
DOJ Settles with McDonalds, Quickstuff ICE Fines, I-9 Audits Down,

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Season's Greetings from the Clark Hill Immigration Team

During this season, we are reminded how fortunate we are as a nation to have so many diverse traditions, cultures, and values to celebrate. The Clark Hill Immigration Team embraces this diversity and wishes you and your family a happy holiday season.

DOJ Settles with McDonalds to Resolve Allegations of Immigrant Discrimination

On November 19, 2015, the Department of Justice's (DOJ) Office of Special Counsel settled with McDonalds, after finding "...reasonable cause to believe that [McDonalds] committed unfair documentary practices during the employment eligibility reverification process." (See [Settlement Agreement, page 1.](#)) McDonalds required Legal Permanent Residents (LPR) to show new green cards when their original documents expired. Employees who could not provide a new green card were not allowed to work and some even lost their jobs. The DOJ said similar requests were not made of US citizen employees.

In a statement, the head of the DOJ's Civil Rights Division, Vanita Gupta, said, "Requiring unnecessary documentation of individuals based on their citizenship or immigration status is discriminatory, and the [DOJ] will not hesitate to enforce the law and protect the rights of work-authorized immigrants."

While McDonalds denies any engagement in unfair documentary practices, they have agreed to pay \$355,000 in civil penalties, provide back pay to employees who were wrongfully terminated or prohibited from working, undergo 20 months of monitoring, and train employees on anti-discrimination provisions.

For more information on this settlement, see the [United States Department of Justice website.](#)

Quickstuff on the Hook For \$5M In ICE Fines

On November 24, 2015, Administrative Law Judge Ellen K. Thomas ruled that a US Immigration and Customs Enforcement (ICE) notice for \$5 million in fines against Quickstuff LLC for employment eligibility verification violations is final. ICE filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) in July 2015, alleging that Quickstuff had 4,964 violations of employment eligibility verification provisions. Quickstuff failed to respond to this complaint in the time allotted under OCAHO rules. Quickstuff's counsel claimed their failure to respond was due to counsel's mistaken belief that an automatic stay under the Bankruptcy Code would apply.

Judge Thomas ruled that Quickstuff failed to show good cause for not filing an answer. A stay of the Bankruptcy Code, 11 U.S.C. § 362(a)(1), does not apply to an action by a governmental unit enforcing its police or regulatory powers. As a result, ICE's Notice of Intent to Fine became the final agency decision on the matter. See the [decision here.](#)

ICE Releases Worksite Enforcement FY2014 Annual Report: I-9 Audits Are Down

Despite the two cases mentioned above, I-9 audits are down. According to Immigration and Customs Enforcement (ICE) statistics, the number of I-9 audits decreased by more than half from 2013 to 2014. In 2013, ICE served 3,127 Notices of I-9 Inspections, while in 2014, the number dropped to 1,320. See [ICE's 2013 Factsheet](#) and [ICE's Worksite Enforcement FY2014 Annual Report](#) for more information.

State Program Seeks To Connect Employers and STEM-Trained Immigrants

The Michigan Department of Licensing and Regulatory Affairs (LARA) is launching a new program that will link Michigan employers with immigrants in the science, technology, engineering, and math (STEM) fields. The new program will be called the Michigan International Talent Solutions program and will operate under the Michigan Office for New Americans within LARA.

The program will offer job training in the following areas: professional resume development in US format, assistance with completing job applications, networking and marketing, interviewing, and salary negotiations. There will not be a fee for employers to use the program. Under the program, interested workers must have a green card or other permanent work authorization status, possess at least a bachelor's degree, have a minimum of two years of professional work experience outside the United States, and be proficient in English. For more information, see the [Michigan Office for New Americans website.](#)

USCIS Draft Memo on "Same or Similar Occupational Classification"

Under Section 204(j) of the Immigration and Nationality Act (INA), if an individual has filed an application to adjust their status in the United States and that application has remained adjudicated for 180 days or more, the applicant can change jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed. See the [Clark Hill website for more information on green cards.](#)

On November 20, 2015, United States Citizenship and Immigration Services (USCIS) released a draft memo providing additional guidance to Immigration

Service Officers adjudicating these "same or similar occupational classification" cases. According to the memo, "with respect to whether two jobs are in the same occupation classification, USCIS will look to whether the jobs are identical, resembling in every relevant respect, or the same kind of category or thing." In determining if two jobs are similar, "USCIS will look to whether the jobs share essential qualities or have a marked resemblance or likeness."

In making these determinations, USCIS may refer to the Department of Labor's (DOL) Standard Occupational Classifications (SOC) system, which organizes data for occupational categories. Factors such as the type of work to be performed and the skills, education, and training necessary to perform the work are included in the SOC system. All workers can be classified into a broad occupation code and a detailed occupation code.

If USCIS determines that the two jobs have the same detailed occupational code (meaning, all six digits of the code match exactly), USCIS may treat this evidence favorably in determining if the two jobs are within the same or similar occupational classification. Similarly, if the two jobs have different detailed occupation codes, but they are within the same broad occupation code, USCIS may treat this evidence favorably in determining if the two jobs are within a similar occupational classification. However, it must be shown that the two jobs largely share the same duties and areas of study associated with the classification. In cases where the SOC codes do not match at all, and in all cases generally, USCIS will consider the totality of the circumstances to determine whether the preponderance of the evidence established that the two positions are in the same or similar occupation classifications to utilize section 204(j).

When a case involves an individual moving from a non-managerial or non-supervisory position into a managerial or supervisory position, the applicant must show that the new position is primarily responsible for managing or supervising the same or similar functions of the old position. The same analysis above is applicable.

In addition to the factors above, USCIS will also review the wages offered in the original position and the new position. The mere fact that the wages are the same is not indicative of a same or similar occupation; similarly, a difference in salaries alone is not enough to preclude USCIS from finding that the two positions are the same or similar. For more information, see [USCIS's Draft Policy Memorandum](#). It is expected that final guidance will be issued within a year.

The DOS Eliminates Visa Page Inserts in US Passports

Starting January 1, 2016, the U.S. Department of State (DOS) will no longer add visa pages to passports. Currently, US passport holders have the option to pay for a 24 page visa insert when they run out of adequate space for entry and exit visa stamps. DOS will discontinue this practice to enhance security and abide by international passport standards. Requests for the 24 page insert will be accepted through December 31, 2015. After that date, if additional pages are needed, a new passport must be secured. US passport applicants can choose either a 28 page or a 52 page passport book.

December Visa Bulletin

The [December Visa Bulletin](#) has been released. The priority date for filing an Adjustment of Status (AOS) Application in the employment-based second category (EB-2) China is January 1, 2013 and EB-2 India is at July 1, 2009. The final action date for employment-based second category (EB-2) China remains the same at February 1, 2012. The final action date for EB-2 India will advance forward 10 months to June 1, 2007.

The priority date for filing an AOS in the employment-based third category (EB-3) China is October 1, 2013 and EB-3 India is at July 1, 2005. The final action date for employment-based third category (EB-3) China is April 15, 2012 and for EB-3 India is at April 22, 2004.

The priority date for filing an AOS for EB-2 cases included in the worldwide limit remains current. The final action date for EB-2 cases included in the worldwide limit remains current. See the [Clark Hill website for more information on priority dates](#).