

Siskind's Immigration Bulletin – July 27, 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:

This week the infamous Arizona immigration law is scheduled to take effect and no one has any idea whether it will actually happen or not. A judge heard arguments last week in the first of seven lawsuits challenging the law. She indicated that she would only consider stopping sections of the law that were not in dispute so that means at least part of the law will go in to force. But even if the judge believes the plaintiffs have a point, it is not clear that she will stop the law before it takes effect as opposed to letting it take force and ruling later on the merits.

Also, the White House could stop one of the more controversial sections of the law if it chooses. DHS could simply not cooperate with Arizona law enforcement officials which would mean there would be no way to verify the legal status of individuals. The Justice Department has, of course, sued to stop the law from taking effect so it would make sense if DHS took such action. But we'll have to wait and see.

In the mean time, many are asking if comprehensive immigration reform is dead for 2010 (and beyond). Senator Harry Reid has made comments in recent days that strongly hint that this is the case and is suggesting pro-immigration advocates look at trying to get something less this year – perhaps the DREAM Act.

Many, including me, have been suggesting this approach for a while. The Democrats had the ability to kill the filibuster some time back and have instead left the 60 vote requirement in place. And that has meant difficult bills have not been brought up for a vote – including immigration. Since it looks like the “nuclear” strategy of killing the filibuster is not going to happen, the odds of comprehensive immigration reform passing have dropped. Republicans are clearly not going to risk the wrath of Tea Party constituents for anything too big. But some bills – like DREAM – probably have the votes to pass.

As they say in politics, the perfect is the enemy of the good. So while CIR is really the ideal way to address the problems in our immigration system, being wedded to that solution versus accepting something less actually is doing more to hurt immigrants than help. It has been ten years since Congress passed anything that really helped a lot of immigrants. And for the last six of those years, pro-immigrant groups have been the ones blocking positive legislation for fear that if anything popular is brought up, it will reduce support for a comprehensive bill. That's a good strategy for the short run. But after years and years of trying, the all or nothing approach has really proven to be the source of a lot of pain.

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. The ABC'S Of Immigration: L-1 Intracompany Transfer Visas

What is an L-1 intracompany transfer visa?

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

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

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

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

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

Second, the foreign firm and the US firm must have a "qualifying relationship." Both the US and the foreign firm must have common majority ownership, or, where there is less than majority ownership, common control by the same person or entity. Ownership by a common group of owners where no owner has control or a majority interest can cause a problem if each individual owner does not own approximately the same amount of both the US and the foreign company. This problem can sometimes be worked around if the owners have set up a voting agreement to ensure that there are not different groups controlling the foreign firm and the US firm.

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

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

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

What is the difference between an “executive” and a “manager”?

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

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

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

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

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

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

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

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

How do I apply for L-1 status?

Applications for L-1 visa status must first be approved by the Regional INS Service Center having jurisdiction over the location where the transferred employee will be

situated. The employer must send the Application for Non-Immigrant Visa and L Supplement, petition letter, supporting documentation and filing fee to the INS Service Center. After the INS Service Center approves the application, the employee must apply at the US Consulate for the visa. The Consulate normally approves the application unless it believes the INS has been defrauded or the INS was not aware of important information.

What if my company has a large number of applicants?

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

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

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

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

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

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

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

3. Ask Visalaw.com

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

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

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1) Question:

I am in the U.S. in L-1 status. My visa has expired, but my company has extended the petition. Can I go to Europe and return to the U.S. with my expired visa since the petition has been extended? I am from Mexico. If I need a visa do I have to get it in Mexico or can I apply for it in Europe.

Answer:

You will need a valid visa to return to the U.S. in L-1 status. You can get the visa at the U.S. consular post in Mexico. You may also be able to get the visa at a U.S. consular post in Europe, however that will depend on the post where you wish to apply. Some consular posts will issued visas to third country nationals, however each post has their own policy about this. You can usually find out the posts policy on issuing nonimmigrant visas to third country nationals by visiting the posts website. Links to each posts website is available at <http://www.usembassy.gov/>.

