

Siskind's Immigration Bulletin – November 22, 2010

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1. Openers

2. ABCs of Immigration Law: The DREAM Act Proposal

3. Ask Visalaw.com

4. Border and Enforcement News

- GAO report: Border Patrol's hands tied by Interior, Agriculture rules
- Flight school students arrested
- Iowa planning board vote against ICE holding site
- One out of three deportation requests denied

5. News from the Courts

- Arizona citizenship proof law for voters overturned by court
- Costs to defend Arizona immigration law top \$1 million
- Court signals backing for Arizona immigration law
- Nebraska Court won't weigh in on immigration measure
- Feds to reopen Michigan man's asylum case
- Supreme Court weighs fairness of citizenship rule that varies by sex
- Immigration courts add 23 judges

6. News Bytes

- Naturalization documents add security features
- New process for relatives of green card holders
- Jesse Jackson Sr. asks voters to protect 14<sup>th</sup> amendment
- Temporary Protected Status for Somalia extended 18 months
- Rhode Island governor says he'll rescind immigration order
- New Mexico governor unlikely to imitate Arizona immigration law
- Largest number of service members naturalized since 1955

-Study: 100,000 Hispanics left Arizona after SB1070

7. Washington Watch

-Nancy Pelosi, Harry Reid want DREAM Act vote

8. Notes from the Visalaw.com Blogs

9. State Department Visa Bulletin: December 2010

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## 1. Openers

Dear Readers:

It's difficult to find a positive pro-immigration spin to put on the election earlier this month. But perhaps one way to look at the situation is that we had reached a point where no progress on the immigration issue could be made in this country. Effectively, only one party has been interested in pro-immigration legislation and it is not possible to move any bill in the current political environment – immigration or not – that lacks at least some bipartisan support.

There are many explanations for why the GOP drifted from a place where there was an active pro-immigration wing to the one we find today. It certainly is clear, however, that the party has drifted to the right which has meant the silencing of pro-immigration Republicans.

The GOP took back the house and many state legislatures and gubernatorial seats because of anger that stems largely from the country's precarious economic state. But the economy WILL improve and if the Republicans expect to be able to maintain a majority, they're going to have to be able to attract voters in good times as well.

One of the ways they'll be able to do that is to show that they offer solutions and not just protests. And public opinion polling for years has shown the public is moderate on immigration and wants practical solutions that involve better enforcement of our laws, a visa system that works well and a path to some kind of normal status for workers here illegally.

The other reason it's good politics for the GOP to moderate on immigration is because eventually the Hispanic voting bloc will be so large that it will be impossible to have a Republican majority without at least appealing to a reasonable number of Latino voters. We've already seen how Hispanic voters can help the Democrats even in a Republican wave year. Majority Leader Harry Reid kept his Senate seat because of Latino votes and those voters also saved Democrats in Washington state, Colorado and California. It's a matter of time before Texas is in the mix and if the Democrats can win over growing numbers of Latino voters in Texas, California, New York, Illinois and Florida, it's hard to see a way for Republicans to maintain a majority in the long run.

The grown ups in the GOP understand this and behind the scenes there is deep anxiety over this issue. That's why I don't agree with some pro-immigration colleagues who think we will not make any progress on immigration issues for at least the next several years. I do think we'll start to see the re-emergence of pro-

immigration voices in the GOP. It will probably start with measures that focus on legal immigration – a better functioning green card system, a guest worker program, etc.

Stay tuned.

In the mean time, the stage is being set for a vote on the DREAM Act in the lame duck session and it will be very, very close. In September, the DREAM Act got 56 votes. No Republicans voted for the measure, but a few objected on the grounds that they objected to the procedure used to get to the vote. Namely, that it was tacked on to a defense budget bill and there was little opportunity to debate the measure or vote on amendments. This time, the DREAM Act will be introduced as a standalone bill. The hope is that some moderate Republicans will vote yes and a few outgoing GOP Senators who have supported the DREAM Act in the past will not feel pressure to vote with the party. My sources are telling me the bill has a better than even chance of passing, but no one has yet to announce a vote switch so it's still too soon to say. Nevertheless, we'll likely know in the next two weeks where things stand.

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In firm news, I spoke this past week to the Council of State Restaurant Associations at the organization's annual meeting in Savannah, Georgia. I discussed trends in state lawmaking on immigration.

I also wanted to welcome our new paralegal Lily Axelrod in our Memphis office. Lily is a Brown University graduate who most recently worked at the Mississippi Immigrant Rights Alliance. Welcome Lily!

