

Siskind's Immigration Bulletin – April 11, 2011

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Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>

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1. Openers

Dear Readers:

I am writing this en route back to Memphis after spending the last few days walking the halls of Congress advocating on immigration issues. There's definitely a different dynamic when it comes to immigration issues. At first, I was assuming that the 2010 election would have created a much more hostile atmosphere than in the past. Granted, the introduction of birthright citizenship legislation and similar bills is not a good sign, but it seems like the heat has been turned down on immigration as members of Congress are focused on bigger issues like three wars and a budget crisis.

My sense is that we're likely to see some kind of enforcement legislation coming out of the House – probably an e-Verify permanent reauthorization and maybe a mandate for all employers to use the system. There will certainly be opposition from the Democrats, but I also suspect there will be an openness to some deal making in the end. It's hard to say what Democrats would demand and what Republicans would exchange, of course, so that's something we'll have to watch. We're also seeing less mention of comprehensive immigration reform as THE strategy for pro-immigration legislators. The votes are simply not there, particularly in the House. In the Senate, Bob Menendez of New Jersey still wield a lot of power and can block legislation, but it's not clear whether he will move toward the center on this issue.

One of the highlights of the trip was attending a reception I helped to organize honoring Senator Kent Conrad for his years of hard work on physician immigration issues. I had the privilege of presenting Senator Conrad with an award from the IMG Taskforce. The IMG Taskforce is a bar organization whose member law firms advocate for improving immigration law. We have worked with Senator Conrad's office for many years on various physician immigration initiatives including the Conrad 30 J-1 waiver program. That critical program helps rural and inner city hospitals around the country recruit American-trained, foreign-educated physicians with more than 9,000 doctors already having gone through the program over the last 17 years. It's set to expire next year and we were in Washington to begin the work of trying to push for a permanent reauthorization of the program before Senator Conrad retires next year. We're also looking to promote a number of improvements to the program that will get more doctors to medically underserved communities.

I was also in DC to spend a day participating in the National Day of Action sponsored by the American Immigration Lawyers Association. We visited congressional offices around the Hill and also were educated on the latest legislative developments. I attended a reception for Immigrants List, a political action committee that raises money to support pro-immigration candidates. I attended a reception sponsored by the American Immigration Council honoring several immigrants who have had

remarkable achievements since arriving in America. And today I attended the Board of Governors meeting for AILA. A busy three days for sure, but hopefully productive ones.

Readers are reminded that they are welcome to contact my law office if they would like to schedule a telephone or in person consultation with me or one of my colleagues. If you are interested, please call my office at 901-682-6455.

Regards,

Greg Siskind

2. ABCs of Immigration Law: L-1 Intracompany Transfer Visas

What is an L-1 intracompany transfer visa?

L-1 intracompany transfer visas are non-immigrant visas available to persons coming to work in the US for an employer that is related to a company the applicant worked for prior to entering the US.

What are the advantages of an L-1 intracompany transfer visa as opposed to other types of visa?

While there are a number of important requirements to qualify in this category, the category offers a number of advantages that make it worth considering over other types of visas. For example, there is no annual limit on the number issued, one may pursue permanent residency while on an L-1 visa and for many L-1As, there is a matching permanent residency category that makes getting a green card relatively quick and pain-free.

What are the requirements for an L-1 intracompany transfer visa?

The first requirement for the L-1 is for the applicant to have been continuously employed abroad for one year of the last three for a parent, affiliate, or subsidiary of a US employer. The employer may be a company or other legal entity including a profit, non-profit, religious, or charitable organization. It does not matter if the company is incorporated or not. Any time spent working in the US will not count toward the one year of required employment, though time spent in the US will not be considered to have disrupted the continuity of employment abroad. It is possible to use a combination of part-time employment for affiliated companies under certain circumstances.

Second, the foreign firm and the US firm must have a "qualifying relationship." Both the US and the foreign firm must have common majority ownership, or, where there is less than majority ownership, common control by the same person or entity. Ownership by a common group of owners where no owner has control or a majority interest can cause a problem if each individual owner does not own approximately the same amount of both the US and the foreign company. This problem can

sometimes be worked around if the owners have set up a voting agreement to ensure that there are not different groups controlling the foreign firm and the US firm.

