

Siskind's Immigration Bulletin – October 25, 2010

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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:

In a little more than a week, voters across the United States will cast ballots in the 2010 midterm elections. The pollsters are to be believed, Republicans will make gains across the board. Some in the pro-immigration community greatly fear what may come. The conventional wisdom holds that Republicans are generally anti-immigration will seek to promote such an agenda.

I'm not quite as fearful. Certainly, losing Zoe Lofgren as the House Immigration Subcommittee Chair would be a great loss as would seeing Sen. Chuck Schumer no longer chairing the Senate Subcommittee. And seeing Congressman Lamar Smith or Sen. Chuck Grassley running the show on either committee is indeed worrisome.

But, history has certainly shown that the pro-immigration party doesn't necessarily deliver pro-immigration results and the anti-immigration party doesn't necessarily lead to more restrictionist legislation. The last two years alone have shown this. Despite having the White House, the House of Representatives and the Senate, Democrats have failed to pass any pro-immigration legislation. Perhaps the most anti-immigration legislation last 20 years, the 1996 Immigration Act, was signed by Democratic President Bill Clinton. The pro-immigration 1990 Immigration Act was signed by Republican Pres. George Bush and the pro-immigration AC 21 legislation was passed by a Republican House of Representatives.

Obviously the anti-immigration rhetoric espoused by many candidates in this election cycle has been cause for concern. On the hand, the overwhelming defection of Latino voters to the Democratic Party over the last five years has caught the attention of some in the GOP and it seems inevitable that the party will have to begin rebuilding its relationship with Latino voters if it hopes to remain a viable party nationally. I would be surprised if we don't start hearing pro-immigration voices emerging in the GOP shortly after the election.

The most immediate immigration-related question people will be asking after the election is whether immigration issues will be dealt with during the lame-duck session. There is a small chance that the DREAM Act could get another vote we will

have to wait to see whether supporters of legislation can convince the Democratic leadership that pushing the bill has one of the few measures likely be considered in the lame-duck is worthwhile.

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: H-2A Temporary Agricultural Visas

The H-2A temporary agricultural visa is a nonimmigrant visa which allows foreign nationals to enter the U.S. to carry out temporary or seasonal agricultural labor or services. Given estimates that more than half of America 's agricultural workers are undocumented immigrants, the use of the H-2A visa is becoming more and more important.

What are employers required to do to obtain workers on H-2A visas?

Generally, employers must satisfy two criteria to hire nonimmigrant workers when filing an application with the USCIS:

1. The employer must show that able, willing, and qualified US workers are not available at the time and place needed
2. The employer must show that an adverse effect on wages or working conditions of similarly employed US workers will not result from the employment of foreign workers

Who may file an application for an H-2A visa?

- An agricultural company or employer who expect a shortage of U.S. workers needed to perform temporary or seasonal agricultural labor or services
- An authorized agent filing on behalf of an agricultural employer

The employer may be an individual proprietorship, a partnership or a corporation. A collective of agricultural producers may file as either a sole employer, a joint employer with its members, or act as an agent on behalf of its members.

What steps must employers follow to do to obtain workers via the H-2A process?

First, two copies of the ETA-750 are filed, of which one should be sent to the appropriate Department of Labor ("DOL") region, and the other to the respective state workforce agency ("SWA") for the state in which the work is sought. This application has to be submitted at least 45 days before the H-2A temporary workers are needed and it also has to be approved by the DOL before the starting work date. The application fees, which must be paid by the employer, include \$100 base fee plus \$10 for each position certified, up to a maximum of \$1000.

Second, recruitment efforts follow, which are directed by the SWA for H-2A positions in one of three ways: the SWA refers candidates to the employer (with the employer using the state's electronic data bank), the employer conducts independent recruitment, or the recruitment is conducted after the SWA certifies the applications. Generally, referrals come from the state agencies. Employers are required to hire US workers who apply for work until half of the contract period is over.

The DOL no longer requires employers to use recruitment ads (either through print or broadcast) outside the employer's geographical area of intended employment. In circumstances where the employer has one or more worksite locations in different states, the employer should file a single H-2A application concurrently with the SWA in the state where the work will begin.

Third, following the recruitment period, a decision is made regarding certification. The SWA subtracts the number of US workers successfully referred from the total number of workers requested by employers to calculate and certify the remaining job openings.

Once certification is granted, the application is then filed with the DOL national processing center, which it may be filed for multiple unnamed workers. As they become available, however, the DOL must be provided with names. Finally, following DOL approval, the workers can then apply for visas at the appropriate consulate office.

What might be some reasons for which the DOL might not issue certification?

One pitfall preventing certification is if the DOL determines that US workers have filled all the job openings, or for example, if the DOL determines that H-2A candidates have been offered better working conditions than their US counterparts. Another reason preventing certification could be if a strike or a lockout results, or if the employer is in significant violation of the H-2A program with the previous two years. Yet another block could be if the employer fails to show that H-2A workers will be covered by workers compensation, or if the employer fails to comply with the recruitment efforts.