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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

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## **2. ABC'S of Immigration Law: The DREAM Act Proposal**

### **What is the DREAM Act?**

The 'Development, Relief, and Education for Alien Minors Act' or DREAM Act has been introduced in every session of Congress for the last decade. The measure is designed to provide a path to legal residency for young people brought to the US as children who meet various requirements that demonstrate good character. Individuals qualified under the act will be adjusted to conditional permanent residency and then will need to meet education or military service requirements to keep their green cards.

The bill was tacked on to a budget bill in September 2010 and will come up again in the "lame duck" session of Congress likely in December 2010. *Readers should know that this bill has not yet passed and the purpose of the article is only to educate people on how the law would work IF it passes.*

### **What are the basic requirements to qualify for the DREAM Act?**

The latest version of the DREAM Act imposed the following beneficiaries must show the following:

- Entry to the US prior to age 16
- Five continuous years of residence since entering
- For men, compliance with any applicable Selective Service requirements
- Is under age 35 when the bill is enacted (note that this provision is one of the more controversial ones and the age limits have changed from one version of the bill to another)
- Admission to an institution of higher education or graduation from a US high school or GED program
- Be of "good moral character"

### **What happens if someone is in removal proceedings or ordered removed?**

The Secretary of Homeland Security is directed to cancel the removal of anyone who qualifies for the DREAM Act and proceed with adjusting their status to permanent residence. Being placed in removal proceedings will not be considered to disrupt the five year residency requirement. After the law is enacted, anyone with a pending application for conditional status under the DREAM Act shall not be removed until the application is adjudicated.

### **Will I still qualify if I have been outside the US since entering the country?**

In order to meet the continuous physical presence requirement, absences will normally disqualify an applicant. However, absences of less than 90 days will not count as long as the total number of days outside the US amount to no more than 180 total days. DHS is authorized to extend these periods if there are exceptional circumstances justifying the absence. Those would include the serious illness of the applicant or the death or serious illness of a parent, grandparent, sibling or child.

### **What status is the applicant granted if they meet these requirements?**

Applicants who qualify under the DREAM Act based on meeting these requirements, will be granted "conditional" permanent residency status. That means they are granted permanent residency, but that status can be removed if additional requirements are not met after being granted conditional permanent residency status.

### **How long does the conditional permanent residency last?**

Six years. After that, the person will either need to convert to an unconditional green card or will be considered out of status.

### **Can a person's DREAM Act conditional residency status be terminated?**

Yes. If the applicant no longer meets one of the qualification requirements noted above (such as doing something that shows the applicant no longer is a person of "good moral character") or becomes impoverished and is considered a public charge (which might be the case if a person applies for need based public benefits), or if the applicant is discharged from the military for reasons that are not honorable, then

DHS is authorized under the DREAM Act to terminate the applicant's conditional residency status.

**When does the application to remove conditions need to be filed?**

The applicant must file to remove the conditions from 180 days before the conditional status expires to the period two years after the six year anniversary date of being granted conditional status.

**What status is the applicant in while the application to remove conditions is pending?**

The applicant is considered to still be in conditional permanency resident status during the time the removal of conditions application is pending.

**What does the DREAM Act recipient need to show to have the conditions on the green card removed?**

1. The applicant has demonstrated good moral character for the time he or she has held conditional residency.
2. The applicant has not abandoned residency in the US. Absences of a total of 365 days or more are presumed to mean residency has been abandoned and the burden will shift to the applicant to prove otherwise. Absences from the US due to military service are not counted in the 365 days.
3. The applicant has completed one of the following two requirements:
  - a. The applicant has received a degree from an institution of higher education (as defined by the Higher Education Act of 1965 which generally includes associate degree programs and higher) or has completed two years toward a bachelors degree or higher degree in the US
  - b. The applicant has served for at least two years in the US military and if discharged, was discharged honorably.
4. The applicant provides a list of each secondary school he or she has attended in the US.

If the applicant is unable to meet the college or military requirement, DHS is authorized to waive the requirement if the applicant can show compelling circumstances for the inability to complete the requirements and the applicant's removal from the US would result in extremely unusual hardship to the applicant or the applicant's spouse, parent, or child who is a citizen or permanent resident. DHS can also extend the period of time needed to meet the military or education requirement.