2) Question:

I am an H-1B holder. My husband has a green card. When he applies for his citizenship do I become a citizen with him? Do I have to apply with him?

Answer:

You will not become a citizen when your husband does and you are not eligible to apply for citizenship when he does.

In order to become a U.S. citizen you must first become a permanent resident and be a permanent resident for at least 5 years (possibly 3 years if your husband becomes a citizen). You can become a permanent resident either through a petition filed by your husband and/or a petition filed by your employer. You can speak to an immigration law attorney to find out which option is likely to work better for you.

3) Question:

If an illegal immigrant gets married in the U.S., is there a certain waiting period before their spouse can file a petition for them? Is there an age limit on how old the spouse must be to file the petition? I heard that they must be 21.

Answer:

There is no waiting period between getting married and being able to file an immigrant petition for your spouse. Although in some situations the couple may want to wait between the time the alien enters the U.S. and when they get married.

The petitioner does not have to be 21 to file a petition for their spouse. U.S. citizens must be 21 before they can petition for their parents, but there is no such age limit for filing a petition for a spouse. However, while there is no age requirement for filing the immigrant petition, the petitioner must be at least 18 when their spouse applies for the immigrant visa or green card application as they must be 18 to file an affidavit of support, which is required for those applications.

As a word of caution, if the beneficiary did not enter the U.S. legally then they should definitely speak with an immigration law attorney before filing anything.

4. Border and Enforcement (Arizona) News:

Arizona immigration law could overwhelm state's court system

The Arizona Republic, out of Phoenix, reports that the impending immigration legislation in Arizona has the potential to overwhelm the state's court system with criminal and civil cases when enforcement begins. Estimates indicate that enforcement of SB 1070 could triple the number of cases almost immediately, with no additional court staffing or funds.

Additionally, the law's enactment could lead individual law enforcement officers vulnerable to lawsuits, regardless of how strictly or leniently they apply the new rules. An unusual provision of the law allows residents to sue local government for not enforcing the law strictly enough. But in a catch-22, if police are too aggressive in their enforcement, it is nearly inevitable that they would end up arresting and holding US citizens, which will result in wrongful arrest lawsuits.

http://www.azcentral.com/arizonarepublic/business/articles/2010/06/15/20100615a_rizona-immigration-law-may-overwhelm-court-system.html

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ICE mulls 'softening' immigration detention centers

CNN reports that Federal Immigration and Customs Enforcement (ICE) has proposed reforms to the nation's immigration detention centers that would make the facilities more comfortable for some detainees.

The reforms are trying to improve amenities for the non-criminal immigrants being held at detention centers. These detainees have not been convicted of any crime, but are being held pending removal from the US.

The proposed changes include eliminating lock-downs and lights-out for non-criminals, giving visitors full access for as long as they like during a 12 hour period every day, and sponsoring light-hearted events such as movie nights.

<http://www.cnn.com/2010/US/06/17/detention.center.reforms/>

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Homeland Security Department to Use Drones on Mexican Borders

Daily Tech reports that Department of Homeland Security (DHS) has announced that it will increase the number of unmanned drones that patrol the US-Mexico border, hunting for drugs and illegally present immigrants. The FAA has granted DHS permission to launch mission from along the border.

The Customs and Border Protection will maintain a drone at the Corpus Christi Naval Air Station in Texas. The Office of National Drug Control Policy will also be cooperating with DHS and using drones on drug enforcement missions. Additionally, DHS will be working with the Justice Department to implement a cooperative framework to share drone related information with state, local, and federal law enforcement agencies.

<http://www.dailytech.com/Homeland+Security+Department+to+Use+Drones+on+Mexican+Borders/article18833.htm>

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Small businesses must now comply with SC's anti-illegal immigration law; audits to increase

The Associated Press reports that a South Carolina immigration law subjecting small business to fines and potential shutdowns for employing illegally present workers took effect on July 1st. According to Jim Knight, spokesman for the Department of Labor, Licensing and Regulation, every employee on the payroll must be legally documented. Employers are required to check workers' legality through a federal database or only hire workers with a valid driver's license.

