

Siskind's Immigration Bulletin – April 30, 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:

Over the past several days, immigration has returned to the headlines in a serious way. A few weeks back, we heard rumblings that the Democrats in the Senate would take up immigration this year, but many were not taking the talk seriously.

And then came Arizona. Most of you know by now that the Governor signed the controversial bill SB1070 which does many controversial things including making it a state crime for an immigrant to not have their documents proving legal status on them at all times and also permitting police officers to demand documents from any person an officer "reasonably" suspects of being an illegally present immigrant. The law doesn't just apply to traffic stops as some have been assuming. It applies to officers making any "lawful contact" with an individual which covers just about every situation where a person is out in public.

The idea that police can ask anyone at any time to show their papers has shocked many and instantly made headlines around the world. Boycotts have begun against businesses in the state and a lawsuit has already been filed.

And the new Arizona law has also spurred Congress to accelerate its plans on immigration despite the political risks. However, as of now it looks like the Democrats are going to go it alone as the planned Republican co-sponsor of the legislation, Lindsey Graham (R-SC) walked away from negotiations.

On April 29<sup>th</sup>, Democrats unveiled a 26 page outline of their planned comprehensive immigration reform bill, but have still not offered a date when the bill will formally be introduced. In this issue, we provide a summary of the Democrats' outline in place of our usual ABCs of Immigration article.

I would encourage readers to visit my blog at <http://blogs.ilw.com/gregsiskind> to keep up with the latest developments both on the comprehensive immigration reform bill and the Arizona law. I've been updating the blog several times a day to reflect the latest news.

And once a bill comes out, I'll be summarizing the entire text section by section. The first place I'll post it will be on my blog.

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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. Special: The Siskind Summary – The Reid-Schumer-Menendez Conceptual Proposal for Immigration Reform**

*Prepared 4/28/2010 by Greg Siskind ([gsiskind@visalaw.com](mailto:gsiskind@visalaw.com)) of Siskind Susser, PC ([www.visalaw.com](http://www.visalaw.com))*

Democrats in the US Senate are circulating a 26-page plan outlining soon to be introduced comprehensive immigration reform legislation.

### **I. Achieving Control of the Borders**

The plan is different in many respects from earlier proposals. The most significant change involves the delaying of a legalization program until the following eight benchmarks are met:

1. Increasing the number of Border Patrol officers;
2. Increasing the number of ICE agents combating smuggling;
3. Increasing the number of ICE worksite enforcement inspectors and resources;
4. Increasing the number of ICE document fraud detection officers and improved detection capability;
5. Increasing the number of personnel to conduct inspections for drugs, contraband and illegal immigrants at ports of entry;
6. Improving technology, infrastructure, and resources to assist the Border Patrol and ICE;
7. Increasing resources for prosecuting smuggling and unauthorized border crossers; and
8. Increasing immigration court resources to expedite the removal of unlawfully present individuals.

The proposal also notes plans for additional ports-of-entry and the hiring of thousands of new CBP inspectors.

A bipartisan commission will be created to investigate the state of security on the southern and northern borders and to issue recommendations on what is necessary to ensure "complete operational control of the southern and northern borders" within a year. Congress must enact the recommendations.

State and local governments will be barred from enacting their own immigration laws.

### **II. Removal of Unlawfully Present Persons**

The US-VISIT entry-exist system will be completed.

DHS will promptly pursue removal proceedings against people who overstay visas. All criminals will be checked for legal status and deported if they are here illegally. The Visa Waiver Program will be monitored and countries with too many people overstaying their visas will be removed.

Sex offenders will be prohibited from petitioning to bring in foreign nationals to the US.

"Laws will be amended to encourage individuals here illegally to depart voluntarily."  
New crimes for trafficking and misuse of passports.

New laws to sanction countries that delay or prevent repatriation of their citizens being removed from the US.

States will be reimbursed quickly for the costs of jailing and transporting immigrants. Biometrics will be mandated for all foreign nationals.

DHS will establish uniform standards for detaining aliens and will charge detained aliens within three months or within 48 hours.

Detainees shall not be transferred without making arrangements for their children.

Penalties and sanctions for immigration violators will be increased for people who evade border checkpoints, fail to obey border officials, engage in human smuggling, use vessels and aircraft to smuggle immigrants, sell firearms to illegal immigrants, money launder to fund illegal trafficking and willfully fail to comply with conditions placed upon them.