**Will time in conditional permanent residency status count toward the naturalization residency requirements?**

Yes. All time in conditional permanent residency status will count the same as if the applicant has unconditional permanent residency status. However, the removal of conditions on permanent residency must be approved before the applicant can apply for naturalization.

**Are there any limitations on the number of people who may qualify for the DREAM Act?**

No. Normal quotas on adjustment of status and cancellation of removal do not apply.

### **How many potential DREAM Act applicants are there?**

Estimates vary, but most believe the number to be between 500,000 and 3 million.

### **If the bill passes, when will applicants be allowed to apply?**

DHS will have 180 days to issue interim regulations that will take effect at that point.

### **Will DREAM Act recipients be able to qualify for educational financial aid and in-state tuition?**

Applicants will not be eligible for Pell Grants and other federal grants during their conditional residency period. They would be eligible for federal work-study and student loan programs. States are not restricted from making students eligible for their own aid programs.

Section 505 of the 1996 Immigration Act is repealed by the DREAM Act which means states would be able to make their own determination on whether DREAM Act recipients could qualify for in state tuition.

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### **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](mailto: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 in the U.S. on an H-1B and my wife is on an H-4. My company will start my residence process, probably using the EB2 category.

But, in 2006 my wife's sister filed an I-130 immigrant petition for a relative. I am not sure I am included in that request. I just see my wife's name in the Beneficiary section on the I-797.

My question is if this parallel process might affect my EB2 process, whether my wife's sister has including me or not?

Answer:

The two processes are parallel to each other and will not have any effect on the other. According to the Visa Bulletin, visa availability for the EB-2 preference category is current except for nationals from China and India, which are currently available for May 2006 priority dates. Visa availability for sibling petitions (F-4) are currently in 2001 for nationals of most countries.

You cannot transfer the priority date from your wife's family-based petition to your employment-based petition.

Your name may have been included on the Form I-130 application, if you were married to your wife at the time. However the primary beneficiary is your wife, and your name would not be listed on the I-797 notice. You are still eligible to benefit from the petition as your wife's derivative beneficiary, even if your name was mistakenly left off the application, as long as you remain married to your wife.

2) Question:

I have an employee who is currently in his first year of an H1-B visa. He would like to do some part-time work consulting for a university, in the same field as his work here. Could he do that without filing any further paperwork?

Someone here in our HR has suggested that he would have to file for another H1-B visa to work at the other company. Another person said that since his work would be in the same field as his work here, it would be legal without further paperwork.

The reason for the work is that it would allow him to finish a Ph.D. which he started at the university.

Answer:

The H-1B only allows the beneficiary to work for the H-1B petitioner. Any unauthorized work for other employers is a violation of the status and would result in the person falling out of status.

However, there is no problem with having more than one H-1Bs at the same time as long as the person is maintaining the requirements for both H-1Bs.

The other university has to file an H-1B petition for him.

3) Question:

I was imprisoned in my home country for protesting against the dictatorial regime. When I applied for asylum, I answered 'yes' on the question asking if I had ever been arrested.

But when I applied for my green card I answered 'no' to the question of whether I had ever been arrested for breaking or violating a law because the arrest itself was illegal.

Now I am applying for U.S. citizenship. Do I have to answer 'yes' to the question of whether I have been arrested? Will it be a problem that my answers on my asylum application and green card application were different?

Answer:

With the naturalization application, it is always best to err on the side of being too honest, as the easiest way for a USCIS officer to deny an application is to show that

the applicant was not truthful in the application. A denial on this basis will mean that the applicant will have to wait another 5 years (3 years if you are applying as the spouse of a U.S. citizen) before being able to file again.

If you have ever been arrested, detained, ticketed, or given a citation for any reason you should check yes in answer to the question on the N-400. This is true even if it was an unlawful arrest or detention, if it happened in a different country, if the charges were dismissed, if no charges were ever brought, or if the arrest records were expunged. You can include an explanation of the arrest on the application and you will be given a chance to explain the arrest at the interview.

In this situation you should also answer yes to the question about whether you ever gave false or misleading information when applying for an immigration benefit. This is because you did not mention the arrest on the green card application. As I said, it is best to err on the side of being overly honest on the naturalization application. Again you can include an explanation in the application and will be able to explain at the interview.

