#### H-1B Cap Update

Employers are reminded to identify new candidates for new H-1B

status as soon as possible, to ensure that these applications are received on April 1st. That is the first date that an employer is able to sponsor a foreign national who has not possessed [H-1B status](#) before. Employees with approved petitions will be able to begin working in that status on October 1, 2008.

The H-1B is a frequently utilized temporary work visa for professional positions. There are only 65,000 H-1Bs available per year. We expect the annual limit will be reached quickly this year, as only two-thirds of H-1B applications were [accepted for processing last year](#). We do not expect the US Congress to pass a law which would provide for additional H-1Bs in the near future. Once USCIS has received more than enough petitions for H-1B applications, there will be a computer generated random selection process to choose which H-1B petitions will be accepted for processing.

There are an additional 20,000 H-1Bs available for candidates with a Masters Degree or higher from a US university. Those are also expected to be used very quickly. Foreign nationals who work for a non-profit research organization, an institution of higher education, or work in furthering the purposes of either of these, are exempt from the H-1B quota.

The following summarizes some reports from the USCIS Service Center Operations.

. USCIS does not expect a change from last year in the cap-subject H-1B receipt volume. However, while Premium Processing is currently available, it may again need to be suspended for a period of time, as it was last year.

. With regard to filing duplicate H-1B filings with the same employer to increase the chances of obtaining a cap number, the USCIS is drafting a regulation to prohibit this practice. However, USCIS has indicated that it will deny any applications that are found to be duplicates. At this time, we believe that a petition filed under both the regular and master's cap is not considered to be a duplicate.

. Electronic filing will remain unavailable for H-1B petitions.

#### Bill Gates on Capitol Hill - More H-1B Visas

Bill Gates, Microsoft co-founder, has long been a proponent of raising the H1-B visa cap. [Gates appeared on March 12th before the House of Representatives Committee on Science and Technology](#) with the same "wish list" that he's had for years. "America should be doing all it can to attract the world's best and brightest. Instead, we are shutting them out and discouraging those already here from

staying and contributing to our economic prosperity."

### I-9 Fines to Increase on March 27, 2008

On February 22, 2008, [the US Attorney General Michael Mukasey](#) announced that [higher fines](#) will be levied against employers who commit I-9 Employment Eligibility Verification violations. The Attorney General says these increases, which take effect on March 27th, are adjusted to keep with inflation, and are an increase of approximately 25%. A copy of the [Federal Register announcement with a listing of the new fines is available online](#).

### U. S. Immigration and Customs Enforcement ("ICE") Updates

High-Profile Contractors and Employers Draw More ICE Attention  
In 2007, Immigration and Customs Enforcement (ICE) made over [4000 administrative arrests at job sites, and over 800 those arrested were criminally charged](#). ICE has confirmed that construction firms and other companies that perform "high profile" work are at a higher risk of attracting the attention of ICE officials.

### ICE Releases Final Arrest Numbers for Utah Worksite Enforcement Operation

ICE officials arrested 57 illegally present foreign nationals during a worksite enforcement operation at [Universal Industrial Sales Inc.](#) in Lindon, Utah. Universal Industrial Sales was charged with 10 counts of harboring illegal aliens, all of whom are or had been employees of the company. The indictment alleges the company concealed, harbored or shielded the workers from detection for commercial advantage.

In a related story, ICE agents executed a sealed federal search warrant at [Micro Solutions Enterprises](#), a privately-owned manufacturer of computer imaging supplies in Van Nuys, California. Eight current and former employees were taken into custody on federal criminal charges for providing fraudulent information in order to obtain employment. In addition to those arrested on criminal charges, ICE agents found 130 workers at the plant who were in the United States without authorization.

These events continue to demonstrate ICE's efforts to criminally charge owners and others who are aware of the employment of unauthorized foreign nationals. For more on the I-9 Employment Verification Form, and penalties, [see Clark Hill's previous Immigration Update](#).

## Clark Hill's 24th Annual Employment Law Conference

Clark Hill's Employment Law Group will present its [24th Annual Employment Law Conference](#) on May 8th in Dearborn, Michigan. Clark Hill offers this learning opportunity to CEOs, in-house corporate counsel, human resources professionals and others involved in the increasingly complex field of employment, labor and immigration law.

### Extensions for Employment Authorization Cards (EADs)

USCIS has [updated its website](#) to remind foreign nationals with an Employment Authorization Card (EAD) to apply as soon as possible for extensions, but no earlier than 120 days prior to the expiration of the original EAD. EAD cards are issued when foreign nationals secure optional practical training as part of their [F-1 visa status](#), or as part of the [third stage of the green card process](#) (called Adjustment of Status), and a few other categories. If an application for replacement EAD is filed more than 120 days from the expiration date, it will be denied. Immigration's timeframe to adjudicate an EAD card is 90 days.

### Minnesota State Agencies and Contractors to Use E-Verify

Pursuant to the Governor's [executive order](#), all Minnesota State agencies and contractors doing business with the State of Minnesota are required to utilize the federal government's [electronic employment verification \(E-Verify\) system](#) to verify the US work eligibility of new hires. The E-Verify system is currently optional in most states.

### Proposed New H-2A Regulation to Streamline Process and Protect Workers

The H-2A visa is available to foreign nationals who are sponsored by an employer to come to the US to perform temporary agricultural labor. There are two general requirements to obtain workers on H-2A visas. First, the employer must demonstrate that there are not sufficient able, willing and qualified US workers available at the time and worksite needed. Second, the employer must show the use of foreign workers will not create an adverse effect on the wages or working conditions of similarly employed US workers. These farm workers generally receive an hourly wage or are paid by the piece.

USCIS has proposed a [new H-2A regulation](#) that would re-engineer

the temporary labor certification process for agricultural workers, and implement an "attestation-based" application. The current H-2A program is "cumbersome and slow" in large part due to the duplicative tasks performed by the state workforce agencies and the Department of Labor. The new regulations will also include new worker protections, which include expanding recruiting requirements, less ambiguity in state workforce job orders and advertisements, and prohibiting employers from shifting the cost of applying for H-2A visas to workers.

### Backlog in Naturalization Applications

United States Citizenship and Immigration Services (USCIS) officials [have announced that it will take at least 14 to 16 months to clear the backlog in naturalization applications](#) due to last summer's surge. Specifically, the agency received more than 1.4 million applications during June and July 2007. This was 350% more than the agency received for the same period the previous year.

### Employment Visa Availability

The April Visa Bulletin has been posted on the Department of State's (DOS) website, and the priority dates have moved forward for [employment based categories](#). This movement, the DOS believes, will prevent a situation later in the year where there are large amounts of numbers available but not enough time to use them. For a summary of [priority dates](#), and the issues that have arisen with the [Visa Bulletin](#) recently, please visit our [previous Immigration Updates](#).

### No Changes to Immigration Laws in the Near Future

On February 19, 2008, Utah US Senators Hatch and Bennett told the Legislature that changes to federal immigration laws are not likely to occur until well after the next president takes office.

### Background Check Policy Update

US Citizenship and Immigration Service (USCIS) has not changed its background check policies for naturalization applications. However, the agency modified certain guidelines for many other applications (e.g. I-485, I-601, I-687, I-698) to ensure that these cases can proceed. [A summary of this change is on the USCIS website](#). Federal Bureau of Investigation (FBI) name checks were put in place after September 11, 2001, and has been a key reason for many immigration application delays. USCIS made this recent change because

immigration law allows for the detention and removal of individuals if actionable information is received from a FBI name check, after an approval.

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