Victims of labor violations will be provided legal incentives to cooperate with law enforcement.

Refugees and asylees will be admitted as permanent residents when they receive their refugee or asylee status.

### III. Ending Illegal Employment through Biometric Employment Verification

Within 18 months, SSA will begin issuing tamper-resistant, machine-readable biometric social security cards. The cards will be used to verify work authorization and not as proof of citizenship or lawful immigration status. SSA will verify identity and work authorization of each person before issuing card. An administrative adjudication process can be invoked if an individual is unable to establish identity. Employers will be required to use a new Biometric Enrollment, Locally-stored Information and Electronic Verification of Employment (BELIEVE) System as a means of verification. Employees will present the biometric SSA card to employers who will swipe the cards through a card reader. The BELIEVE system will replace the current I-9/E-Verify system within six years.

Fines will be tripled for employers hiring someone not authorized for employment, hiring someone without verifying work authorization, continuing to employ someone the employer knows is not authorized to work or for violating the anti-discrimination rules.

The new system will be funded through a fee charged to non-citizens as part of the biometric social security card application process, EAD application fees, fees charged to businesses seeking to act as authorized employment eligibility screeners, fines charged for violating the new law and fees charged to US citizens for obtaining replacement Social Security Cards.

### IV. Reforming Legal Immigration

#### - High Skilled Immigration

Green cards will be available without a cap on numbers to foreign students with an advanced degree from a US institution of higher education in a field of science, technology, engineering or math (STEM) and who possess an offer of employment from a US employer in a field related to their degree.

STEM F-1s will now be dual intent visas.

"Fraud and abuse" protections will be added to the H-1B program. New H-1B requirements relating to wage determinations, Internet posting of employment positions, lengthening of US worker displacement protections and extending those requirements to all employers rather than just H-1B employers, prohibiting employers from limiting positions to H-1Bs and limiting the number of H-1B and L-1 employees that an employer of 50 or more workers in the US may hire.

DOL will be able to investigate fraud and conduct H-1B compliance audits. DOL will be required to conduct annual audits of companies with large numbers of H-1Bs. Penalties for violating employers will be increased.

For L-1s, a limit of one year for L-1B employees and working at worksite other than the petitioning employer unless DHS waives. Also sets requirements for new offices, wage rates, working condition and employer penalties.

- Lower-Skilled workers.

H-2A agricultural workers – AgJobs bill provisions to be included.

H-2B – adds protections to eliminate fraud and abuse. Aggrieved workers will have a right to file a civil action against employers.

Employers of H-2Bs must notify DOL within 30 days of an H-2B employee's termination and submit documentation showing the worker was paid the prevailing wage, transportation and other expenses.

Returning worker H-2B cap exemption will return except if unemployment is higher than 8%.

New H-2C for non-seasonal, non-agricultural workers entering the US. Like H-1B, valid for up to three years at a time with total of six years. H-2Cs can be put on track to green card. The visa will be dual intent.

H-2Cs can change employers after a year. The H-2C cap shall adjust each year based on unemployment and relevant economic indicators. If an employer cannot obtain a foreign worker because the annual cap is reached, the employer can pay an additional fee to USCIS and pay a heightened wage and go through additional recruitment in order to hire the worker.

All H-2C cases will have a recruiting requirement. H-2C workers shall have labor protections and US workers displaced by an H-2C shall have redress for being unlawfully displaced.

A Commission on Employment-Based Immigration is created which shall have the purpose of studying America's employment-based immigration system to recommend policies to promote growth and competitiveness while minimizing job displacement, wage suppression and unauthorized employment. The Commission will publish an annual report detailing the usage of visas and issuing recommendations. The Commission shall have the power to declare an emergency in the immigration system. That means a situation where the immigration system is failing to admit a sufficient number of workers or is admitting too many. The Commission will then issue recommended adjustments to Congress which must then vote to accept or reject.

Unused green cards will be recaptured.

The family immigration backlog will be cleared out over eight years. After that, the quotas will return to current levels. Spouses and children of green card holders will be "immediate relatives".

Per country limits in family cases will be increased from 7 to 10 percent.

Allows "permanent partners" of US citizens and lawful permanent residents to get green cards.