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#### **4. Border and Enforcement News:**

##### **GAO report: Border Patrol's hands tied by Interior, Agriculture rules**

*The Hill* reports that the Government Accountability Office (GAO) found that the Interior Department and Agriculture Department are enforcing environmental laws that are hampering the Border Patrol's ability to monitor the U.S.-Mexico border. Under federal law, Border Patrol agents are required to receive permission from land managing agents before building roads or establishing surveillance posts, a process that can sometimes take months. In Arizona, for example, Border Patrol agents waited four months to receive permission to move a mobile surveillance system, during which time 7 miles of border were left unwatched. According to the report, however, only 15% of agents reported this problem. The majority of agents claimed that 'the overall security status of their jurisdiction is not affected by land management law.' The GAO report is available at:

<http://www.gao.gov/new.items/d1138.pdf>

<http://thehill.com/blogs/blog-briefing-room/news/125531-gao-report-border-patrols-hands-tied-byinterior-agriculture-rules>

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##### **Flight school students arrested**

*The Boston Globe* reports that federal officials arrested 34 Brazilian nationals connected to TJ Aviation Flight Academy at Minute Man Air Field in Stow, MA. Despite increased security measures put in place after the September 11<sup>th</sup>, 2001 terrorist attacks that banned illegally present immigrants from taking flight lessons, many of the school's students received government clearance to train as pilots. The Transportation Security Administration (TSA) is reviewing the circumstances by which these individuals were issued licenses.

Among those arrested by ICE is Thiago DeJesus, the school's owner who holds a pilot's license and was charged with being in the country illegally in July. DeJesus

claims that all of his foreign students were approved by the TSA before taking classes and that he was unaware they were in the country illegally.

[http://www.boston.com/news/local/massachusetts/articles/2010/11/05/flight\\_school\\_arrests\\_raise\\_terrorism\\_fears/?page=full](http://www.boston.com/news/local/massachusetts/articles/2010/11/05/flight_school_arrests_raise_terrorism_fears/?page=full)

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### **Iowa planning board vote against ICE holding site**

*The Des Moines Register* reports that the Planning and Zoning Committee of Urbandale, Iowa has voted against plans to construct a federal immigration enforcement facility near a residential area. ICE requested to convert a warehouse to an office that would include holding cells for alleged illegally present immigrants. ICE claims that the facility would only be used to process and interview people rather than detain them over night. The committee voted unanimously to recommend against the ICE facility and the City Council will consider the matter on November 30<sup>th</sup>.

<http://www.desmoinesregister.com/article/20101109/NEWS/11090366/-1/ENT06/Urbandale-board-votes-tonix-ICE-holding-site>

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### **One out of three deportation requests denied**

*Hispanically Speaking News* reports that one out of every three deportation requests made by ICE was rejected during the last three months of the 2010 fiscal year. According to the Transactional Records Access Clearinghouse at Syracuse University, the turndown rate was one in four for fiscal year 2009. Some major immigration courts, however, reported higher rejection rates, including New York City, which denied 70 percent of requests, and Los Angeles, which rejected 63 percent. ICE has refused to release its own records, making it difficult to reach any conclusions about the cause of the increased rejection rate.

<http://www.hispanicallyspeakingnews.com/notitas-de-noticias/details/one-out-of-three-deportation-requests-denied1/2898/>

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## **5. News from the Courts:**

### **Costs to defend Arizona immigration law top \$1 million**

*The Arizona Republic* reports that the cost for defending Arizona's SB 1070 has surpassed \$1 million. Arizona Governor Jan Brewer's office released invoices from the Phoenix law firm Snell & Wilmer, which totaled to \$621,846.16 for July and \$440,520.25 for May and June. The state's legal defense fund has received \$3.7 million from thousands of donors across all 50 states. She will travel to 9<sup>th</sup> Circuit U.S. Court of Appeals in San Francisco to appeal the ruling that overturned parts of SB 1070.

<http://www.azcentral.com/news/articles/2010/10/27/20101027arizona-immigration-lawcost-through-july.html#ixzz13fHYQmM5>

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## **Court signals backing for Arizona immigration law**

*The San Francisco Chronicle* reports that a three-judge panel of the 9<sup>th</sup> U.S. Circuit Court of Appeals indicated it would reinstate a provision of Arizona's SB 1070 that would authorize police to demand papers from those they reasonably suspected of being illegally present immigrants. The provision would be weakened, however, so authorities would not be allowed to arrest or prosecute them under state law. Instead, suspects would be referred to federal authorities for deportation.

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/11/01/MNDP1G54K0.DTL>

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## **Nebraska Court won't weigh in on immigration measure**

*The Associated Press* reports that the Nebraska Supreme Court will not issue a ruling on whether municipalities can enact immigration-related restrictions on where people can live or work. Since the request did not allege a violation of state law, the court will not consider the question.