Third, the applicant must be coming as a manager, executive or specialized knowledge employee. "Specialized knowledge" refers to employees with

- a special knowledge of the company's products and their applications in world markets;
- an advanced or proprietary knowledge of the company's processes or procedures.

Fourth, the applicant must intend to depart the US when his or her stay is over. But the applicant may also pursue permanent residency simultaneously without a negative impact on the ability to keep or extend an L visa. This is because the doctrine of dual intent applies to L-1 visas (just like H-1B visas). This makes the L visa a popular option for multinational firms.

What is the difference between an "executive" and a "manager"?

An "executive" is one who directs the management of the company or a major part or function of the organization. Typical executive positions are presidents, vice-presidents and controllers. An executive is expected to have a supervisory role in the company (either over personnel or a function) and would not include people who are primarily performing the specific tasks of production or providing service to customers. A "manager" directs the organization, a department, or a function of the organization. Like executives, a qualifying manager will not be overseeing the primary performance of a task. Exceptions apply when a manager or executive is coming to open a new office.

How long can executives and managers stay in L-1 status?

Executives and managers may stay in L-1 status for up to seven years. They are granted L-1A status.

How long can "specialized knowledge" employees stay in L-1 status?

Specialized knowledge employees may stay in the US for up to five years. Their visas are called L-1Bs. Those who wish to obtain L-1B visas must do labor certification. The visas will be granted with an expiration of up to three years. Whether the visas are multiple entry or not depends on the applicant's country of origin.

What about people coming to open up a new office in the US?

Persons coming to open up a new office in the US will only be granted a one-year stay in the US. The INS will also typically require additional information about the plans for the new office such as proof that office space has been obtained, that the applicant has had the appropriate experience with the foreign company and that the foreign company will remain in existence during the full period of the applicant's transfer to the US. If the company wants to have the L-1 visa extended beyond the

initial year, it will have to demonstrate at the time of extension that it has proceeded with the plans outlined in the initial petition.

The INS will also more closely scrutinize cases where the transferred employee also has an ownership interest in the company, since the INS may not believe the owner intends to ever leave the US. The US employer will need to show here that the firm's need for the transferee is not indefinite and that the transferee's foreign business interests are a strong lure for the person to return upon the expiration of the transferee's stay in the US.

How do I apply for L-1 status?

Applications for L-1 visa status must first be approved by the Regional INS Service Center having jurisdiction over the location where the transferred employee will be situated. The employer must send the Application for Non-Immigrant Visa and L Supplement, petition letter, supporting documentation and filing fee to the INS Service Center. After the INS Service Center approves the application, the employee must apply at the US Consulate for the visa. The Consulate normally approves the application unless it believes the INS has been defrauded or the INS was not aware of important information.

What if my company has a large number of applicants?

There are special procedures that make it easier for companies sending over large numbers of applicants to get L-1 visas for their employees. Companies that qualify can receive a "blanket approval" for all of their workers rather than having to apply to INS individually for each employee. To qualify for a blanket petition, the company must meet the following tests:

- The US and foreign offices must be engaged in commercial trade or services;
- The employer's US office must have been in business for at least a year;
- The employer must have at least three domestic or foreign branches, subsidiaries, or affiliates;
- The Employer must show one of the following: a) at least ten L-1 visas were approved in the last year; b) the company had US sales of at least million, or c) the US work force numbers over 1,000 workers.

The procedures for filing are largely similar to a normal L-1 application except that the employer must also submit evidence showing the above requirements are met and the firm's petition letter can be replaced with a company letter summarizing the basis for the L-1 petition. A key difference between blanket L-1 employees and regular L-1 employees is that the employee need only work for six months outside the US for the company rather than a year.

Are there any benefits available to L-2 spouses of L-1 visa holders?

L-2s can seek employment authorization by submitting an I-765 application after acquiring L-2 status. Applicants for employment authorization should remember, however, that it could often take up to three months to get this work authorization.

What is the difference between EB-1 Multinational Manager/Executive category for employment-based green cards and the L-1A visa category?