How long are the H-2A visas valid?

Generally, the H-2A visas are valid for a one year maximum. Extensions of up to one year, however, are possible but with a maximum of three years. After the alien has spent three years in the US under the H-2A status, then the alien must leave for three months before continuing H-2A employment. Subsequent to this time, however, the alien can reenter the US in any status not based on the performance of agricultural work.

How do employers calculate workers' earnings?

Usually farm workers receive either an hourly wage or are paid by the piece. Under the H-2A program, however, workers have to be offered a wage equal to that of US workers. In the past, this has been interpreted to mean the higher payout of the following:

- The prevailing industrial wage in the relevant labor market
- The state or federal minimum wage
- The "adverse effect wage rate" ("AEWR")

As of February 12, 2010, the 2010 Final Rule stipulates that the H-2A AEWR be based on the USDA data compiled through its Farm Labor Survey (FLS) Reports. The AEWRs applicable to all agricultural employment for which temporary H-2A certifications are being sought will be the annual average of combined crop and livestock workers' wages applicable for each State as reported by the USDA FLS reports. The applicable 2010 AEWRs can be found at the following link: [2010 Adverse Effect Wage Rates](#).

For workers earning money by the piece, an employer must pay any difference between worker earnings and the AEWR. Additionally, on or before each day the H-2A worker is paid, the employer must provide the worker with an earnings statement listing total earnings, hours of work offered versus actually worked, and whether the worker is paid hourly or by the piece.

What benefits are employers required to provide the workers?

- Transportation to and from the workers' temporary home to the workplace
- When the contract period is up, transportation home or to their next workplace
- Housing to all workers who do not commute, which must be inspected by the Department of Labor as well as meet minimum federal standards for temporary labor camps
- Either three meals a day or facilities in which the workers can prepare food
- Any tools and supplies necessary to perform the work
- Workers compensation insurance where required by state law; if state law does not require it, the employer must provide equivalent insurance

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:

I am a student currently in the US on a valid F1 visa. I want to immigrate to US. Could you please let me know the best way to do this?

Answer:

There are a number of ways to obtain U.S. permanent residence. I couldn't say what the best way would be for you without first speaking with you and finding out more about you.

But the most common way for an F-1 student to obtain permanent residence is through sponsorship through an employer. Usually the F-1 student will work for a company in their field on an Optional Practical Training employment authorization card for up to a year after their graduation. During that time, the employer can petition for the foreign national to change their status to an H-1B, which usually begins in October, the beginning of a new fiscal year when H-1B visa numbers become available.

The employer would then go through the PERM Labor Certification process to show that there are no qualified U.S. workers to fill the position. When the Department of Labor has certified the PERM application, the employer would file an immigrant visa petition under the EB-2 or EB-3 preference category.

Depending on which preference category the petition was filed under and what country the foreign national (or their spouse) is from, the foreign national may then have to wait for a visa to become available for that petition before they are able to file their application for adjustment of status (green card). The entire process usually takes at least a year and often takes 5 years or longer.

Of course, as I mentioned, there are a number of ways to obtain permanent residence, therefore you may wish to consult with an immigration law attorney to determine what would be the best process for you.

2) Question:

I have been called in for an immigration interview for my employment-based I-485 adjustment of status. Is that normal procedure now or it is unusual for this to occur? My file has been with USCIS for over a year now since all the documents was submitted. Also, the sponsoring company has reduced my hours drastically due to the economy but they are still sponsoring me. I found employment in the same field with a different company. Please advise me on whether this is going to be an issue.

Answer:

As a general rule, employment-based applications for Adjustment of Status do not require interviews. However, USCIS has the authority to require an interview where there is some issue or fact that is in question that can be resolved by interviewing the applicant. This is commonly done where the applicant is filing for adjustment of status under the 245(i) "amnesty". It also sometimes occurs where it has been a long time since the I-140 was approved. The fact that you have been called for an interview does not necessarily mean that there is something wrong with your application.

The fact that your company has reduced your hours could possibly be a problem, however. While there is no requirement to work for the petitioning company prior to being granted adjustment of status, there is a requirement that the petitioning company continue to have an intent to employ you pursuant to the I-140 petition. The fact that the company is not employing you for the hours and salary specified in the I-140 calls into question whether the company intends to employ you for the listed hours once you are granted adjustment of status and whether the company has the ability to pay the proffered wages.

You should consult with an immigration law attorney right away to find out if this issue can be overcome, or whether you would be eligible to port your petition to the new employer.

3) Question:

I have a little over 5 years of work experience in my field and I have a Bachelors degree. Of the 5 years, 2 years of experience is from my current employer. Am I eligible to have my company file a PERM Labor Certification filing for me in the second preference (EB2) category?