New provisions for widows and orphans of US citizens and children of Filipino World War II veterans. New provisions for stepchildren and adoptive children.

#### V. Mandatory Registration and Administration of Punishment for Unauthorized Aliens in the US

Requires all illegal immigrants to come forward to register, be screened and, if eligible, complete other requirements to earn legal status. That requires payment of taxes.

Criminals and security risks will be excluded.

In Phase I, eligible applicants will be registered, fingerprinted, screened and considered for an interim "Lawful Prospective Immigrant" (LPI) status that allows them to receive a tamper resistant credential allowing for work and travel outside the US. In Phase 2, which will take place in eight years after current backlogs have

cleared, LPIs who have fulfilled all additional statutory requirements will be permitted to petition for adjustment to Lawful Permanent Resident (LPR) status.”

Plan calls for initial broad, streamlined registration/application process characterized by rigorous security checks and verification of eligibility. The goals are to encourage maximum participation and to enhance US national security and law enforcement capabilities.

Spouses and minor children living abroad will be eligible for legalization once the relative receives LPI status.

To qualify for initial registration for status as an LPI, an individual must

- Complete an application supplying basic biographic and biometric information
- Pass security and criminal checks
- Pay all applicable fees, civil penalties and taxes
- Have been continuously present in the US since the date of enactment

The LPI system will only be available to people illegally present in the US.

After eight years, people with LPI status will be permitted to apply for adjustment of status to lawful permanent resident status if they meet the following criteria:

1. Show basic citizenship skills
2. Have English language skills
3. Have continuously resided in the US
4. Have cleared an updated security/criminal check
5. Paid all taxes, fees and penalties
6. Registered for Selective Service

DREAM and AgJobs are also going to be included.

#### VI. Reforms to Enhance Efficiency

New program to provide visas to promote property ownership by foreign nationals.

R-1 religious worker visa to be made permanent and improvements to be incorporated.

Conrad 30 J-1 program to be made permanent and H-1B MDs to be provided incentives to work in underserved areas. Easier path for doctors working in underserved areas to get green cards.

E-3 visa for Irish nationals similar to Australia.

Fashion models can enter on O and P visas rather than the H-1B.

Nurses and PTs will have new paths to enter the US to alleviate shortages.

Technical fixes in the EB-5 program.

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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 a U.S. citizen and I would like to file a petition for my daughter, who has two children, both under 21. Since it will take many years, they may be over 21 when the visa is current. Would they still be eligible to come as unmarried children under 21?

### **ANSWER:**

It depends on how long it takes for USCIS to approve the immigrant petition (I-130) and how old they are when a visa becomes available under the petition. The longer USCIS takes to approve the I-130 the better. This is because the time that it takes for USCIS to approve the I-130 petition is subtracted from the children's ages on the date a visa becomes available. This is a benefit provided under the Child Status Protection Act (CSPA).

For example, let's say your oldest grandchild is 14 years old now. Assuming your daughter is married (F-3 preference category), let's assume it will take 9 years for a visa to become available for a petition that is filed now, so that the child will be 23 on the date that a visa becomes available under the Visa Bulletin. Let us also assume that it will take USCIS 3 years to approve the I-130 petition. We could therefore subtract the 3 years the petition was pending from the child's age when a visa became available (23) and the result would be that the child's age for this purpose would be 20 and she would be able to get a visa with her mother.

Taking the same facts from the hypothetical situation above, if USCIS were to approve the I-130 in only a year, the child's age would then be 22 (23 years minus one year) and she would not be able to get a visa with her mother.

Another requirement is that the child must apply for a green card or immigrant visa within one year of a visa becoming available for the petition under the Visa Bulletin. Also there are different calculations for the unmarried child of a U.S. citizen who is under 21.

Until a visa becomes available under the petition, it is not possible to say for sure whether the child can benefit under the CSPA, as a derivative beneficiary of their parent. But this should give you an idea of whether there it would be possible for the children to benefit.

### **2) QUESTION:**

I would like to apply for a green card, but I have poor credit and I owe money on my credit cards. Will this be a problem?

### **ANSWER:**

Having poor credit or debt is not a basis for USCIS to deny a green card application. You must show that you will not become a public charge. If your application is based upon a petition by an employer, this is met by the fact that your employer will be placing you in a full-time position that pays the required wage. If your application is

based upon a family member filing a petition on your behalf, the petitioner will have to file an Affidavit of Support on your behalf stating that they will be financially responsible for you so that you do not end up having to go on welfare. The creditors cannot sue them for payment, but if you accept any public benefits, such as welfare payments, the government can sue them for reimbursement.