The EB-1 Multinational Manager/Executive category for employment-based green cards closely resembles the L-1A visa category. The green card requires a showing of all of the same evidence. The main additional requirement is that the US operation be in existence for at least a year. The category is very popular because applicants can avoid the onerous labor certification process, they can have an ownership interest in the company and they can proceed to the green card relatively quickly. Note, however, that if an employee hopes to get a green card via the multinational executive route, he or she will need a year abroad working for the company. That could be a problem for L-1s who came on blanket petitions and only had six months with the company.

3. Ask Visalaw.com

In our Ask Visalaw.com section of the SIB, attorney [Ari Sauer](#) answers immigration law questions sent in by our readers. If you enjoy reading this section, we encourage you to visit Ari's blog, [The Immigration Answer Man](#), where he provides more answers to your immigration questions. You can also follow The Immigration Answer Man on [Facebook](#) and [Twitter](#).

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

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1) Question:

In 2007, my company filled an I-140 for me under the EB-3 category using a substitution Labor Certification from another employee that had a priority date of September 2006. I have now earned an MBA degree. Can we port the priority date from EB-3 I-140 to the EB-2 I-140, even though it is based upon a substitution Labor Certification?

Answer:

Yes, as long as your I-140 has been approved, you can recapture the 2006 priority date, even though it is based upon a substitution Labor Certification. You will need a new PERM Labor Certification for the EB-2, though.

Also, keep in mind that just because you now have an MBA doesn't necessarily mean you can now have an EB-2 approved. For an EB-2 to be approved, the position must require a Masters degree or the equivalent as the minimum qualification to be able to perform the duties of the position. Having the degree isn't enough. The job must also require that degree. So you cannot have an EB-2 approved for the same position. Since you were working in that position before you earned the degree, it is obviously not required to perform the duties of the position. You may be able to have an EB-2

approved for a different position in the company, if an MBA or the equivalent is necessary for the position.

2) Question:

I am a U.S. Permanent Resident. I have an 8-year-old son, who was born out of wedlock. Can I file a petition for my child as his father?

Answer:

Under the immigration laws, a U.S. citizen or Permanent Resident can petition for a child if they fall under one of the following categories:

- 1) A child born in wedlock;
- 2) A step-child, but only where the parents married before the child's 18th birthday;
- 3) A child born out of wedlock where the child was legitimated before the child's 18th birthday under the laws of the country where either the child or the father resides and the child is in the legal custody of the legitimating parent at the time of the legitimation;
- 4) A child born out of wedlock, who has not been legitimated, but who is the natural child of the parent. If the parent is the father, he must also show that an ongoing father-child relationship exists;
- 5) An adopted child, where the adoption took place before the child's 16th birthday, and the child has resided with the adoptive parents at least two years (although there are different rules where the parents adopt two siblings).

A U.S. Permanent Resident can only petition for an unmarried child.

3) Question:

I became a Permanent Resident last year. I got married after I became a Permanent Resident. I want to petition for my wife and two kids (7 years old and 6 months old) who are in my home country. Do I need a separate I-130 form for each or can I place them all on one?

Answer:

The spouse of a U.S. Permanent Resident can have derivative beneficiaries. So your children can apply for an immigrant visa with your wife based upon the I-130 petition filed for her. Additional I-130 petitions for the children are not required. However, if you naturalize before the children become U.S. Permanent Residents, then you will need to file separate I-130 petitions for the children, since the spouse of a U.S. citizen cannot have derivative beneficiaries.

4. Border and Enforcement News:

Officials: border delays costly

The Gannett Washington Bureau reports that officials from the U.S. Border Counties Coalition say long delays moving people across the U.S.-Mexican border are costing these counties billions of dollars. A study by the San Diego Association of

Governments, for example, estimated that wait times cost an estimated total of \$7.2 billion in 2007.

Officials from border counties in California, Arizona, New Mexico, and Texas blamed outdated facilities and small staffs at entry points for their inability to process the large number of vehicles trying to cross the border. The resulting traffic jams discourage Mexicans from crossing the border to shop and do business. They urged President Obama to fund an \$84 million project to double the number of traffic lanes at Mexicali in Baja California and to increase funding for projects such as the Southwest Border Prosecution Initiative and the State Criminal Alien Assistance Program.