Under the new law, the state Office of Immigrant Worker Compliance has doubled its number of investigators and increased its budget from \$750,000 to \$2 million as 110,000 business fall under the law.

<http://www.washingtonexaminer.com/breaking/small-businesses-must-now-comply-with-scs-anti-illegal-immigration-law-audits-toincrease-97618334.html>

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5. News from the Courts:

Carachuri-Rosendo v. Holder

The Associated Press reports that the Supreme Court recently heard the case of Carachuri-Rosendo v. Holder. The case involved a Mexican immigrant who was deported after a minor drug conviction, his second such conviction. Carachuri-Rosendo was caught with a single tab of Xanax, after being charged with possession of marijuana under two ounces a year prior.

The Federal government ruled that he could not appeal to an immigration judge for leniency because as a second time violator, his conviction amounted to a serious, or aggravated felony.

However, Justice John Paul Stevens, writing for the majority, said that the local prosecutor in Texas could have charged Carachuri-Rosendo with being a repeat offender, but didn't. Thus he was not convicted of a crime that would result in automatic deportation, and can now appeal the deportation decision. Justice Stevens noted that the immigrant, and others in his position, 'may now seek cancellation of removal and thereby avoid the harsh consequence of mandatory removal.' He noted, though, that immigrants can still be deported in such cases.

<http://www.chron.com/disp/story.mpl/ap/tx/7052420.html>

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Judge: Gov't can be sued in RI detainee death case

The Associated Press reports that a judge denied the Federal government's request to be dismissed from a lawsuit over the death of an immigrant detainee in Rhode Island.

Hiu Lui 'Jason' Ng died of liver cancer while in custody of the Donal W. Wyatt detention center. The lawsuit, filed by his widow, alleges abuse and medical negligence. US Immigration and Customs Enforcement (ICE) officials acknowledged that Ng was mistreated, but claimed that the government couldn't be held responsible for the actions of an independent contractor.

A US District Judge denied the government's motion. A representative of the ACLU, which took charge in organizing the lawsuit, was pleased that the case against the government could now move forward.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/06/14/AR2010061404212.html>

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Concerns Over Kagan's Immigration Views Add to Debate Ahead of Hearing

Fox News reports that Republicans plan to grill Supreme Court Justice Nominee Elena Kagan on her involvement in a federal challenge to a 2007 Arizona law. The law gives the state the right to suspend business licenses of employers who hire illegally present immigrants.

Fourteen Republican lawmakers wrote a letter to Sen. Jeff Sessions urging him to press Kagan on her role in the administration's May filing of the lawsuit. Other issues expected to arise in the confirmation hearings include questions on the second amendment and gun rights, and questions regarding her decision to ban military recruiters from the career center at Harvard Law.

<http://www.foxnews.com/politics/2010/06/25/concerns-kagans-immigration-views-adddebate-ahead-hearing/>

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Chamber of Commerce v. Candelaria

The Associated Press reports that the Supreme Court has agreed to hear a challenge from business and civil liberties groups to an Arizona law that punishes employers who hire illegally present or undocumented workers. The law in question requires

employers to verify the eligibility of potential employees through a federal database, E-Verify. The law also imposes sanctions if companies knowingly hire undocumented workers.

The ACLU, amongst others, alleges Arizona is overstepping its authority. Only Congress, they say, has the power to legislate about immigration. The Obama administration lent its support to the ACLU on the matter, agreeing that federal immigration law trumps state efforts. This case could establish precedent for the impending lawsuits against Arizona's recently passed SB 1070.

<http://www.washingtonpost.com/wpdyn/content/article/2010/06/28/AR2010062802133.html>

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6. News Bytes:

Hamas founder's son decries Islamic 'god of hate'

The Washington Times reports that Mosab Hassan Yousef, whose father Sheikh Hassan Yousef is leading imam within Hamas, denounced the god of Islam. Speaking at a dinner for the Endowment for Middle East Truth, he said 'the god of Islam is the god of hate.'