### **3) QUESTION:**

I am a fashion designer and I have a Bachelors degree and have been working for more than five years as a fashion designer since then. My company wants to sponsor me for an immigrant petition, and I would like to have it filed as an EB2 rather than an EB3 because of the long wait for the EB3. However, I have been told that I cannot use experience with my current company to meet the five years experience requirement for the EB2. Is this correct?

### **ANSWER:**

As a background to this answer, immigrant petitions are categorized according to the minimum qualifications for the position. A third preference petition (EB3) is for skilled workers, professional workers, and other workers. A second preference petition (EB2) is for professions which require a masters degree or the equivalent or persons of exceptional ability. The equivalent of a Masters degree, for these purposes, would be a Bachelors degree and five years of progressive relevant experience. The preference category for your petition is important as there is generally a longer wait for a visa to become available for a third preference petition than there is for a second preference petition.

It is true that you cannot use experienced gained in the same position, with the same company, to show you have the five years experience. This is because the company is stating in the petition that a Bachelors degree and five experience years is the minimum requirement to be able to perform the job. But this would not be true, because you did not have a Bachelors degree and five years experience when you started in the position, so that is obviously not the true minimum requirement.

But, you can *sometimes* use your experience gained with the company if the company is sponsoring you for a position that is different and not substantially comparable to the position you were in when you gained the experience.

Also, to be eligible for a second preference petition, the actual minimum requirement for the position must be a Masters degree or the equivalent, which is a bachelors and five years experience. Having a Bachelors degree and five years experience does not make you eligible for a second preference petition if the position is not one that requires a Masters degree or the equivalent. Most positions do not normally require a Masters degree. For example, according to the Department of Labor Standard Occupational Classifications, the position of Fashion Designer does not normally require a Masters degree or the equivalent, and would not normally qualify for a second preference petition.

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

**Monterey County joins ICE program to identify illegal immigrant inmates**

*The Salinas Californian* reports that Monterey County Jail has joined ICE (Immigration and Customs Enforcement) in implementing a biometric system, which will help identify the immigration status of new inmates.

The jail will take fingerprints and send the prints to a Department of Homeland Security database. If the print indicates that someone in the database is not in an acceptable immigration status, the inmate will face deportation. Across the country, 144 jurisdictions in 18 states have implemented this program, and it is set to go nationwide by 2013. If someone is identified as an illegal immigrant, ICE will only take them into custody and start deportation procedures after the local judicial process is complete

<http://www.thecalifornian.com/article/20100407/NEWS01/4070308/1002/Monterey-County-joins-ICEprogram-to-identify-illegal-immigrant-inmates>

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### **Report criticizes 287(g) program**

*The Frederick News-Post* reports that a report from the DHS' Office of the Inspector General has criticized an immigration enforcement program that allows state and local police to enforce aspects of immigration law.

The program, known as 287(g), entails ICE officials and Local law enforcement working together, expanding ICE's capacity to arrest, jail, and deport illegal immigrants.

The report found that in the 66 districts that use the program, terms of the program were not being followed, ICE had not provided adequate oversight to local enforcement, and questions concerning the use of data collected and potential civil rights violations therein have not be addressed adequately. Citing the report, the ACLU has called for an end to the program.

<http://www.fredericknewspost.com/sections/news/display.htm?StoryID=103480>

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### **Immigration Raid Targets Vast Network**

*The Wall Street Journal* reports that more than 800 federal agents took part in a large raid, across multiple states that dismantled a loosely connected network of human smugglers.

Authorities arrested 47 alleged leaders of the human-trafficking ring, working out of shuttle-bus operations and over 50 separate safe houses, where immigrants were held by the smugglers.

The operation was called "In Plain Sight" and involved close coordination between ICE officials, Mexican authorities, the FBI, and local authorities. ICE chief John Morton claimed, following the raids, "We have dealt a severe blow to an alien-smuggling industry...There is no part of the chain left intact."