<http://www.azcentral.com/business/articles/2011/03/11/20110311officials-border-delays-costly.html>

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New border technology slow to be deployed

The Associated Press reports that the Government Accountability Office (GAO) expects the technology replacing the defunct SBI net virtual fence project to take at least another decade to be implemented. GAO officials said a mix of cameras, radar, and other technology will first be deployed to the border in Arizona over the next two years and is expected to be completed by 2015 or 2016. Next, the project would expand to Texas, New Mexico, and California but would not be completed until 2021. Mark Borkowski, Customs and Border Protection assistant commissioner for technology innovation and acquisition said the new equipment could be deployed more quickly if Congress allocated the money. The first phase of the project in Arizona is estimated to cost \$755 million.

<http://www.google.com/hostednews/ap/article/ALeqM5iJXJodaWdfV-puafGpuT7Oh10QZw?docID=0e3536ca9efd452cab4e1da296d71b41>

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ICE launches Self-Verify

Fox News reports that ICE launched E-Verify Self Check, an online program that will enable workers to check their own immigration status. Initially, the service will be launched in Arizona, Idaho, Colorado, Virginia, Mississippi, and the District of Columbia and extended to 16 more states in 2012. Homeland Security Secretary Janet Napolitano described E-Verify Self Check as a 'voluntary, free, fast and secure service' that gives users an opportunity to submit corrections of any inaccuracies to their records before seeking employment. So far in fiscal year 2011, E-Verify has received over seven million data searches.

In addition, *The Washington Post* reports that the federal government is exploring the possibility of using a credit rating service like Equifax to verify the identity of American workers and make it more difficult for undocumented immigrants to use stolen Social Security numbers to obtain work.

<http://latino.foxnews.com/latino/politics/2011/03/22/ice-launches-self-verify/>

http://www.washingtonpost.com/local/us-may-strengthen-identity-verification-system-for-workers/2011/03/21/ABH8Si8_story.html

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Report criticizes immigrant detention system

Reuters reports that a study by the Inter-American Commission on Human Rights (IACHR) shows that immigrants detained in the United States lack adequate access to legal representation and medical care. The report, entitled 'Immigration in the United States: Detention and Due Process,' based its finding on research that included visits to six immigration detention facilities in Arizona and Texas. IACHR found that the system is over reliant on detention, which in turn has a negative impact on due process. The report is available at:

<http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf>

<http://www.reuters.com/article/2011/03/17/us-immigration-study-idUSTRE72G8M120110317>

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Napolitano: U.S. border towns with Mexico are safe

The Associated Press reports that U.S. Secretary of Homeland Security Janet Napolitano said that security on the U.S.-Mexico border 'is better now than it ever has been' while visiting the Bridge of The Americas border crossing. After meeting with the mayors of the border towns of El Paso, Yuma, and Nogales, Napolitano tried to dispel the misconception that violence in Mexico has spilled over to bordering U.S. towns. She cited a reduction of 36 percent in the number of illegally present immigrant detentions and a 22 percent increase in the total value of imports crossing the border as evidence that the border situation has improved. However, she said there 'is much work to do' and announced that the Department of Homeland Security will deploy 250 more border agents and expects to have 300 more when the next budget is approved.

http://www.google.com/hostednews/ap/article/ALeqM5jCf0_Z-8v0SfdA1gGvvc-eynuuZA?docId=880757ed582b49fabad6015928347aac

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5. News from the Courts:

Ringleader faces up to five years for arranged weddings

The Press Herald (ME) reports that Rashid Kakande, a Ugandan man convicted of conspiring to defraud the U.S. government, faces up to five years in prison and a maximum fine of \$250,000. Kakande is accused of arranging fifteen weddings between Maine residents and Africans who wanted to remain in the United States after their visas expired.

http://www.pressherald.com/news/ringleader-faces-up-to-five-years-for-arranged-weddings_2011-03-25.html

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6. News Bytes:

New census milestone: Hispanics to hit 50 million

The Associated Press reports that Hispanics accounted for more than half of the U.S. population increase over the last decade. Official census data has the number of Hispanics at roughly 47 million and that total is expected to surpass 50 million when figures for New York, Maine, And the District of Columbia are released. The population changes will result in the shift of 12 house seats and electoral votes affecting 18 states, including Mississippi, Georgia, Maryland, Florida, Arizona, Nevada, Texas, California, Mexico, and Hawaii.