Yousef came to the United States in 2007 and recently published his memoir, *The Son of Hamas*, detailing his recruitment by Israel's domestic intelligence and security service Shin Bet.

Mr. Yousef faces potential deportation due to charges labeling him a terrorist affiliated with Hamas. Mr. Yousef considers himself a devout Christian and blames the religion of Islam for instigating violence in the Middle East.

<http://www.washingtontimes.com/news/2010/jun/23/hamas-founders-son-decries-islamic-god-hate/>

Governor to convene summit on immigration

The Salt Lake Tribune reports that Governor Gary Herbert of Utah will summon an immigration summit this month. He hopes to have members from various minority communities, the business community, various faith-based organizations and legislators present at the meeting.

Republican State Rep. Stephen Sandstrom said he plans to implement a revised version of Arizona's new immigration law requiring local police officers to enforce federal immigration laws.

Governor Herbert hopes his roundtable discussion will provide an open forum for respectful dialogue about immigration. He expects to sign some form of immigration legislation into law at the end of the next legislative session, but he emphasizes that it will be a Utah immigration law, not a copy of Arizona's law.

<http://www.sltrib.com/sltrib/home/49862458-76/immigration-governor-church-herbert.html.csp>

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Mexican murder suspect: US consulate infiltrated

The Associated Press reports that Jesus Ernesto Chavez, a drug-cartel enforcer, has told officials that a woman who worked in the Mexican border's biggest US consulate had helped a rival drug gang obtain American visas. For that, he ordered her killed.

The employee, Lesley Enriquez, and two other people connected to the US Consulate in Ciudad Juarez were killed March 13 in simultaneous attacks. A US federal official said that after the killings US officials investigated possible corruption involving Enriquez, but found none. The official said the motive behind the killing remained unclear. Officials have previously said that Enriquez was never in a position to provide visas and worked in a section that provides basic services to US citizens in Mexico.

<http://www.google.com/hostednews/ap/article/ALeqM5gMi5B2USfJStXxfqgWWr2xjRYpOgD9GN79000>

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7. Washington Watch:

Clinton: Obama wants immigration reform passed this year

The Hill reports that Secretary of State Hillary Clinton has said that President Obama is courting lawmaker's support for comprehensive immigration reform this year. 'He's working very hard to get that support and I know he wants to do it in the next months.'

When asked if it would be this year, Clinton answered, 'He wants it to be this year.' Clinton made the comments while on a diplomatic trip to Ecuador.

<http://thehill.com/blogs/blog-briefing-room/news/102807-clinton-obama-wants-immigration-reform-this-year>

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Key Dem: Immigration bill lacks votes

The Hill reports that Representative Luis Gutierrez (D-Ill.), a leading advocate for comprehensive immigration reform, believes 'there are an insufficient number of Democratic votes' in Congress to pass a bill this year. Noting that there will likely be fewer Democrats in both chambers after the November elections, Gutierrez believes future prospects for reform remain bleak.

Senate leaders have decided to address energy legislation before immigration and Gutierrez does not see the Senate acting before September. In addition, Arizona's controversial border security law has become a serious roadblock for comprehensive immigration reform.

<http://thehill.com/homenews/house/105503-key-democrat-immigration-bill-lacks-votes->

Obama tries to put Republicans on immigration hot seat

The Washington Times reports that President Obama has urged Republicans to join in the legislative push for an overhaul of the nation's immigration laws. Obama believes the issue is too dangerous to tackle without a bipartisan effort.

A major sticking point in the debate is Arizona's new law, which Obama believes is 'unenforceable' for local police. Key Republicans argue that borders must be secured before the government considers legalizing illegally present immigrants.

Obama contends that our borders are too vast to secure 'only with fences and border patrols' and that illegally present immigrants should be given a multi-step path to citizenship if they agree to pay fines, admit they broke the law, and learn English.