The court had been asked to consider the issue while a federal judge heard a lawsuit brought by the ACLU to challenge a Fremont ordinance that bars illegally present immigrants from renting property or finding employment. The ordinance would require employers to use a federal online database to check whether a person is permitted to work in the U.S. and would require renters to apply for a permit at City Hall. The city council has suspended the ordinance until its legality is decided in court.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/05/AR2010110503028.html>

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## **Feds to reopen Michigan man's asylum case**

*The Associated Press* reports that the federal government has agreed to reopen the case of Anton Camaj, an asylum seeker from former Yugoslavia. Camaj is facing deportation because he was forty minutes late to an immigration hearing in 1995. A federal appeals court said that it would not intervene in the case, even though it believes Camaj suffered a 'miscarriage of justice.'

<http://www.google.com/hostednews/ap/article/ALeqM5iFaFcrcqkRvWy6qCcwDEEtNG3bXw?docId=50f9ae4115394d2e8350b00d27f2dc07>

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## **Supreme Court weighs fairness of citizenship rule that varies by sex**

*The Washington Independent* reports that the Supreme Court is examining a citizenship law that treats men and women differently. Ruben Flores-Villar, a Mexican-born man who grew up with an American-citizen father in the United States, is asking the court to halt his deportation. He claims that he would have been granted citizenship if his mother had been an American instead of his father. Under citizenship law, children born outside the U.S. to at least one U.S. citizen parent can become citizens if the parent has lived in the country a certain period of time. However, the length of time differs for men and women. Currently, fathers

need to have spent at least five years in the country, two of which must be after the age of 14, while mothers need only one year of residence.

Members of the Supreme Court seem to have different opinions on the matter. Chief Justice John Roberts and Justice Antonio Scalia questioned a federal public defender's claim that the law perpetuates outdated 'gender stereotypes.' Justice Ruth Bader Ginsburg, on the other hand, believes the court should consider parents like Flores-Villar's father who don't fit the traditional mold.

<http://washingtonindependent.com/103262/supreme-court-weighs-fairness-of-citizenship-law-differences-for-mothers-and-fathers>

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### **Immigration courts add 23 judges**

*The Washington Independent* reports that the Justice Department has sworn in 23 new immigration judges. The increase in judges should ease large backlogs in the immigration courts, where the average wait time for a case is 459 days. It should also decrease the time defendants spend in detention centers. The DOJ's Executive Office for Immigration Review promised to fill the 48 vacancies in immigration courts by the end of this year. However, some immigrant rights advocates are concerned with the fact that 15 of the new judges previously worked for ICE.

<http://washingtonindependent.com/103252/immigration-courts-add-23-judges>

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## **6. News Bytes:**

### **Naturalization documents add security features**

*USA Today* reports that immigration officials have created a new naturalization certificate with enhanced security features. The certificates, used by new citizens to obtain passports and other legal documents, will have information embedded in the document and ink patterns that are harder to replicate. Earlier this year, U.S. Citizenship and Immigration Services unveiled a new green card that included a personalized holographic image and a laser engraved fingerprint of the person.

In another anti-fraud initiative, *The Federal News Radio* reports the Department of Homeland Security has expanded the E-Verify program to include U.S. passports and passport cards for employment verification. DHS hopes the inclusion of passport photo matching will enhance its ability to detect counterfeit documents and prevent fraud.

[http://www.usatoday.com/news/nation/2010-10-25-citizenship25\\_ST\\_N.htm](http://www.usatoday.com/news/nation/2010-10-25-citizenship25_ST_N.htm)  
<http://www.federalnewsradio.com/index.php?nid=35&sid=2114736>

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### **New process for relatives of green card holders**

*The Miami Herald* reports that the U.S. diplomatic mission in Cuba has changed the way it handles applications for U.S. entry by relatives of U.S. green card holders.

The change affects only spouses and minor children of U.S. residents, who will now be processed as regular immigrant visa applicants under the Cuban Family Reunification Program (CFRP). Beginning in 2011, F2A applicants "will be processed as immigrant visas applicants and will receive Legal Permanent Resident (LPR) status upon entry to the United States." Under the CFRP, which was established in 2007 to reduce delays for Cubans obtaining visas, cleared applicants are allowed to enter the United States and wait for their green cards there.