<http://online.wsj.com/article/SB10001424052702304510004575186341802033952.html>

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## **ARIZONA'S NEW IMMIGRATION LAW**

Last week, following approval in the State House and State Senate of Arizona, the Governor signed the controversial bill SB1070 which controversially makes it a state crime for an immigrant to not have their documents proving legal status on them at all times and also permits police officers to demand documents from any person an officer "reasonably" suspects of being an illegally present immigrant. The bill has provoked heated opposition, and already faces multiple law suits. In our next issue of Siskind's Immigration Bulletin, we will be devoting an entire section to coverage of the bill and the controversy it has sparked.

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

#### **U.S. judge orders agency to rule on green card for Iraqi**

*The McClatchy Newspapers* report that there are around 7000 refugees and political asylum seekers in legal limbo in the USA. Many are deemed ineligible to become permanent residents, despite the fact that many actively fought against despotic regimes and terrorist groups in their home countries. This stems from the current administration's interpretation of the Patriot Act, which they say claims that refugees and asylum seekers are barred from living and working in the US if they had supported or were ever members of armed groups in their homelands. The same groups often fought alongside or aided US troops, and fought tyrannical dictators and terrorists.

A ruling issued recently from a US District Court judge in Colorado ruled that in the case of Sami Alkarim, an Iraqi refugee, DHS must process Mr. Alkarim's green card request within 30 days, claiming that DHS's arguments were not valid, and that the legal limbo had put the plaintiff into a situation of great stress and anxiety.

It is unclear now, whether based on the current interpretations of the law, DHS will be forced to deny Mr. Alkarim's request, or if he will be approved. If denied, he and his attorney have announced they will continue to fight until Mr. Alkarim and his four children are given permanent residence and work eligibility.

<http://www.kansascity.com/2010/03/30/1846900/us-judge-orders-agency-to-rule.html>

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### **6. News Bytes:**

#### **Board OKs action to keep Filipino teachers**

*The Shreveport Times* reports that a local school board voted to keep the Filipino teachers working there beyond the current year. In a 9-2 vote, the school board voted to file for H1-B visas for the more than 40 Filipino teachers in the system.

Universal Placement, the company that had previously hired and brought the teachers to the US, has come under state and federal investigation for overcharging,

misinforming, and stealing from the teachers. The school board has since hired a team of immigration attorneys to work on the teachers' cases.

<http://www.shreveporttimes.com/article/20100331/NEWS04/3310324/1063>

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### **Few takers for H-1B work visa**

USCIS started receiving H1-B petitions for the 2011 fiscal year on April 1<sup>st</sup>. In the first week, only 13,500 applications were received out of the mandated 65,000 visas available. Only a few hundred were used in the following week.

Last year, USCIS had received 42,000 applications already by this point. So far, they have only received 5,600 petitions for workers with an advanced degree (out of 20,000 available positions). Last year's quota was filled in 265 days, whereas during the year before that, prior to the economic meltdown, the cap was reached in the first day applications were available.

<http://news.in.msn.com/international/article.aspx?cp-documentid=3796461>

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### **Mexicans facing reduced U.S. visa limits**

*The San Antonio Express News* reports that the State Department has changed the policy for many Mexican visa holders, reducing the amount of time they can spend in the country from 3-5 years, down to only one year. The changes will apply mostly to Mexicans who own businesses and houses here, and do not intend to immigrate. Many of these immigrants are present on an E-1 or E-2 visa, for non-immigrant traders and investors.

Mexicans present on E-1 and E-2 visas would be required to prove each year that their businesses are viable. The change applies to both Mexicans seeking to come to the US, and those already present and seeking visa renewal.

[http://www.mysanantonio.com/business/Visas\\_for\\_Mexicans\\_now\\_only\\_good\\_for\\_a\\_year.html](http://www.mysanantonio.com/business/Visas_for_Mexicans_now_only_good_for_a_year.html)

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### **Carpet maker, employees reach \$18M settlement**

*The Associated Press* reports that Mohawk Industries Inc, one of the world's largest carpet makers has agreed to an \$18 million settlement with its employees, who had claimed that the company hired illegal immigrants as laborers to reduce their wages.

The workers claimed that they received lower wages than employees at other carpet-making companies in the region. The lawsuit was filed in 2004, and negotiations of the settlement began last year, after the case was brought to the 11<sup>th</sup> US Circuit Court of Appeals.