http://news.yahoo.com/s/ap/20110324/ap_on_re_us/us_census2010_population

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USCIS halts green-card decisions for same sex-spouses

The Washington Post reports that foreign nationals who are married to U.S. citizens of the same sex may apply for spousal green cards, but the approval process will be put on hold until the USCIS receives guidance from the Department of Homeland Security. This decision was made in response to the Obama administration's announcement that it would no longer defend the constitutionality of the 1996 Defense of Marriage Act.

http://www.washingtonpost.com/politics/federal-agency-halts-green-card-decisions-for-some-gay-immigrants/2011/03/28/AFcCIerB_story.html

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Arizona rejects more immigration crackdowns

Politico reports that the Arizona Senate rejected five immigration enforcement and birthright citizenship measures. One bill would have required hospitals to check the citizenship status of patients and notify authorities if they suspected anyone in their care of being an illegally present immigrant. Another bill would have demanded public school districts to monitor the children of illegally present immigrants. A third measure would have required proof of citizenship or legal immigration status in order to attend state universities or collect federal benefits. The final two bills were designed to trigger a court challenge to birthright citizenship as defined by the 14th amendment.

<http://www.politico.com/news/stories/0311/51541.html>

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Japanese nationals eligible for immigration help

The Associated Press reports that USCIS has offered temporary immigration benefits for Japanese nationals struggling after the earthquake and tsunami. Eligible nationals may seek an extension of nonimmigrant status, expedited processing of advance parole requests, quick review of requests for off-campus employment authorization for F-1 students, accelerated employment authorization, and hastened processing of immigrant petitions for immediate relatives of U.S. citizens and lawful permanent residents.

http://www.necn.com/03/18/11/Japanese-nationals-eligible-for-immigrat/landing_nation.html?&blockID=3&apID=6d591bcadcb3496db0cc03a647e56426

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Maryland Senate approves in-state tuition bill

The Washington Post reports that the Maryland Senate passed legislation that would make undocumented immigrants eligible for in-state tuition benefits at the state's public colleges. The bill's lead sponsor, Sen. Victor R. Dominguez, says it is essential to offer educational opportunities to the children of illegally present immigrants, arguing that they didn't choose to come to Maryland, their parents did.

http://www.washingtonpost.com/local/politics/maryland-senate-approves-in-state-tuition-bill/2011/03/14/ABxs2IW_story.html

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Study: More immigrant families are intact

United Press International reports that a study conducted by sociologists at Penn State University shows that children of immigrants are more likely to live in households with two married parents than children of natives in similar ethnic groups. The study asserts that the intact family structure may offer immigrant children economic and social advantages that help them adapt to life in the United States.

http://www.upi.com/Science_News/2011/03/15/Study-More-immigrant-families-are-intact/UPI-34741300246503/

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Committee OKs college financial aid for illegally present immigrants

The Press Enterprise (Riverside, CA) reports that a California legislative committee passed two bills that would make illegally present immigrant students eligible for financial aid. Although former Governor Arnold Schwarzenegger vetoed earlier versions of the measure, backers are optimistic that Governor Jerry Brown will be supportive since he has campaigned in favor of the California Dream Act.

A 2001 law granted illegally present immigrants who spend three years in and graduate from a California high school in-state tuition, but these students are ineligible for financial aid. One of the bills, AB 131, would give those students access to state-funded financial aid while the other, AB 130, would make students eligible for millions of dollars in private scholarship money.

http://www.pe.com/localnews/stories/PE_News_Local_D_dream16.22ca54f.html

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Kansas House committee bottles up immigration bill

The Kansas City Star reports that the Kansas House Judiciary Committee voted against a proposal that would require law enforcement to check the immigration status of those they suspect to be illegally present immigrants. The bill also would

have required state and local governments and their contractors to run citizenship for anyone seeking public aid. Some Republicans had tried to amend the bill to require law enforcement to have 'probable cause' to run a background check.