<http://www.washingtontimes.com/news/2010/jul/1/obama-tries-put-gop-immigration-hot-seat/?page=1>

Obama Administration Sues Arizona Over Immigration Law

The New York Times Reports that the Obama administration has sued Arizona over its new immigration law. The suit argues that immigration law and regulation is the responsibility of the federal government rather than each state. The administration claims the law will interfere with foreign policy by straining the United States' relationship with Mexico and other countries.

The Justice Department filed the lawsuit in federal court in Arizona, asking for a preliminary and permanent injunction against the law that will take effect on July 29th. The case is *United States of America v. State of Arizona et al*; Case No. 10-cv-1413 in U.S. District Court for the District of Arizona.

<http://www.nytimes.com/reuters/2010/07/06/news/news-us-obama-immigration-lawsuit.html>

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Study questions how many would qualify for immigration 'Dream' act

The Hill reports that a recent study released by the Migration Policy Institute (MPI) reveals that less than half of the 2.1 million young illegally present immigrants in the United States would qualify for citizenship under the 'Dream Act.' Drafted by Senators Dick Durbin (D-Ill.) and Richard Lugar (R-Ind.), the 'Dream Act' would put immigrants between the ages of 12 and 35 on the path to legal permanent residence.

President Obama has supported the legislation, stating that 'innocent young people' should not be punished for their parents' actions. However, according to the study, the majority of illegally present immigrants would not qualify, lacking enough education or English proficiency. While 726,000 undocumented adults would meet the criteria for conditional status, many others who meet the age requirement would be unlikely to meet all of the other criteria.

<http://thehill.com/homenews/senate/107755-study-questions-how-many-would-qualify-for-immigration-dream-act>

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8. Updates from the Visalaw.com Blogs

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

- [REPUBLICAN HOUSE MEMBERS: WE'RE READY TO PASS IMMIGRATION REFORM](#)
- [COURT ORDERS SHERIFF JOE TO PAY HALF MILLION DOLLARS TO PROTESTORS](#)
- [ARIZONA-MEXICO RELATIONS TAKE ANOTHER HIT](#)
- [THE STRATEGY](#)
- [THE UNITED STATES V. ARIZONA](#)
- [COLBERT: COME ON AMERICANS, TAKE OUR FARMWORKER JOBS](#)
- [DROP DEAD DIVA](#)
- [HEALTH CARE REFORM NEEDS IMMIGRATION REFORM](#)
- [JEB BUSH: WE NEED TO DO A BETTER JOB WELCOMING IMMIGRANTS](#)
- [AILA BOARD OF GOVERNORS](#)
- [WHAT DOES IT MEAN?](#)
- [LIVEBLOGGING THE OBAMA IMMIGRATION ADDRESS](#)
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- [RUPERT MURDOCH TAKES PRO-IMMIGRATION CASE TO HIS OWN FOX NEWS](#)
- [ARIZONA LAW COULD COST GOP TEXAS GOVERNOR'S RACE](#)
- [KOS: IMMIGRATION POSITIONS WILL COST CALIFORNIA SENATE AND GOVERNOR RACES](#)
- [NOBEL PRIZE WINNER BECKER: CHARGE \\$50K FOR IMMIGRATING](#)
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- [FREEMONT, NEBRASKA VOTERS PASS SANCTIONS LAW](#)
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- [HILARY REVEALS WHITE HOUSE PLANS TO SUE ARIZONA](#)
- [NFAP: PENDING H-1B AND L-1 SENATE BILLS LIKELY VIOLATE TRADE LAWS](#)

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

- TEMUCULA, CA CONSIDERING E-VERIFY ORDINANCE

- SC EMPLOYER SANCTIONS LAW FULLY IN EFFECT NOW
- UTAH E-VERIFY MANDATE TAKES EFFECT
- MASSACHUSETTS LEGISLATORS SCALE BACK SANCTIONS BILL
- SOUTHERN CALIFORNIA TOWNS CONSIDERING E-VERIFY MANDATES
- LEWIS COUNTY, WASHINGTON TO REQUIRE E-VERIFY FROM CONTRACTORS
- NOVATO CITY COUNCIL CONSIDERING E-VERIFY MEASURE
- ICE UNVEILS FIVE YEAR PLAN
- AGRIPROCESSORS PLANT MANAGER GETS 27 YEAR SENTENCE
- FREEMONT, NEBRASKA VOTERS PASS SANCTIONS LAW
- USCIS ISSUING NEW VERSIONS OF I-9-ACCEPTED WORK DOCUMENTS