Answer:

The second preference employment based category (EB2) is for those foreign national workers who are working in a position that requires a masters degree or the equivalent as the minimum requirement. A combination of a bachelors degree and 5 years experience after the degree is considered by the Department of Labor to be the equivalent of a masters degree.

You probably do not have 5 years counting toward an EB-2 PERM Labor Certification. As a general rule, the 5 years must be from a different company. Since you did not have 5 years experience when you started in the position, you cannot claim that the position requires at least 5 years experience.

However, experience with the company can sometimes be counted when it can be shown that the experience gained has been in other positions which are not substantially similar to the position that is being offered in the PERM application or where it can be shown that it is no longer feasible for the company to train an employee for the position.

The PERM process is complicated, long, expensive and the slightest mistake can lead

to a denial. It is highly recommended that companies hire an experienced immigration law attorney to handle their PERM applications.

4. Border and Enforcement News:

No opt-out for immigration enforcement

The Washington Post reports that it is virtually impossible for a local jurisdiction to opt-out of Secure Communities, a controversial immigration enforcement program that uses fingerprints gathered by local law enforcement agencies to identify illegally present immigrants. The program was thought to be voluntary and Homeland Security Secretary Janet Napolitano reinforced that perception in a September 7th letter to Congress that advised local law enforcement agencies that did not want to participate to notify David Venturella, the Assistant Director for the program.

Secure Communities operates in 32 states and has resulted in the deportation of tens of thousands of illegally present immigrants. The program relies on fingerprints that are collected by local law enforcement agencies, forwarded to the FBI for criminal background checks, and then made accessible to ICE. The only way to opt out of the program would be to not send fingerprints to the FBI, but doing so would be implausible because states depend on the FBI to provide the criminal records of the people they arrest.

<http://www.washingtonpost.com/wpdyn/content/article/2010/09/30/AR2010093007268.html>

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ICE increases audits of businesses

The Phoenix Business Journal reports that the Immigration and Customs Enforcement Agency (ICE) is investigating 500 businesses nationwide for knowingly employing illegally present immigrants. These audits require employers to provide I-9 Employment Eligibility Verification forms for each of their workers. Companies face the possibility of fines and other charges if I-9 compliance violations are discovered.

<http://phoenix.bizjournals.com/phoenix/stories/2010/09/20/daily8.html>

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Deportation of criminals increases

The Sacramento Bee reports that of the 350,000 people deported this year, more than half had criminal convictions, marking a 55 percent increase since 2008. Noncriminal deportations, on the other hand, have dropped by about 30 percent. According to ICE officials, the increased deportation of immigrants with criminal records can be attributed to expanded partnerships with local and state law enforcement under programs like Secure Communities and technological advances such as video conferencing, which allows ICE officers to interview detainees in remote jails, has also i

<http://www.sacbee.com/2010/10/05/3080002/deportation-xy-x-yxy-xyx-yx.html#ixzz11UVBkSaf>

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Authorities use social networking sites to detect immigration fraud

The Washington Independent reports that a USCIS internal memo obtained by the Electronic Frontier Foundation suggests that federal immigration authorities may use social networks to determine whether immigrants are committing fraud in the immigration process. Fraud Detection and Nation Security, a department of USCIS, browses sites like MySpace and Facebook to see if petitioners and beneficiaries are in a valid relationship or are trying to deceive USCIS about their relationship. According to USCIS, because foreign-born spouses of U.S. citizens can obtain permanent legal residency, these sites can provide useful information to USCIS officials.

<http://washingtonindependent.com/100819/immigration-authorities-use-social-networking-sites-to-check-on-fraud-fake-marriages>

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California border inspector accused of taking bribes and smuggling drugs

The Associated Press reports that California border inspector Lorne Leslie Jones was indicted for accepting more than \$500,000 in bribes from 2000 to 2009 and allowing five tons of marijuana to cross the border from Mexico under his watch. Jones, who is alleged to have worked with an ex-wife and an unidentified investment advisor, pleaded not guilty to the charges.

The Border Corruption Task Force began investigating Jones in 2009 after receiving a tip that he was accepting bribes. A truck driver who was arrested in 2007 with 9,397 pounds of marijuana hidden in his vehicle told investigators that he had successfully crossed the border five previous times with Jones' help. The driver was arrested after he was directed away from Jones' inspection lane and prosecutors are seeking an additional \$60,000 for this incident.

<http://www.latimes.com/news/nationworld/nation/wire/sns-ap-us-border-corruption,0,430517.story>

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Napolitano and border sector chief say border is secure

The Silver City Sun Times (New Mexico) reports that Randy Hill, a top ranking U.S. Border Patrol official for the El Paso sector in New Mexico, claims that the state's border is the most secure he's seen during his 32 year career. Although Hill noted that only 73 percent of the sector's 268 miles of border are considered 'under control' by the Border Patrol, New Mexico has seen a drastic reduction in arrests and drug seizures. So far in 2010, 7,800 arrests have been made in New Mexico, significantly less than the 76,900 immigrants apprehended during the peak period of 2004 and 2005. In addition, drug seizures in the state have declined by 20,000 per year since 2005.