<http://www.kansascity.com/2011/03/14/2726156/kansas-committee-bottles-up-immigration.html>

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SD House rejects bill to punish businesses that hire illegally present immigrants

The Associated Press reports that the South Dakota House rejected a bill that would have made it a state crime to hire illegally present immigrants by imposing a civil for a first offense and harsher penalties for subsequent offenses. The measure failed 33-35 with opponents arguing that the bill was an unnecessary duplication of federal law. Supporters argued that the state needed to take action because the federal government has not done enough to enforce national immigration laws.

<http://www.therepublic.com/view/story/12915949056c48dd805d61dbc469be42/SD-XGR--Illegal-Immigrants/>

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Study: U.S. immigration policies may cause dearth of talent

The Economic Times reports that a study released by the Federal Reserve Bank of Dallas says that the strict numerical cap on employment-based visas has caused a slowdown in the entry of highly-skilled migrants. The report titled 'From Brawn to Brains' notes that immigrants with more than a high school education contributed \$105,000 more in taxes than they used in public services, while lower-skilled migrants actually cost \$89,000 more than they contributed in taxes. U.S. Federal senior economists pointed out that too much focus in Washington on illegally present immigrants has overshadowed the fact that the legal system of immigration needs comprehensive reform in order to fix a 'web of outmoded, contradictory and inefficient quotas, rules, and regulations.' The report is available at:

<http://www.dallasfed.org/fed/annual/2010/ar10b.pdf>

<http://economictimes.indiatimes.com/news/news-by-industry/services/travel/visa-power/us-immigration-policies-may-cause-dearth-of-talent-study/articleshow/7682738.cms>

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Immigration crackdown moves in Florida House

The Herald Times (FL) reports that the Florida House passed an immigration reform measure that would require police to check the immigration status of a person who is under arrest or subject of a criminal investigation. In addition, all employers would be required to verify their employees' work statuses. Although Governor Rick Scott pledged to bring an Arizona-style immigration law to Florida, this measure stops just short of Arizona's requirement to determine the immigration status of a person with whom a police officer makes 'any lawful contact.'

The Miami Herald reports that Republican Sen. Anitere Flores introduced a bill to the Senate that would require jail, prison, and other detention officers to check the status of an inmate. Advocates from the Florida Immigrant Coalition and business interests such as the Florida Chamber of Commerce and the Florida United Business Association have voiced their opposition to both measures.

<http://www.miamiherald.com/2011/03/11/2108920/immigration-crackdown-moves-in.html>

http://www.miamiherald.com/2011/03/14/2115000/florida-senate-relaxes-e-verify.html?asset_id=2115073&asset_type=audio

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7. Washington Watch:

Obama vows Salvadorian aid, immigration reform

The Washington Times reports that in a visit to El Salvador, President Obama vowed to push the U.S. Congress to pass an immigration bill to aid the country. He assured El Salvador, which has almost 2 million of its citizens living in the United States, that his administration is still committed to passing comprehensive immigration legislation.

<http://www.washingtontimes.com/news/2011/mar/22/obama-vows-salvadoran-aid-immigration-reform/?page=2>

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Obama won't suspend deportations

The Washington Times reports that President Obama says he does not have the power to suspend deportations, a move many immigrant-rights advocates had hoped could grant de-facto legal status to hundreds of thousands of illegally present immigrants. In a town hall hosted by the Spanish-language Univision broadcast network, President Obama said that the law is very clear in terms of immigration enforcement and to 'ignore those congressional mandates would not conform with my appropriate role as president.'

<http://www.washingtontimes.com/news/2011/mar/28/obama-rules-out-back-door-legalization-of-immigran/>

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8. Updates from the Visalaw.com Blogs

[Greg Siskind's Blog on ILW.com](#)