[Visalaw Healthcare Immigration Blog](#)

- WORLD HEALTH ORGANIZATION ISSUES CODE ON INTERNATIONAL HEALTH CARE RECRUITMENT
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9. State Department Visa Bulletin: July 2010

Number 22 Volume IX Washington, D.C.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **July**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; U.S. 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 June **9th** 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	01APR05	01APR05	01APR05	01APR05	01NOV92	01SEP95
2A	01JUL08	01JUL08	01JUN07	01JUL08	01JUN07	01JUL08
2B	01MAY03	01MAY03	01MAY03	01MAY03	15JUN92	01MAR00
3rd	01SEP01	01SEP01	01SEP01	01SEP01	01MAR92	01MAY93
4th	01JAN01	01JAN01	01JAN01	01JAN01	01MAR95	01APR89

*NOTE: For July, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JUN07. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT the DOMINICAN REPUBLIC and MEXICO** with priority dates beginning 01JUN07 and earlier than 01JUL08. (All 2A numbers provided for the DOMINICAN REPUBLIC AND MEXICO are exempt from the per-country limit; there are no 2A numbers for the DOMINICAN REPUBLIC AND 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	22NOV05	C	01OCT05	C	C
3rd	15AUG03	15AUG03	15AUG03	22NOV01	U	15AUG03
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	U	01JUN01
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-2010 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 **July**, immigrant numbers in the DV category are available to qualified DV-2010 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	54,100	Except: Egypt: 24,500 Ethiopia: 25,100 Nigeria: 18,850
ASIA	23,500	
EUROPE	32,000	
NORTH AMERICA (BAHAMAS)	5	
OCEANIA	1,300	
SOUTH AMERICA, and the CARIBBEAN	1,500	

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-2010 program ends as of September 30, 2010. DV visas may not be issued to DV-2010 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2010 principals are only entitled to derivative DV status until September 30, 2010. DV visa availability through the very end of FY-2010 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 AUGUST

For **August**, immigrant numbers in the DV category are available to qualified DV-2010 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	
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	Separately	
AFRICA	64,300	Except: Egypt: 26,000 Ethiopia: 25,625 Nigeria: 22,000
ASIA	28,700	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	5	
OCEANIA	CURRENT	
SOUTH AMERICA, and the CARIBBEAN	CURRENT	

D. VISA AVAILABILITY IN THE FAMILY-SPONSORED CATEGORIES

There continues to be extremely rapid forward movement of most Family preference cut-off dates. This is a direct result of the lack of demand by potential applicants who have chosen not to pursue final action on their cases, or who may no longer be eligible for status. The rapid movement provides the best opportunity to maximize number use under the FY-2010 annual numerical limitations. Should applicants eventually decide to pursue action on their cases it will have a significant impact on the cut-off dates.

E. RETROGRESSION OF THE MEXICO FAMILY THIRD AND FOURTH PREFERENCE CUT-OFF DATES

As the end of the fiscal year approaches, it has been necessary to retrogress the Mexico Family Third and Fourth preference cut-off dates to keep visa issuances within the annual numerical limitations set by law. It is anticipated that for October, the first month of the new fiscal year, these preferences will return to the latest cut-off dates reached during FY-2010.

F. VISA AVAILABILITY IN THE EMPLOYMENT-BASED CATEGORIES

Based on current indications of demand, the best case scenarios for cut-off dates which will be reached by the end of FY-2010 are as follows:

Employment First: Current

Employment Second:

China and India: March or April 2006

Employment Third:

Worldwide: June through September 2004

China: October through December 2003

India: February 2002

Mexico: Unavailable
Philippines: June through September 2004

Employment Fourth:

Worldwide: It may be necessary to establish a cut-off date for September.