The Los Angeles Times reports that Department of Homeland Security Secretary Janet Napolitano emphasized the increase in seizures of illegal drugs, currency, and weapons under the Obama administration during her visit to the border with Mexico at San Ysidro. She declared that statistics show that the Southwest border is more secure than ever before. In fiscal years 2009 and 2010, U.S. Customs and Border

Protection seized \$104 million in illegal currency and more than 7 million pounds of narcotics.

http://www.scsun-news.com/ci_16161969

<http://latimesblogs.latimes.com/washington/2010/10/napolitano-san-diego-visit-.html>

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DHS set to discontinue SBI net virtual fence

The Los Angeles Times reports that the Department of Homeland Security has declined to exercise a one-year option for Boeing to continue its work on a virtual fence along that U.S.-Mexico border. Instead, DHS extended the deal to mid-November as it evaluates the efficiency of the program. Construction of the virtual fence and other technological programs, called SBI net, are part of the larger \$4.4-billion Secure Border Initiative.

The fence was meant to prevent human and drug trafficking but after an investment of more than \$1 billion, the system covers only 53 miles of the 2,000 mile border with Mexico. In addition, high-tech cameras, radar, and vibration sensors operate with little reliability and are unable to provide the surveillance initially envisioned by the government. DHS is expected to rule soon on the fate of SBI net as it investigates alternatives to meet border security needs.

<http://www.latimes.com/news/nationworld/nation/la-na-invisible-fence-20101022,0,5546525.story>

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5. News from the Courts:

Arizona immigration law: Judge denies bid to halt lawsuit

The Arizona Republic reports U.S. District Court Judge Susan Bolton denied motions by Arizona Governor Jan Brewer, Maricopa County Sherriff Joe Arpaio, and Pinal County Sherriff Paul Babeu to dismiss a lawsuit challenging the constitutionality of Senate Bill 1017. The plaintiffs, led by the Phoenix advocacy group Friendly House and the ACLU, argued that SB 1017 infringed on the rights guaranteed by the Fourth Amendment, which guards against unreasonable search and seizure, and the Fourteenth Amendment, which prohibits racial discrimination.

Bolton, however, rejected the ACLU's arguments that the language of the law was unconstitutionally vague and that forbidding illegally present immigrants from soliciting work violated the First Amendment. BorderSherriffs.com issued a press release claiming victory in this partial dismissal. Sherriff Babeu stated that he is 'pleased the Court has acknowledged the ACLU has not proven how a law that has yet to be enforced would actually cause harm.'

<http://www.azcentral.com/arizonarepublic/local/articles/2010/10/12/20101012arizona-immigration-law-lawsuit-challenge-denied.html>

<http://www.bordersheriffs.com/newsroom/press-release-72.html>

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C-SPAN will televise SB 1070 appeal live

The Associated Press reports that C-SPAN will televise the November 1st hearing in the 9th U.S. Circuit Court of Appeals in San Francisco. Arizona Governor Jan Brewer will appeal a ruling that struck down parts of her state's controversial immigration law. *United Press International* reports that Arizona cities such as Tucson and Tolleson, fearing that the responsibility of immigration enforcement would take away from enforcing against other crimes, have joined the Justice Department's suit. Under a provision included in SB 1070, a city can be sued for not following the law

http://www.necn.com/10/13/10/C-SPAN-gets-OK-to-televise-immigration-h/landing_politics.html?&blockID=3&apID=9b3b25bc1bbf454c875b6bed7a399d09

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U.S. citizen sues over wrongful deportation

The Associated Press reports that Mark Lyttle, an English speaking, mentally disabled U.S. citizen, is seeking damages from the federal government in relation to his deportation to Mexico. The lawsuit was filed in Atlanta, GA by the ACLU and a parallel lawsuit is being filed in North Carolina against immigration and prison officials.

In 2008, Lyttle was serving prison time in North Carolina for the misdemeanor offense of inappropriately touching a female orderly at a psychiatric hospital. He drew the attention of prison officials when he gave Mexico as his place of birth. He was eventually deported and spent four months wandering Central America, where he was imprisoned in Mexico, Honduras, and Nicaragua for failing to prove his identity. Although he eventually signed papers allowing his deportation, his lawyers argue that he was too mentally disabled to understand what he was signing and thus he was manipulated by immigration officials.