<http://www.miamiherald.com/2010/10/28/1895506/new-process-for-relatives-ofgreen.html#ixzz13fRGuOkw>

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### **Jesse Jackson Sr. asks voters to protect 14<sup>th</sup> amendment**

*Politico* reports that prior to the November 2<sup>nd</sup> election, Jesse Jackson Sr. was urging Chicago-area residents to vote for Democrats via a pre-recorded telephone message. In the message, Jackson voiced concerns that Republicans would change the 14<sup>th</sup> amendment, sending signals of the 'backsliding of equality.' Earlier this year, Senator Lindsey Graham (R-SC) and other Republican leaders suggested altering the amendment to discourage illegal immigration. Jackson warned that 'a call to rally against these basic amendments is always threatening.' The 14<sup>th</sup> amendment grants automatic citizenship to anyone born on U.S. soil.

<http://www.politico.com/news/stories/1010/44218.html>

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### **Temporary Protected Status for Somalia extended 18 months**

*U.S. Citizenship and Immigration Services* reports that it will extend Temporary Protected Status (TPS) for eligible nationals of Somalia from the current expiration date of March 17, 2011 to September 17, 2012. Secretary of Homeland Security Janet Napolitano has determined that the conditions that prompted the original TPS designations continue to exist in Somalia.

TPS does not apply to Somali nationals who first entered the United States after September 4<sup>th</sup>, 2001. In order to maintain TPS status, eligible Somali TPS beneficiaries must re-register during the re-registration period from November 2<sup>nd</sup>, 2010 to January 3<sup>rd</sup>, 2011 and submit an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765). USCIS will issue a new Employment Authorization Document to eligible TPS beneficiaries who re-register and apply.

### **Rhode Island governor says he'll rescind immigration order**

*Turn to 10 (Rhode Island)* reports that Rhode Island governor-elect Lincoln Chafee announced his plans to rescind an executive order on immigration. In 2008, Governor Don Carcieri signed an executive order requiring state agencies and vendors to use E-Verify to confirm the legal status of prospective employees. Chafee believes mandating E-Verify is an unnecessary step that alienates the Latino community and will move to repeal the order.

<http://www2.turnto10.com/news/2010/nov/05/chafee-says-hell-rescind-immigration-order-ar-281788/>

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### **New Mexico governor unlikely to imitate Arizona immigration law**

*USA Today* reports that New Mexico's Republican Governor-elect, Susana Martinez, said that she would not create a law similar to Arizona's controversial measure requiring police officers to determine a suspect's immigration status. Despite this comment, Martinez has been a strong opponent of a New Mexico law that allows illegally present immigrants to receive a state driver's license. Martinez campaign advisor Danny Diaz said she won 40% of New Mexico's Hispanic vote and hopes her moderate stance on immigration policy will be embraced by other GOP candidates in the 2012 election.

[http://www.usatoday.com/news/nation/2010-11-09-newmexico09\\_ST\\_N.htm](http://www.usatoday.com/news/nation/2010-11-09-newmexico09_ST_N.htm)

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### **Largest number of service members naturalized since 1955**

*Hispanically Speaking News* reports that USCIS announced that 11,146 members of the U.S. armed forces were granted citizenship in fiscal year 2010, representing the highest number of service members naturalized since 1955. USCIS conducts educational seminars about the naturalization process and other family-based immigration services for service members. The Naturalization at Basic Training Initiative, for example, conducts naturalization processing on the military base so that recruits become U.S. citizens before graduating from basic training. Since 2001, more than 65,000 service members have become U.S. citizens, including those serving in Iraq and Afghanistan.

<http://www.hispanicallyspeakingnews.com/immigration/details/largest-number-of-servicemembers-naturalized-since-1955/2872/>

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### **Study: 100,000 Hispanics left Arizona after SB1070**

*The Associated Press* reports that 100,000 Hispanics left Arizona after the passage of the state's tough immigration law. BBVA Bancomer Research shows that 23,380 Mexicans left Arizona for Mexico between June and September. The study cites the passage of SB 1070 as one possible cause, but also notes that Arizona's difficult economic situation could have caused illegally present immigrants to leave. The report estimated that 720,000 Mexican migrants were unemployed in the United States when the study was concluded in October.