<http://www.ajc.com/business/carpet-maker-employees-reach-459049.html>

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## Work Force Fueled by Highly Skilled Immigrants

The *New York Times* reports that an analysis of new census data shows that more than half of the working immigrants in St. Louis hold high-paying, white-collar jobs, rather than low income, blue-collar jobs, as often thought. The analysis also shows that this is the norm, and not an anomaly.

In fourteen out of the 25 largest cities in the US, more immigrants are employed in white-collar jobs than in low-wage work such as construction, service industry, cleaning, and manufacturing.

Despite popular misconceptions, the analysis of the new data shows that the 25 million immigrants in the largest cities (2/3 of the overall immigrant population in the US), are "nearly evenly distributed across the job and income spectrum."

<http://www.nytimes.com/2010/04/16/us/16skilled.html?src=me&ref=homepage>

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## Laguna Niguel man pleads guilty in student visa fraud ring

Eamonn Daniel Higgins, 46, of Laguna Niguel, faces up to 5 years in prison on the charge of conspiracy to commit visa fraud, after being accused of organizing to have imposters take tests on behalf of foreign students trying to stay in the country on student visas.

<http://www.ocregister.com/news/college-244171-prosecutors-students.html>

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## 7. Washington Watch:

### US House measure is a result of rancher Krentz's slaying

*The Arizona Daily Star*, out of Tucson, reports that Republican lawmakers want to give Border Patrol agents unfettered access to all public lands along the border, whereas they must currently adhere to some rules and restrictions as to where they can freely go.

At heart of the legislation, sponsored by Republican Bob Bishop, the bill would prohibit the Department of the Interior from preventing BP agents from crossing protected terrain. Currently, BP agents must get approval to cross lands with endangered species off-road.

Many argue that the increased access won't change the facts on the ground, and couldn't have helped the rancher, Mr. Krentz, who was slain by a suspected immigrant. The restrictions imposed on public lands are based on decades of bipartisan legislation and are crucial to protecting wildlife, according to a representative of Defenders of Wildlife.

[http://azstarnet.com/news/local/border/article\\_fa5c1624-485e-11df-9d8e-001cc4c03286.html](http://azstarnet.com/news/local/border/article_fa5c1624-485e-11df-9d8e-001cc4c03286.html)

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## Michelle Obama: 'Immigration reform is necessary'

*USA Today* reports that on her first solo trip, first lady Michelle Obama, in Mexico, said that changes to the immigration system were necessary, but noted that they will be "politically difficult." She cited the need for bipartisan cooperation and support for any bill to pass.

<http://content.usatoday.com/communities/theoval/post/2010/04/michelle-obamaimmigration-reform-is-necessary/1>

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## 8. Notes from Visalaw.com Blogs

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

- [IMMIGRATION HUMOR: ARIZONA'S NEW LAW - NO PROBLEMO](#)
- [WEIGHING IN ON ARIZONA OVERREACH](#)
- [PELOSI TELLS REID: IMMIGRATION CAN MOVE AHEAD OF CLIMATE BILL](#)
- [MCCAIN: ILLEGAL IMMIGRANTS DELIBERATELY CAUSING CAR ACCIDENTS](#)
- [NEW STUDY SHOWS IMMIGRANT POPULATION HARD TO STEREOTYPE](#)
- [EXTREMISTS ATTACK PRO-IMMIGRATION REPUBLICANS](#)
- [ARIZONA AG: BILL HAS SERIOUS PROBLEMS](#)
- [BREAKING NEWS - OBAMA: WE ARE MOVING IMMIGRATION IN A MONTH](#)
- [MCCAIN PRAISES ARIZONA BILL](#)
- [PITTING NEIGHBOR AGAINST NEIGHBOR](#)
- [WHAT TO DO IF THE ICELAND VOLCANO IS DELAYING YOUR DEPARTURE](#)
- [IMMIGRATION COULD BE A "REVERSE" WEDGE ISSUE FOR DEMS](#)
- [REID: I STILL INTEND TO PASS REFORM IN 2010](#)
- [ARIZONA PASSES NATION'S TOUGHEST ANTI-IMMIGRATION LAW](#)
- [REID WANTS A SUMMER VOTE ON IMMIGRATION REFORM](#)
- [REID'S MATH](#)
- [H-1B VISAS BY THE NUMBERS](#)
- [MAY VISA BULLETIN OUT](#)
- [LOTS OF MIXED MESSAGES ON IMMIGRATION REFORM](#)
- [H-1B TALLY FOR FIRST WEEK JUST ONE-THIRD OF LAST YEAR'S NUMBERS](#)
- [DO TEA PARTIERS REALLY CARE ALL THAT MUCH ABOUT IMMIGRATION?](#)
- [INITIAL H-1B NUMBERS LOW](#)
- [THE NOVEMBER STRATEGY](#)
- [DHS REPORT SLAMS 287\(G\) PROGRAM](#)
- [SHERIFF JOE CONDUCTS IMMIGRATION RAID AGAINST PHOENIX AREA MCDONALD'S](#)
- [APRIL 1ST ARRIVES QUIETLY AT FIRMS AROUND THE US](#)
- [NY TIMES: US JAILING HAITIANS IT AIRLIFTED TO THE US](#)
- [GOP HEAD SORT OF PROMISES TO SUPPORT CIR](#)
- [JAIME ESCALANTE DIES](#)
- [LATINO GROUPS TO SCORE MEMBERS OF CONGRESS ON IMMIGRATION ISSUES](#)
- [WHITE HOUSE FIRES BACK AGAINST GRAHAM](#)
- [GREECE ADDED TO VISA WAIVER LIST](#)
- [GRAHAM'S TANTRUM: THE VIDEO](#)