<http://www.google.com/hostednews/ap/article/ALeqM5jZqiEEgsHMJjGyQuOTx311iNTg3wD9IR5IPG0?docId=D9IR5IPG0>

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Supreme Court takes Arizona E-Verify legislation

The Clarion-Ledger (Jackson, MS) reports that the U.S. Supreme Court has agreed to take up an appeal that challenges the Legal Arizona Workers Act. The 2007 piece of legislation, which requires companies to check the legal status of employees through the online federal database E-Verify, was already upheld by the 9th U.S. Circuit Court of Appeals in San Francisco in 2008. The case will be heard on December 8th and could set a precedent for 14 other states with similar mandates. Mississippi, for example, passed the Employment Protection Act in 2008, requiring all companies with more than 20 workers to use E-Verify.

Carter Phillips, attorney for the U.S. Chamber of Commerce, which is leading the challenge against Arizona's E-Verify law, argues that Congress clearly intended for the E-Verify program to be voluntary. Mississippi Senator Chris McDaniel, on the other hand, contends that federal law has 'encouraged federal and state

collaboration regarding enforcement of immigration law' and thus the legislation should be upheld.

<http://www.clarionledger.com/article/20101011/NEWS/10110311/Justices-take-E-Verify-case>

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6. News Bytes:

Despite economy, Americans don't want farm work

The Associated Press reports that the few Americans apply for jobs harvesting fruits and vegetables in California, despite the state's 12.5% unemployment rate. In 2010, California farmers have posted adds for 1,160 farmworker positions for U.S. citizens and legal residents, but only 233 people applied through unemployment offices in California, Nevada, Arizona, and Texas.

According to the Labor Department, more than half of the farmworkers in the United States are illegally present immigrants. Due to the difficulty in attracting American citizens to farmworker jobs, most farmers and ranchers utilize the H-2A Guest Worker Program to fill their positions. Philip Martin, a professor of agricultural and resource economics at the University of California-Davis, believes recruitment of U.S. workers is unsuccessful because employers have already identified who they want to bring from abroad and U.S. workers are not looking for a seasonal job that pays minimum wage. Others counter that wages cannot rise too much or farmers will not be able to compete with foreign food producers. Also, much higher wages could increase food prices significantly which would adversely affect Americans who spend a high proportion of their budgets on food (usually the poorest Americans).

http://www.google.com/hostednews/ap/article/ALeqM5gCuxCWJeZYK_OWRK9dLd61eQeDwD9IG9OPO0

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Stephen Colbert testifies before immigration subcommittee

CNN reports that comedian Stephen Colbert appeared before a House subcommittee on immigration beside United Farm Workers President Arturo Rodriguez. Colbert discussed his experiences working alongside immigrant farm workers during the 'Take our Jobs' campaign, a movement launched by Rodriguez's organization that challenged U.S. citizens to replace immigrants in farm work. The panel's chairwoman, Rep. Zoe Lofgren (D-CA), who worked alongside him at the farm, praised Colbert for bringing attention to the issue. Phil B. Glaize, chairman of the U.S. Apple Association, and Carol M. Swain, a law professor at Vanderbilt University, also testified at the hearing.

<http://www.cnn.com/2010/POLITICS/09/24/colbert.house.testimony/?hpt=T1>

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Media moguls urge Congress to reform immigration

The Associated Press reports that Rupert Murdoch, the founder of News Corps., and Michael Bloomberg, the mayor of New York and founder of Bloomberg, the financial

news and information service, asked a House immigration subcommittee to take action on immigration reform. Murdoch and Bloomberg lead a coalition of businesses and mayors that supports comprehensive immigration reform and advocates providing a pathway to citizenship for illegally present immigrants. Murdoch, who was born in Australia and became an American citizen in 1985, emphasized the importance of immigration reform to 'keep American the most economically robust, creative, and freedom-loving nation in the world.'

http://www.google.com/hostednews/ap/article/ALeqM5iEJS72HtRF_FVPoOscvKdNr-6O5QD9IIG4I80?docId=D9IIG4I80

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Cuban exiles in Spain can come to U.S.

The Miami Herald reports that the State Department will allow former Cuban political prisoners and their relatives living in Spain to immigrate to the U.S. under the Significant Public Benefit Parole (SPBP) Program. In the past, the program has been used to allow groups fearing for their lives, such as Colombian labor activists and Iraqi civilians, to enter the U.S.

According to the State Department, the ex-prisoners' applications will be processed on a case-by-case basis, but are expected to receive approval after an average of one month. The SPBP program will allow new arrivals to quickly receive work permits and eventually residency.

<http://www.miamiherald.com/2010/10/04/1857387/released-cuban-prisoners-in-spain.html>

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Lou Dobbs responds to illegal hiring allegations

The Los Angeles Times reports that during an appearance on MSNBC's 'The Last Word, former CNN anchor Lou Dobbs declared that neither he nor any of his companies ever hired an illegally present immigrant. Dobbs was responding to a piece in *The Nation* claiming that he employed at least five undocumented workers for the upkeep of his estates and the care of his daughter's show-jumping horses. Because he has attacked individuals who employ undocumented workers throughout his career, Dobbs said he said the mainstream media latched on to the story in order to portray him as a hypocrite.