- [IMMIGRANT OF THE DAY: PELE - SOCCER LEGEND](#)
- [H-1B HEARING TOMORROW IN THE HOUSE](#)
- [EMILY WAS DEPORTED](#)
- [REPORT: 1 IN 4 SCIENTISTS, ENGINEERS ARE FOREIGN-BORN](#)
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- [NFAP: EMPLOYERS HAVE PAID OVER \\$3 BILLION IN MANDATORY FEES TO HIRE SKILLED FOREIGN NATIONALS IN PAST DECADE](#)
- [MAN SENTENCED TO PRISON FOR FAKING H-1B TECH WORKER PETITIONS](#)
- [JUDGE HALTS DEPORTATION OF SAME SEX SPOUSE](#)
- [IT'S OFFICIAL: USCIS ACCEPTING SAME SEX MARRIAGE GREEN CARD PETITIONS](#)
- [TWO USCIS OFFICES ACCEPTING SAME SEX MARRIAGE GREEN CARD PETITIONS](#)
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- [WWII VET FIGHTS OVER HIS CITIZENSHIP](#)
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- [IMMIGRANT OF THE DAY: ALI VELSHI - JOURNALIST](#)
- [USCIS ANNOUNCES ADDITIONAL ACOMODATIONS FOR JAPANESE NATIONALS](#)
- [ARIZONA AND KANSAS BACK OFF IMMIGRATION BILLS](#)
- [USCIS BACKS DOWN ON CONTROVERSIAL TEACHING HOSPITALS H-1B CAP INTERPRETATION](#)
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- [IMMIGRANT OF THE DAY: EDUARDO SAVERIN - ENTREPRENEUR](#)
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- [USCIS ANNOUNCES DISASTER POLICY FOR JAPANESE AS IT RESUMES HAITIAN DEPORTATIONS](#)

The SSB I-9, E-Verify, & Employer Immigration Compliance Blog

- [CHIPOTLE WORKERS QUIT IN ANTICIPATION OF I-9 AUDIT](#)
- [MISSISSIPPI FIRM NOW FACING CIVIL SUIT](#)
- [FAY ARTICLE EXPLAINS I-9 FINE CALCULATIONS](#)
- [STAFFING COMPANY EMPLOYEES SENTENCED TO PRISON](#)
- [HOWARD INDUSTRIES AGREES TO PAY \\$2.5 MILLION FINE](#)

The Visalaw Healthcare Immigration Blog

- USCIS PLANS TO CLARIFY THAT TEACHING HOSPITALS REMAIN EXEMPT FROM H-1B CAP

[Karen Weinstock's Visalaw Georgia Immigration Blog](#)

- [GEORGIA GOVERNOR ON TIGHT IMMIGRATION SPOT](#)
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9. State Department Visa Bulletin: May 2011

*Number 32
Volume IX
Washington, D.C.*

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **May**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April **8th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

4. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. **(F2A)** Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

*Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW

cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

5. On the charts below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01MAY04	01MAY04	01MAY04	01MAR93	15JUL95
F2A	08JUN07	08JUN07	08JUN07	01JAN07	08JUN07
F2B	15APR03	15APR03	15APR03	01AUG92	01MAR00
F3	01MAY01	01MAY01	01MAY01	15NOV92	15FEB92
F4	08MAR00	22JAN00	08MAR00	15FEB96	08APR88

*NOTE: For May, F2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN07. F2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN07 and earlier than 08JUN07. (All F2A numbers provided for MEXICO are exempt from the per-country limit; there are no F2A numbers for MEXICO subject to per-country limit.)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01AUG06	01JUL06	C	C
3rd	22AUG05	15APR04	15APR02	08SEP04	22AUG05
Other Workers	08SEP03	22APR03	15APR02	08SEP03	08SEP03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Private Programs	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2011 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **May**, immigrant numbers in the DV category are available to qualified DV-2011 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	42,000	Except: Egypt 31,200 Ethiopia 26,200 Nigeria 15,450
ASIA	23,500	
EUROPE	27,800	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,175	
SOUTH AMERICA, and the CARIBBEAN	1,150	

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JUNE

For **June**, immigrant numbers in the DV category are available to qualified DV-2011 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed	

	Separately	
AFRICA	49,300	Except: Egypt 34,300 Ethiopia 28,525 Nigeria 17,150
ASIA	28,600	
EUROPE	29,450	Except: Uzbekistan 27,800
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,300	
SOUTH AMERICA, and the CARIBBEAN	1,300	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2011 program ends as of September 30, 2011. DV visas may not be issued to DV-2011 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2011 principals are only entitled to derivative DV status until September 30, 2011. DV visa availability through the very end of FY-2011 cannot be taken for granted. Numbers could be exhausted prior to September 30.