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

- ICE CONFIRMS EMPLOYERS HAVE TEN DAYS TO CORRECT TECHNICAL VIOLATIONS
- GROUPS PUSH FOR OREGON COUNTIES TO ADD EMPLOYER SANCTIONS MEASURE TO BALLOT IN NOVEMBER
- SANTA MARIA, CA TO BEGIN USING E-VERIFY ON MUNICIPAL EMPLOYEES
- DOJ SUES JOHN JAY COLLEGE FOR IRCA DISCRIMINATION VIOLATIONS
- MOHAWK INDUSTRIES SETTLES RICO SUIT FOR \$18 MILLION
- SC FIRM SIGNS UP FOR IMAGE
- CHICKEN COMPANY SUED OVER IMMIGRANT HIRING
- E-VERIFY USE INCREASING IN TENNESSEE
- USCIS POSTS E-VERIFY CIVIL RIGHTS TRAINING VIDEOS

### [Visalaw Healthcare Immigration Blog](#)

- DESPITE HEALTH CARE REFORM, FILIPINO NURSES STILL GLUM OVER US OPPORTUNITIES
- ST. JUDE CHILDREN'S HOSPITAL FOREIGN MD'S TO GET SPECIAL LICENSING CONCESSION
- WILL USCIS SABOTAGE THE NEW HEALTH CARE BILL?

### [Visalaw Investor Immigration Blog](#)

- START UP VISA SEEN AS HELPING SW FLORIDA

### [Visalaw Fashion, Sports, & Entertainment Blog](#)

- ACTRESS ARRESTED FOR MARRIAGE FRAUD
- NY TIMES: USCIS WAR ON ARTISTS WREAKING HAVOC IN MUSIC INDUSTRY

### [Visalaw International Blog](#)

- CANADA: DISTURBING STUDY SHOWS HIGH RATES OF DIABETES IN IMMIGRANTS
- CANADA: SERGIO R. KARAS GUEST IN NATIONAL TV SHOW
- CANADA: MAJOR REFUGEE REFORMS ANNOUNCED
- CANADA: QUEBEC LAW TARGETS MUSLIM VEIL

### [The Immigration Law Firm Management Blog](#)

- LENOVO MORPHS NOTEBOOK AND TABLET

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## 9. State Department Visa Bulletin: May 2010

### VISA BULLETIN FOR MAY 2010

#### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **May**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April **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, 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	INDIA	MEXICO	PHILIPPINES
1st	08SEP04	08SEP04	08SEP04	15OCT92	01NOV94
2A	01DEC06	01DEC06	01DEC06	01JUN05	01DEC06
2B	01JUL02	01JUL02	01JUL02	15JUN92	15NOV98
3rd	08JUN01	08JUN01	08JUN01	22OCT92	01MAY92
4th	15MAY00	15MAY00	15MAY00	08DEC95	08DEC87