<http://latimesblogs.latimes.com/showtracker/2010/10/lou-dobbs-to-msnbc-i-have-never-hired-anillegal-immigrant.html>

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Nevada gubernatorial candidate accused of hiring undocumented worker

KTVN News Reno (NV) reports that Ana Padilla, an immigrant from Guatemala who recently obtained her U.S. citizenship, claims to have worked for Republican gubernatorial candidate Brian Sandoval before she achieved legal status. According to Ana, she cleaned the Sandoval's home once a week for over 6 months, during which she was never asked for documentation. Ana was reacquainted with Sandoval when she saw him in a televised debate but was disappointed to learn that he does not support a path to citizenship for illegally present immigrants. The Sandoval campaign denies Ana's accusations.

<http://www.ktvn.com/Global/story.asp?S=13305531>

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Hispanics have longest life expectancy

The Washington Post reports that according to a new federal report from the National Center for Health Statistics, Hispanics in the United States have an average life expectancy of 80.6 years. Whites, on the other hand, live an average of 78.1 years and African-Americans have a life expectancy of 72.9 years. There are more than 45 million Hispanics in the U.S., representing 15 percent of total U.S. population and making them the country's largest ethnic minority.

Researchers were surprised with the findings because on average Hispanics have a lower socioeconomic status than the white population and there is a historical correlation between socioeconomic status and mortality. Some researchers theorize that Hispanics who immigrate to the U.S. tend to be healthier, with less healthy immigrants returning home. Others believe that cultural factors such as family structure and lifestyle behaviors have created a protective barrier against the burden of low socioeconomic conditions. The full report is available at:

http://www.cdc.gov/nchs/data/series/sr_02/sr02_152.pdf

http://voices.washingtonpost.com/checkup/2010/10/hispanics_live_longest_embargo.html

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South Carolina town passes E-Verify legislation

NECN News (MA) reports that the town council of Summerville, SC recently approved an ordinance requiring businesses to determine the immigration status of employees by a 5-1 vote. Business could lose their license or face fines for failing to cooperate. When the ordinance was first proposed is included a measure that required landlords to determine the immigration status of potential renters, but that provision was eventually dropped.

http://www.necn.com/10/14/10/SC-town-approves-business-immigration-me/landing_politics.html?&blockID=3&apID=b0cfe09d760440ba8fdaa2177b98fb95

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Rep. Gutierrez opts not to join Chicago mayoral race

The Chicago Sun Times reports that Rep. Luis Gutierrez (D-IL) has chosen to focus on passing comprehensive immigration reform rather than run for mayor of Chicago. Gutierrez noted that in order to run for mayor, he would be forced to delay his immigration crusade to concentrate on the city's local issues. There is some speculation that a federal investigation of Gutierrez's lobbying on behalf of donor influenced this decision, but Gutierrez has denied such allegations.

<http://www.suntimes.com/news/elections/2804226,CST-NWS-luis15.article>

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Study: Crime drops in CA as immigration increases

KPBS News (San Diego) reports that a recent study from the University of California-Berkeley School of Law links an increase in immigrant population with a decrease in crime rates. The study notes that immigrants are under-represented in the California prison system compared to their representation in the state's overall population. In addition, the study finds that counties closest to the border experience the correlation most drastically. San Diego County, for example, has seen a massive influx of immigrants over the last two decades and its violent crime rate has declined by 58 percent over the same period.

http://www.law.berkeley.edu/files/Where_is_the_fire.pdf

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7. Washington Watch:

GOP filibusters DREAM Act

The Washington Times reports that the Republican Party led a filibuster against the defense bill, which also ended Democratic hopes of attaching the DREAM Act as an amendment. Two Democrats joined 40 Republicans in support of the filibuster, blocking the Senate from debating the legislation. Democrats accused Republicans of hiding behind procedural rules while Republicans blasted the Democrats for trying to force immigration-reform debates on the defense bill. Senate Majority Leader Harry Reid (D-NV) hopes to reintroduce the legislation after the November election. The DREAM Act would offer a pathway to citizenship for illegally present immigrants who arrived in the U.S. before age 16 with two years of college or military service.

<http://www.washingtontimes.com/news/2010/sep/21/gop-blocks-moves-on-gays-immigration/>

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Napolitano: focus is on criminal immigrants

The Dallas Morning News reports that Homeland Security Secretary Janet Napolitano highlighted the record number of removals of criminals from the U.S. this year at a speech before the World Affairs Council, emphasizing that the her department focuses primarily on deporting criminals and gang members. So far in 2010, 176,736 criminal immigrants have been removed from the U.S. by ICE, surpassing the 136,343 that were removed in 2009. Napolitano also stressed that militarization of the U.S.-Mexico border was unnecessary and that patrol by civilian law enforcement and increased technology were sufficient to protect the border.

http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DNnapolitano_24met.ART.State.Edition1.336527d.html

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Obama hopes GOP will 'come to senses' on DREAM Act after Nov.