D. VISA AVAILABILITY DURING THE COMING MONTHS

Family-sponsored: The extremely high level of demand during the first few months of FY-2011 resulted in the retrogression of most worldwide cut-off dates in January or February. While most of these cut-offs have begun to advance slowly, heavy demand in the Family First preference has caused a further retrogression for May. At this time it is not possible to predict the rate of forward movement, but some movement is anticipated in most categories for the remainder of the fiscal year.

Employment-based: At this time the amount of demand being received in the Employment First preference is extremely low compared with that of recent years. Absent an immediate and dramatic increase in demand, this category will remain "Current" for all countries. It also appears unlikely that a Second preference cut-off date will be imposed for any countries other than China and India, where demand is extremely high. Based on current indications of demand, the best case scenarios for cut-off date movement each month during the coming months are as follows:

Employment Second: Demand by applicants who are "upgrading" their status from Employment Third to Employment Second preference is very high, but the exact amount is not known. Such "upgrades" are in addition to the known demand already reported, and make it very difficult to predict ultimate demand based on forward movement of the China and India cut-off dates. While thousands of "otherwise unused" numbers will be available for potential use without regard to the China and India Employment Second preference per-country annual limits, it is not known how the "upgrades" will ultimately impact the cut-offs for those two countries. (The allocation of "otherwise unused" numbers is discussed below.)

China: none to three weeks expected through July. No August or September estimate is possible at this time.

India: One or more weeks, possibly followed by additional movement if demand remains stable. No August or September estimate is possible at this time.

Employment Third:

Worldwide: three to six weeks

China: one to three weeks

India: none to two weeks

Mexico: although continued forward movement is expected, no specific projections are possible at this time.

Philippines: three to six weeks

Please be advised that the above ranges are estimates based upon the current demand patterns, and are subject to fluctuations during the coming months. The cut-off dates for upcoming months cannot be guaranteed, and no assumptions should be made until the formal dates are announced.

Allocation of “otherwise unused” numbers in accordance with Immigration and Nationality Act (INA) Section 202(a)(5)

INA Section 202(a)(5) provides that if total demand in a calendar quarter will be insufficient to use all available numbers in an Employment preference, then the unused numbers may be made available without regard to the annual per-country limits. Based on current levels of demand, there will be otherwise unused numbers in the Employment First and Second preferences. Such numbers may be allocated without regard to per-country limits, once a country has reached its preference annual limit. Since under INA Section 203(e) such numbers must be provided strictly in priority date order regardless of chargeability, greater number use by one country would indicate greater demand by applicants from that country with earlier priority dates. Based on amount and priority dates of pending demand and year-to-date number use, a different cut-off date could be applied to each oversubscribed country, for the purpose of assuring that the maximum amount of available numbers will be used. Note that a cut-off date imposed to control the use of “otherwise unused” numbers could be earlier than the cut-off date established to control number use under a quarterly or per-country annual limit. For example, at present the India Employment Second preference cut-off date governs the use of numbers under Section 202(a)(5), India having reached its Employment Second annual limit; the China Employment Second preference cut-off date governs number use under the quarterly limit, since China has not yet reached its Employment Second annual limit.

The rate of number use under Section 202(a)(5) is continually monitored to determine whether subsequent adjustments are needed in visa availability for the oversubscribed countries. This helps assure that all available Employment preference numbers will be used, while insuring that numbers also remain available for applicants from all other countries that have not yet reached their per-country limit.

As mentioned earlier, the number of applicants who may be "upgrading" their status from Employment Third to Employment Second preference is unknown. As a result, the cut-off date which governs use of Section 202(a)(5) numbers has been advanced more rapidly than normal, in an attempt to ascertain the amount of "upgrade" demand in the pipeline while at the same time administering use of the available numbers. This action risks a surge in demand that could adversely impact the cut-off date later in the fiscal year. However, it also limits the possibility that potential demand would not materialize and the annual limit would not be reached due to lack of cut-off date movement.

E. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

<http://travel.state.gov>

From the home page, select the VISA section which contains the Visa Bulletin.

To be **placed on** the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:

Subscribe Visa-Bulletin *First name/Last name*
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listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

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