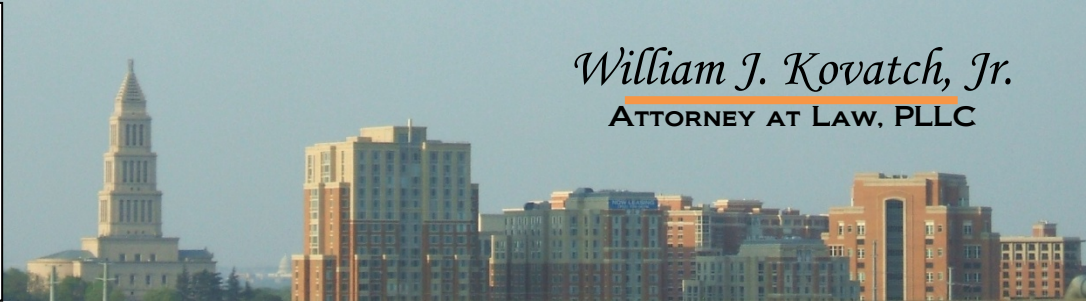


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February 16, 2009

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William J. Kovatch, Jr. is an experienced litigator, with eight years experience litigating cases for the Federal Government. He has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization.

William J. Kovatch, Jr. is a member of the American Immigration Lawyers Association.

This newsletter is meant for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.

## IMMIGRATION LAW NEWSLETTER

### Congratulations to One of Our Newest Citizens!

Alfred S. Jones became a citizen of the United States on February 3, 2009. Alfred, who was born in India, is a software engineer who was a permanent resident for over five years. He is married to a U.S. citizen, and has two U.S. citizen children. His older son, who followed President Obama's inauguration in preschool, has become interested in how voting works. When his son asked if they were all Americans, Alfred reports that he could proudly say, "Yes, we are!" ■



### Stimulus Package Includes Immigration Restrictions

The final agreement concerning the economic stimulus package, known as the American Recovery and Reinvestment Act of 2009 (H.R.1), includes a provision that will restrict the ability of companies who received bailout money under the Troubled Assets Relief Program (TARP) to hire certain immigrant workers. This provision, which was sponsored by Senator Bernie Sanders of Vermont, will make it illegal for companies receiving TARP money to hire specialty workers pursuant to an H-1B visa, unless certain requirements are met. Namely, the H-1B worker cannot displace a U.S. worker, and the employer must make a good faith effort to recruit U.S. workers to fill the position.

Specialty workers are professionals who require at least a bachelor's degree. Employers who hire H-1B workers usually hire highly skilled workers, such a computer technicians. The Sanders Amendment will make it more difficult for TARP recipients to hire such highly skilled foreign workers.

The U.S. Chamber of Commerce and the American Immigration Lawyers Association opposed this amendment, contending, "U.S.

businesses who are trying desperately to recover financially MUST have access to specialty skills inside our country, so they can keep their businesses in the U.S.”

The House version of the stimulus package originally did not contain this provision. The Sanders Amendment was added to the Senate version, and survived the Conference Committee negotiations.■

## USCIS Seeks Further Comment on Proposed Changes to the I-9 Process

The U.S. Citizenship and Immigration Service (“USCIS”) issued an interim final rule, which would change the list of documents an employer may accept to verify employment eligibility. Currently, all new hires have three days from starting a new job to fill-out an I-9 form, and show the employer acceptable proof of identification. In the past, an expired passport could be used to show both identity and authorization to work. The proposed rule would eliminate the ability of an employer to accept an expired document.

The rule was set to take effect on February 3, 2009. Instead, USCIS published a notice extending the date of implementation to April 3, 2009, and inviting comments until March 4, 2009. Comments may be made by online at [www.regulations.gov](http://www.regulations.gov), by mail or hand delivery at Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210.■

## LITIGATION UPDATE

Huarcaya v. Mukasey, Crt. No. 08-0253-ag (2d Cir. December 12, 2008).

The U.S. Court of Appeals for the Second Circuit affirmed a decision by the Board of Immigration Appeals (BIA) denying an alien’s petition to adjust to status based on his marriage to a U.S. citizen. The alien originally entered without inspection, and married a lawful permanent resident. The permanent resident filed a visa petition for him, but withdrew it when they divorced. The alien later married a U.S. citizen, and sought adjustment of status pursuant to section 245(i) of the Immigration and Nationality Act.

Section 245(i) permits an alien who entered the United States without inspection to adjust to status and become a permanent resident if a prior visa petition was filed on or before April 30, 2001, and the alien pays a penalty of \$1000. The alien is eligible, even if that prior visa petition was withdrawn. However, the visa petition must have been approvable when it was filed.

In this case, the marriage on which the prior petition was based concerned a marriage that lasted less than one year. The alien had several children in Peru from two different women. The BIA found that ex-wife lacked key information about these children, and the alien’s financial responsibility for them. The BIA also found that there were inconsistencies between the testimony of the ex-wife and the alien concerning the alien’s employment in Peru, and how old the ex-wife was when she and the alien met.

The BIA that found that in order for an alien to qualify for adjustment of status under section 245(i), the prior marriage must have been *bona fide*. That is, the alien must be able to show the he did not enter into the first marriage purely for immigration purposes.■