The Hill reports that President Obama has vowed to fight for passage of the DREAM Act after November's midterm elections. In an interview with Spanish-language station Univision, Obama said he hopes Republicans who previously supported the measure will 'come to their senses and recognize that this is the right thing to do.' Republicans and Democrats accused each other of political maneuvering rather than tackling the issue when the measure was filibustered last month.

In addition, President Obama defended his position of making undocumented workers ineligible to buy health insurance as part of the new health reform law. He emphasized that legislation providing a pathway to citizenship like the DREAM Act was important for exactly that reason: to allow immigrants the same benefits as everybody else.

<http://thehill.com/blogs/blog-briefing-room/news/120951-obama-hopeful-republicans-will-come-to-their-senses-on-dream-act-after-elections>

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Gutierrez confident DREAM Act still alive; will stump for Reid

The Hill reports that Rep. Luis Gutierrez (D-IL) is actively campaigning for Senator Harry Reid (D-NV) and commending him for his support of the DREAM Act. Rep. Gutierrez, who is also chairman of the Congressional Hispanic Caucus's Immigration Task Force, pointed out a Senate rule that allows a bill to be brought to the floor for consideration with two days' notice. He is confident that the Senate will try to pass the legislation once more before its recess, but hopes they will hold an up-or-down vote instead of attaching it to the defense authorization bill or any other piece of legislation.

<http://thehill.com/homenews/house/120895-gutierrez-confident-dream-act-still-alive-will-stump-for-reid>

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DNC chair says Latino vote is critical

The San Francisco Chronicle reports that Democratic National Committee Chairman Tim Kaine is depending on a strong turnout from Latino voters. Kaine expects a favorable margin among Latino voters and believes that the challenge for his party will be mobilizing voters and maximizing turnout. Kaine, a former Central American missionary who is fluent in Spanish, conducted a Spanish-language press conference at a recent campaign stop in El Paso, Texas where he emphasized a 'sharp difference' between Democrats and Republicans on immigration-related issues.

http://www.sfgate.com/cgi-bin/blogs/nov05election/detail?entry_id=74316#ixzz129eqEEiH

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Angle takes heat for remarks to high school Latinos

The Las Vegas Review Journal reports that U.S. Senate candidate Sharron Angle is facing a backlash from Hispanics and Sen. Harry Reid's campaign for comments she made at a Nevada high school. When asked to explain images in her ads that criticized Reid for supporting illegally present immigrants, Angle tried to explain the difficulty in determining someone's heritage in a mixed-race society and said some of the Hispanics in the room 'look a little more Asian' than they did Hispanic. Angle had already alienated her state's Hispanic community, which makes up 12 percent of registered voters, through her vocal support of Arizona's SB 1070.

<http://www.lvrj.com/news/angle-takes-heat-for-remarks-to-high-school-latinos-105231278.html?ref=278>

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GOP senators call for hearing on immigration dismissals

The Houston Chronicle reports that Senator John Cornyn (R-TX) and six other Republican members of the Senate Judiciary Committee called for a hearing to investigate the dismissal of immigration cases in Houston. Beginning in August, Homeland Security attorneys filed to dismiss hundreds of cases in Houston involving suspected illegally present immigrants who have lived in the U.S. longer than two years without any criminal convictions. While the senators accused the DHS of selective enforcement, the Obama administration has emphasized that its primary focus is removing criminals from the U.S.

<http://www.chron.com/dispatch/story.mpl/special/immigration/7258528>.

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8. Updates from the Visalaw.com Blogs