**\*NOTE:** For May, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JUN05. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JUN05 and earlier than 01DEC06. (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.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
<b>Employment -Based</b>					
1st	C	C	C	C	C
2nd	C	22SEP05	01FEB05	C	C
3rd	22APR03	22APR03	01OCT01	U	22APR03
Other Workers	01JUN01	01JUN01	01JUN01	U	01JUN01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C

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

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

## **B. DIVERSITY IMMIGRANT (DV) CATEGORY**

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-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 **May**, 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	
<b>AFRICA</b>	39,200	Except: Egypt: 23,600 Ethiopia: 22,500 Nigeria: 16,200
<b>ASIA</b>	16,400	
<b>EUROPE</b>	29,250	
<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	1,100	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,200	

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 JUNE**

For **June**, 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	
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	<b>Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	45,600	Except: Egypt: 24,200 Ethiopia: 25,100 Nigeria: 17,500
<b>ASIA</b>	19,550	
<b>EUROPE</b>	31,000	
<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	1,175	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,300	

#### **D. MEXICO EMPLOYMENT THIRD AND THIRD OTHER WORKER VISA AVAILABILITY**

Due to continued heavy applicant demand, primarily by USCIS Offices for adjustment of status cases, the annual limits for the Mexico Employment Third and Third preference Other Worker categories have been reached. As a result, both categories have become "unavailable." Visa numbers will become available once again in October with the start of the new fiscal year.

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

Family-sponsored: During the past fifteen months, the level of demand for numbers in the Family-sponsored preference categories has been very low. As a result, the cut-off dates for most Family preference categories have been advancing at a very rapid pace, in an attempt to generate demand so that the annual numerical limits may be fully utilized. If demand for numbers should begin to materialize cut-off date movements may begin to slow or stop.

Dominican Republic: Continued heavy applicant demand for Dominican Republic numbers is likely to result in the oversubscription of this chargeability in June. This would cause the cut-off dates for the Family second preference categories to be earlier than those which apply to most other countries.

Employment-based: Applicant demand for Employment Fourth preference numbers remains very heavy. It is likely that a cut-off date will need to be established in an effort to keep number use within the annual limits. Depending upon number use, this action could occur as early as June.

#### **F. MONITORING CUT-OFF DATE MOVEMENT AND REPORTING CHANGES OF ADDRESS FOR CASES BEING PROCESSED OVERSEAS**

This Visa Bulletin allows applicants in the numerically controlled immigrant visa categories to follow the movement of the monthly cut-off dates. The information is also available on-line at [www.travel.state.gov](http://www.travel.state.gov). The cut-off dates are used to determine which applicants may be entitled to either: 1) be scheduled for a formal visa interview if processing their case overseas at an Embassy or Consulate, or 2) file an adjustment of status application if they are already in the United States and eligible to have their case processed at a USCIS Office.

All readers should be aware that any changes of address for applicants processing their case overseas should always be reported to the National Visa Center. It is essential that the National Visa Center have the correct address so that information regarding the processing of the case at an overseas post may be sent to the applicant.

When contacting the National Visa Center (NVC) directly about an immigrant visa application case, always include the following information:

- The NVC case number
- Name of the principal applicant
- Principal applicant's date of birth
- Name of the petitioner
- Petitioner's date of birth

#### **E-Mail**

The public may submit inquiries to the NVC via e-mail at: [nvcinquiry@state.gov](mailto:nvcinquiry@state.gov)

In order to ensure a prompt response:

- Provide the relevant NVC Case Number on the subject line of the e-mail.
- Provide the applicant's name and date of birth, and the petitioner's name and date of birth.
- Provide the name of the law office requesting information.
- Provide the name of the employer if the petition is employment based.
- Refer to only one case per e-mail message.

#### **Customer Service**

Telephone operators are available to respond to inquiries Monday through Friday from 7:30am until 12:00am (EST). Please call (603) 334-0700

#### **Postal Mail**

National Visa Center  
Attn: WC  
31 Rochester Avenue, Suite 200  
Portsmouth, NH 03801-2915

#### **G. OBTAINING THE MONTHLY VISA BULLETIN**

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

<http://travel.state.gov>

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

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

**listserv@calist.state.gov**

and in the message body type:

**Subscribe Visa-Bulletin *First name/Last name***  
**(example: *Subscribe Visa-Bulletin Sally Doe*)**

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

**listserv@calist.state.gov**

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

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

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

**VISABULLETIN@STATE.GOV**

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

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