[http://azdailysun.com/news/state-and-regional/article\\_fe9734aa-bf5d-5e05-bfbf-a8fb6b2e5848.html](http://azdailysun.com/news/state-and-regional/article_fe9734aa-bf5d-5e05-bfbf-a8fb6b2e5848.html)

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## **7. Washington Watch:**

### **Nancy Pelosi, Harry Reid want DREAM Act vote**

*Politico* reports that House Speaker Nancy Pelosi (D-CA) will push for a vote on the DREAM Act when Congress reconvenes. The DREAM Act, which would grant

citizenship to illegally present immigrants if they attend college or serve in the military, was shot down in September when it was attached to the annual defense policy bill. *The Washington Times* reports that Senate Majority Leader Harry Reid (D-NV) promised to have the Senate vote on the DREAM Act. In an interview with Univision's *Al Punto*, Reid said he only needs a handful of Republicans to join him in supporting the DREAM Act, but that they have been unwilling to give their support.

<http://www.politico.com/news/stories/1110/44959.html>

<http://www.washingtontimes.com/news/2010/oct/31/reid-vows-immigration-vote-lame-duck-congress/>

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## 8. Updates from the Visalaw.com Blogs

### Greg Siskind's Blog on ILW.com

- [IN THE NEWS](#)
- [ANOTHER COLLEGE PRESIDENT REVEALS HE IS ILLEGALLY PRESENT](#)
- [REPORT: H-2B VISAS CRITICAL FOR MANY BUSINESSES](#)
- [VACATION BREAK](#)
- [CORNBYN: DEMS PLAYING POLITICS WITH DREAM ACT](#)
- [UNIVERSITY STUDENT BODY PRESIDENT "OUTED" AS ILLEGALLY PRESENT](#)
- [STAGE BEING SET FOR DREAM ACT VOTE](#)
- [H-1B EXHAUSTION TARGET - FEBRUARY 16, 2011](#)
- [DECEMBER 2010 VISA BULLETIN RUNDOWN](#)
- [RECORD NUMBER OF FOREIGN STUDENTS COMING TO US](#)
- [HAZLETON, PA FINDS IGNORING CONSTITUTION VERY, VERY EXPENSIVE](#)
- [THE DEFICIT COMMISSION'S UNINTENDED CONSEQUENCES](#)
- [LATINO GOP GROUP WARNS PARTY LEADERS NOT TO PUT KING IN CHARGE OF IMMIGRATION](#)
- [PELOSI WILL PUSH FOR DREAM ACT VOTE IN LAME DUCK](#)
- [OUR LOCAL EMBARRASSMENT](#)
- [HE'S BAAAAACK.....](#)
- [H-1B CAP EXHAUSTION TARGET: FEBRUARY 21, 2011](#)
- [WADHWA PRESENTATION: AMERICA'S LOSS IS THE WORLD'S GAIN](#)
- [FX TO DEBUT DRAMA SERIES INVOLVING ILLEGALLY PRESENT IMMIGRANTS](#)
- [FIVE IDEAS THAT MIGHT APPEAL TO REASONABLE REPUBLICANS](#)
- [POLL GURU EXPLAINS WHY LATINOS ARE CONSISTENTLY UNDERCOUNTED](#)
- [NCSL: LATINO VOTERS SAVED SENATE FOR DEMOCRATS](#)
- [TAKEAWAYS FROM ELECTION 2010](#)
- [An Administrative Note about Comments](#)
- [ELECTION HOLDS SILVER LININGS FOR PRO-IMMIGRANTS](#)
- [BREAKING: SHERIFF JOE FACING CORRUPTION PROBE](#)
- [REID PROMISES VOTE ON DREAM ACT IN LAME DUCK](#)
- [THE MOST OUTRAGEOUS ANTI-IMMIGRANT CANDIDATES OF 2010](#)
- [IMMIGRATION HUMOR: WHAT PART OF LEGAL IMMIGRATION DON'T YOU UNDERSTAND](#)
- [LIBERTARIANS: TIME TO RE-LEGALIZE IMMIGRATION](#)
- [H-1B EXHAUSTION TARGET MOVES UP TO FEBRUARY 2011](#)
- [ARIZONA LOSES ANOTHER COURT BATTLE OVER ANTI-IMMIGRANT LAW](#)
- [WILL LATINOS MAKE A DIFFERENCE NEXT TUESDAY?](#)

[The SSB I-9, E-Verify, & Employer Immigration Compliance Blog](#)