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

- [YUCK!](#)
- [UPHILL CLIMB FOR SB1070 GETS EVEN STEEPER](#)
- [MISSOURI GOP SENATORIAL CANDIDATE HAS AN ILLEGAL WORKER PROBLEM](#)
- [H-1B EXHAUSTION TARGET REMAINS MARCH 2011](#)
- [PEARCE AND KOBACH WORKING ON EVEN DUMBER BILL THAN SB1070](#)
- [GEORGIA GOP CANDIDATE: BORDER PATROL AGENTS SHOULD SHOOT ILLEGAL BORDER CROSSERS](#)
- [ALASKA GOP CANDIDATE: IF EAST GERMANY COULD SEAL THEIR BORDER, SO CAN WE](#)
- [FINDING A WAY TO "YES"](#)
- [NFAP: TIME FOR AN ENTREPRENEUR VISA](#)
- [OH IT'S ON...](#)
- [BAYLOR COACH BEING INVESTIGATED FOR THREATENING COLOMBIAN PLAYER WITH DEPORTATION](#)
- [USCIS EXAMINERS SNOOPING ON FACEBOOK ACCOUNTS](#)
- [THE ILLEGALLY PRESENT IMMIGRANT'S LIVING WILL](#)
- [WHY DO HISPANICS LIVE LONGER THAN WHITE AND BLACK AMERICANS?](#)
- [NEW ARIZONA REPUBLICAN CAMPAIGN THEME: IMMIGRANTS WANT TO COME AND KILL YOU](#)
- [H-1B EXHAUSTION TARGET: MID-MARCH 2011](#)
- [REALITY FORCING CONGRESSIONAL HISPANIC CAUCUS TO LOWER EXPECTATIONS](#)
- [BUSINESS OWNERS: SIGN THE IMMIGRATIONWORKS USA PETITION TO PRESIDENT OBAMA](#)
- [DAVID LEOPOLD ON THE NEED FOR IMMIGRATION REFORM](#)
- [QUESTIONS](#)
- [BOXER HOPES TO EXPEDITE CITIZENSHIP PROCESS TO COMPETE IN OLYMPICS](#)
- [NOVEMBER VISA BULLETIN IS OUT](#)
- [ARIZONA LOSES ANOTHER BATTLE IN THE COURTS](#)
- [REPORT: LOU DOBBS EMPLOYED ILLEGAL IMMIGRANTS](#)
- [DEPORTATIONS HIT RECORD HIGH](#)
- [AMERICA'S VOICE: REPORTS OF LOW LATINO TURNOUT IN ELECTION CONTRADICTED BY NEW RESEARCH](#)
- [REPUBLICAN PRAYER FOR LOW LATINO TURNOUT MAY BE ANSWERED](#)
- [TPM INTERVIEWS ME REGARDING WHITMAN I-9](#)
- [WISH ME LUCK](#)
- [WHITMAN NANNY I-9 SHOWS VIOLATIONS](#)
- [MED SCHOOLS ASSOCIATION: HEALTH CARE REFORM WILL BALLOON ALREADY SEVERE DOCTOR SHORTAGE](#)
- [ANTIS: JAIL WHITMAN](#)
- [MENENDEZ-LEAHY BILL DROPS](#)
- [MORE DETAILS ON WHITMAN NANNY CONTROVERSY EMERGE](#)
- [MEG WHITMAN CENTER OF NEW IMMIGRATION CONTROVERSY](#)
- [ABERCROMBIE & FITCH FINED OVER \\$1 MILLION AFTER I-9 AUDIT](#)
- [H-1B EXHAUSTION TARGET: MARCH 1, 2011](#)
- [CRIST: IMMIGRATION REFORM NEEDED TO SAVE SOCIAL SECURITY](#)
- [COLBERT SPEAKS THE TRUTHINESS](#)
- [OBAMA: DON'T EXPECT ADMINISTRATIVE ACTIONS TO AVOID GRIDLOCKED CONGRESS](#)
- [H-1B EXHAUSTION TARGET: MARCH 15, 2011](#)

9. State Department Visa Bulletin: November 2010

Number 26
Volume IX
Washington, D.C.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **November**. 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 October **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. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

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

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

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

Fourth: 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.

4. 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.

5. On the chart 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	All Chargeability	CHINA-mainland	INDIA	MEXICO	PHILIPPINES
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	Areas Except Those Listed	born			
1st	15FEB06	15FEB06	15FEB06	22DEC92	01APR97
2A	01JUN10	01JUN10	01JUN10	01MAR10	01JUN10
2B	01JUN05	01JUN05	01JUN05	22JUN92	01SEP02
3rd	01JUN02	01JUN02	01JUN02	22OCT92	01MAR95
4th	01JAN02	01JAN02	01JAN02	15DEC95	01APR91

*NOTE: For November, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01MAR10. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01MAR10 and earlier than 01JUN10. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A 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	01JUN06	08MAY06	C	C
3rd	22JAN05	22NOV03	22JAN02	01MAY01	22JAN05
Other Workers	01APR03	01APR03	22JAN02	01MAY01	01APR03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot 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.

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.

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 **November**, 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	12,000	Except: Egypt 9,300 Ethiopia 11,000 Nigeria 10,000
ASIA	10,750	
EUROPE	12,500	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	650	
SOUTH AMERICA, and the CARIBBEAN	675	

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.

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

For **December**, 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	15,650	Except: Egypt 12,600 Ethiopia 12,250 Nigeria 10,850
ASIA	11,600	
EUROPE	13,600	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	700	
SOUTH AMERICA, and the CARIBBEAN	675	

D. 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*
(*example: Subscribe Visa-Bulletin Sally Doe*)

To be **removed from** the Department of State's E-mail subscription list for the "Visa Bulletin", **send an e-mail message to the following E-mail address:**

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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