Employment Fifth: Current

Please be advised that the above date ranges are only estimates which are subject to fluctuations in demand. Continued heavy demand during recent months has reduced the estimated forward movements projected earlier in the year. It is possible that some annual limits could be reached or that some preferences could retrogress prior to the end of the fiscal year. Those categories with a "Current" projection will remain so for the foreseeable future.

G. DIVERSITY VISA LOTTERY 2011 (DV-2011) RESULTS

The Kentucky Consular Center in Williamsburg, Kentucky has registered and notified the winners of the DV-2011 diversity lottery. The diversity lottery was conducted under the terms of section 203(c) of the Immigration and Nationality Act and makes available *50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. Approximately 100,600 applicants have been registered and notified and may now make an application for an immigrant visa. Since it is likely that some of the first *50,000 persons registered will not pursue their cases to visa issuance, this larger figure should insure that all DV-2011 numbers will be used during fiscal year 2011 (October 1, 2010 until September 30, 2011).

Applicants registered for the DV-2011 program were selected at random from over 12.1 million qualified entries (16.5 million with derivatives) received during the 60-day application period that ran from noon on October 2, 2009, until noon, November 30, 2009. The visas have been apportioned among six geographic regions with a maximum of seven percent available to persons born in any single country. During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years. Those selected will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letter and must fully complete the information requested.

Registrants living legally in the United States who wish to apply for adjustment of their status must contact U.S. Citizenship and Immigration Services for information on the requirements and procedures. Once the total *50,000 visa numbers have been used, the program for fiscal year 2011 will end. Selected applicants who do not receive visas by September 30, 2011 will derive no further benefit from their DV-2011 registration. Similarly, spouses and children accompanying or following to join DV-2011 principal applicants are only entitled to derivative diversity visa status until September 30, 2011.

Only participants in the DV-2011 program who were selected for further processing have been notified. Those who have not received notification were not selected. They may try for the upcoming DV-2012 lottery if they wish. The dates for the registration period for the DV-2012 lottery program will be widely publicized during August 2010.

* The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulated that up to 5,000 of the 55,000 annually-allocated diversity visas be made available for use under the NACARA program. The reduction of the limit of available visas to 50,000 began with DV-2000.

The following is the statistical breakdown by foreign-state chargeability of those registered for the DV-2011 program:

AFRICA

ALGERIA 1,753	ETHIOPIA 5,200	NIGERIA 6,000
ANGOLA 55	GABON 41	RWANDA 204
BENIN 508	GAMBIA, THE 72	SAO TOME AND PRINCIPE 0
BOTSWANA 13	GHANA 6,002	SENEGAL 427
BURKINA FASO 183	GUINEA 701	SEYCHELLES 4
BURUNDI 72	GUINEA-BISSAU 5	SIERRA LEONE 3,911
CAMEROON 3,674	KENYA 4,689	SOMALIA 201
CAPE VERDE 26	LESOTHO 11	SOUTH AFRICA 963
CENTRAL AFRICAN REP. 18	LIBERIA 1,826	SUDAN 1,156
CHAD 59	LIBYA 114	SWAZILAND 4
COMOROS 7	MADAGASCAR 55	TANZANIA 174
CONGO 144	MALAWI 33	TOGO 1,011
CONGO, DEMOCRATIC REPUBLIC OF THE 2,575	MALI 88	TUNISIA 132
COTE D'IVOIRE 759	MAURITANIA 25	UGANDA 490
DJIBOUTI 45	MAURITIUS 61	WESTERN SAHARA 0
EGYPT 4,251	MOROCCO 2,003	ZAMBIA 128
EQUATORIAL GUINEA 13	MOZAMBIQUE 2	ZIMBABWE 163
ERITREA 851	NAMIBIA 13	
	NIGER 89	

