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In Our
Second Century
of Service

IMMIGRATION ALERT

by [Giselle Carson](#), a Marks Gray attorney who practices primarily in the areas of immigration and naturalization and civil litigation.

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DHS rescinds Safe-Harbor procedures for those who receive No-Match letters



Last week, the U.S. Department of Homeland Security (DHS) officially rescinded the proposed safe harbor procedures for employers that receive No-Match letters from the Social Security Administration (SSA) or suspect document letters from the U.S. Immigration and Customs Enforcement (ICE).

The proposed safe harbor rule was enjoined by a lawsuit filed in 2007 and never implemented. The rule provided procedures for employers to follow-up on receipt of a No-Match letter to avoid potential liability for constructive knowledge of a worker's undocumented status.

DHS has indicated that their resources would be better utilized improving E-Verify and other DHS programs to reduce unlawful employment than pursuing and enforcing the proposed No-Match rule.

[Click here to read the rule.](#)

DHS increasing company audits

The Department of Homeland Security (DHS) is ramping up its company audits through unannounced visits by USCIS' Fraud Detection and National Security Division (FDNS). DHS hopes to use these unannounced visits to question employers and foreign-born workers and find labor law and immigration violations.

Companies should thoroughly prepare for these surprise investigations by:

- Auditing their I-9 documents
- Training employees on how to handle visits from investigators
- Having a plan in place to contact outside counsel if a government agency shows up at their business.

Links of Interest

[Giselle Carson](#)

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[Prospective Immigration Client Questionnaire](#)

Just in!



Giselle Carson recently spoke at the AILA Fundamental Conference on employment based nonimmigrant visas and at the Orange Park Sunrise Rotary on employment verification matters.

If you would like Giselle to speak to your group about immigration, please contact her at gcarson@marksgray.com

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The average visit is lasting 20-30 minutes. Investigators are asking to speak to the foreign national and the employee representative who signed the I-129 form; to see the company's tax returns and payroll records; and to tour the employer's place of business.

[Click here to read an ICE FAQ about worksite enforcement.](#)

Supreme Court will decide on two issues important to immigrants

Two cases to be heard in the U.S. Supreme Court in the near future will have an impact on immigrants in the United States. The following is a brief summary of each.



Padilla v. Kentucky

Question: Is defense counsel obligated to give advice about the effect a criminal case might have on a non-citizen defendant's immigration status and case? What happens if that criminal defense attorney provides advice that is not correct?

[Click here to read details of the case.](#)

Kucana v. Holder

Question: In motions to reopen immigration proceedings by the Board of Immigration Appeals, do circuit courts have jurisdiction over these decisions?

[Click here to read details of the case.](#)

Widow penalty struck down

The U.S. District Court for the Southern District of Florida, Fort Pierce Division, found that USCIS cannot revoke an I-130 spouse immigrant petition when the U.S. Citizen spouse/petitioner dies prior to the adjudication of the case. This is a welcomed decision and we hope that DHS in the near future issues a rule abolishing the "widow penalty" as the appellate court decisions through out the U.S. on this issue are mixed. *Maclean v. Napolitano* (S.D. FL 09/24/09)

The current law requires the deportation of foreign nationals who have applied for residency based on their marriage to a U.S. citizen, but whose spouse dies before the residency application is adjudicated.

USCIS launches new website



USCIS has launched a new website that provides increased opportunities to track the status of a case and sign up for updates on a case (through email and text messages) while also making the site easier to navigate. The new drop down menus in the upper left-hand corner of the home page provide a "Where to Start" section to help locate needed documents and assistance.

Visit the new site and send any questions or comments to uscis.webmaster@dhs.gov.

[Click here to visit the new USCIS website.](#)

Q&A on I-485 employment-based green cards

An inventory of I-485, employment-based green cards, is causing a delay in processing some of these applications. Approximately 234,000 people have applied for the 140,000 employment-based visa spots available this year.

The I-485 employment-based inventory statistics can also be found on the USCIS website, or by [clicking here](#).

[Click here for more information on the inventory and processing delay.](#)

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If you need assistance with any immigration-related issues, please contact Giselle Carson or Thyra Reveron at (904) 398-0900.

Marks Gray, P.A. is dedicated to customer service. We monitor proposed and current developments in the law. The contents of this newsletter are not intended as legal advice related to individual situations. If you have any questions about your particular situation, please contact a lawyer.



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