- MURIETTA, WA CONSIDERING E-VERIFY MANDATE FOR EMPLOYERS
  - HOOVER VACUUM COMPANY FINED OVER IRCA DISCRIMINATION
  - PASSPORT PHOTOS BEING ADDED TO E-VERIFY
  - FENWAY PARK VENDOR FINED \$50K FOR I-9 VIOLATIONS
  - RHODE ISLAND'S GOVERNOR-ELECT PLANS TO RESCIND EMPLOYER COMPLIANCE ORDER
  - FURNITURE MANUFACTURE CHARGED CRIMINALLY BY ICE
  - AP AUDITS THE I-9 AUDITORS
- 

**9. State Department Visa Bulletin: December 2010**

*Number 27*  
*Volume IX*  
*Washington, D.C.*

**A. STATUTORY NUMBERS**

1. This bulletin summarizes the availability of immigrant numbers during **December**. 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 **November 10th** 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, DOMINICAN REPUBLIC, 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 Areas Except Those Listed	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	15FEB06	15FEB06	01JUN04	15FEB06	01JAN93	01APR97
2A	01AUG10	01AUG10	01AUG10	01AUG10	01MAR10	01AUG10
2B	01JUN05	01JUN05	01JAN02	01JUN05	22JUN92	01MAR00
3rd	01JUN02	01JUN02	01JUN02	01JUN02	22OCT92	01JUL92
4th	01JAN02	01JAN02	01JAN02	01JAN02	22DEC95	01JAN88

\*NOTE: For December, 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 01AUG10. (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	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	08JUN06	C	08MAY06	C	C
3rd	22FEB05	08DEC03	22FEB05	22JAN02	01JUL02	22FEB05
Other Workers	22APR03	22APR03	22APR03	22JAN02	01JUL02	22APR03
4th	C	C	C	C	C	C

Certain Religious Workers	C	C	C	C	C	C
5th	C	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C	C
5th Pilot Programs	C	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 **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:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	15,650	Except: Egypt 12,600 Ethiopia 12,250 Nigeria 10,850
<b>ASIA</b>	11,600	
<b>EUROPE</b>	13,600	
<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	700	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	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 JANUARY**

For **January**, 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:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	20,900	Except: Egypt 16,000 Ethiopia 13,200 Nigeria 12,100
<b>ASIA</b>	13,300	

<b>EUROPE</b>	15,400	
<b>NORTH AMERICA (BAHAMAS)</b>	6	
<b>OCEANIA</b>	775	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	900	

#### **D. OVERSUBSCRIPTION OF THE DOMINICAN REPUBLIC CHARGEABILITY**

Continued heavy applicant demand for Family preference numbers has required the oversubscription of the DOMINICAN REPUBLIC chargeability for December, to hold issuances within the annual numerical limitation. The result has been the establishment of cut-off dates in the Family First and 2B preference categories which are earlier than the Worldwide dates.

#### **E. RETROGRESSION OF PHILIPPINES FAMILY CUT-OFF DATES**

A dramatic increase in the level of applicant demand with very early priority dates has required the retrogression of the Philippines Family 2B, Third, and Fourth preference cut-off dates.

#### **F. VISA AVAILABILITY IN THE COMING MONTHS**

**Family-sponsored:** From early 2009 through September 2010, the level of demand for numbers in the Family-sponsored preference categories was very low. As a result, the cut-off dates for most Family preference categories were advanced at a very rapid pace, in an attempt to generate demand so that the annual numerical limits could be fully utilized. As readers were advised in previous Visa Bulletins providing projections of visa availability (e.g., April 2009, January 2010, May 2010, July 2010), such cut-off date advances could not continue indefinitely, and at some point they could slow, stop, or in some cases regress.

The level of demand which has been experienced during FY-2011 has resulted in most of the worldwide cut-off dates being held for the month of December. At this time it is not possible to predict when or if these dates may advance further, and there is a distinct possibility that retrogressions could occur as early as January if demand within the established cut-off dates does not appear to be subsiding.

**Employment-based:** At this time it is unlikely that there will be any cut-off dates in the Employment First preference during the coming months. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the Second preference category. Cut-off dates continue to apply to the China and India Second preference categories due to heavy demand.

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:**

China: none to two weeks

India: no movement

**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.

**G. ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2010**

This information is available on the Consular Affairs [travel.state.gov](http://travel.state.gov) web site. Once at that site, select "Visas" from along the top line, then on the left side select "Visa Statistics", then "Immigrant Visas", then "Annual IV Waiting List Report".

**H. 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](mailto: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](mailto: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](mailto:VISABULLETIN@STATE.GOV)

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

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