ASIA

AFGHANISTAN 97	IRAQ 147	NEPAL 2,189
BAHRAIN 15	ISRAEL 129	OMAN 3
BANGLADESH 5,999	JAPAN 298	QATAR 9
BHUTAN 5	JORDAN 136	SAUDI ARABIA 91
BRUNEI 5	NORTH KOREA 2	SINGAPORE 35
BURMA 367	KUWAIT 88	SRI LANKA 515
CAMBODIA 434	LAOS 3	SYRIA 132
HONG KONG SPECIAL ADMIN. REGION 43	LEBANON 214	TAIWAN 365
INDONESIA 205	MALAYSIA 133	THAILAND 77
IRAN 2,819	MALDIVES 4	TIMOR-LESTE 0
	MONGOLIA 279	UNITED ARAB EMIRATES 66
		YEMEN 95

EUROPE

ALBANIA 1,469	GEORGIA 699	PORTUGAL 61
ANDORRA 0	GERMANY 1,895	Macau Special Admin.
ARMENIA 1,268	GREECE 62	Region 5
AUSTRIA 147	HUNGARY 272	ROMANIA 821
AZERBAIJAN 355	ICELAND 48	RUSSIA 2,464
BELARUS 1,104	IRELAND 201	SAN MARINO 0
BELGIUM 94	ITALY 450	SERBIA 327
BOSNIA & HERZEGOVINA 67	KAZAKHSTAN 370	SLOVAKIA 125
BULGARIA 950	KOSOVO 134	SLOVENIA 14
CROATIA 97	KYRGYZSTAN 196	SPAIN 219
CYPRUS 11	LATVIA 122	SWEDEN 187
CZECH REPUBLIC 111	LIECHTENSTEIN 1	SWITZERLAND 195
DENMARK 66	LITHUANIA 262	TAJIKISTAN 257
Greenland 1	LUXEMBOURG 3	TURKEY 2,266
ESTONIA 72	MACEDONIA 263	TURKMENISTAN 135
FINLAND 87	MALTA 1	UKRAINE 6,000
FRANCE 767	MOLDOVA 894	UZBEKISTAN 5,091
French Guiana 0	MONACO 0	VATICAN CITY 0
French Polynesia 13	MONTENEGRO 5	
French Southern &	NETHERLANDS 139	
Antarctic Lands 1	Aruba 6	
Guadeloupe 0	Netherlands	
Martinique 0	Antilles 16	
New Caledonia 9	NORTHERN IRELAND 38	
Reunion 0	NORWAY 66	
St. Pierre & Miquelon 0		

NORTH AMERICA

BAHAMAS, THE 18

OCEANIA

AUSTRALIA 683	NAURU 7	SAMOA 0
Christmas Island 0	NEW ZEALAND 333	SOLOMON ISLANDS 3
Cocos Islands 0	Cook Islands 0	TONGA 51
FIJI 476	Niue 8	TUVALU 4
KIRIBATI 9	PALAU 2	VANUATU 1
MARSHALL ISLANDS 6	PAPUA NEW GUINEA 4	WESTERN SAMOA 13
MICRONESIA, FEDERATED		
STATES OF 0		

SOUTH AMERICA, CENTRAL AMERICA, AND THE CARIBBEAN

ANTIGUA AND BARBUDA 1	DOMINICA 29	SAINT LUCIA 27
ARGENTINA 134	GRENADA 5	SAINT VINCENT AND

BARBADOS 12
BELIZE 12
BOLIVIA 90
CHILE 63
COSTA RICA 50
CUBA 406

GUYANA 36
HONDURAS 61
NICARAGUA 74
PANAMA 31
PARAGUAY 14
SAINT KITTS AND NEVIS 6

THE GRENADINES 21
SURINAME 9
TRINIDAD AND
TOBAGO 145
URUGUAY 23
VENEZUELA 752

Natives of the following countries were not eligible to participate in DV-2011: Brazil, Canada, China (mainland-born, excluding Hong Kong S.A.R. and Taiwan), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, the Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

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:

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