

Siskind's Immigration Bulletin – March 22, 2010

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: <http://www.visalaw.com>.

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>

Editor: Greg Siskind. Associate Editor: [Aaron Markowitz](#) . Contributors: Aaron Markowitz, Laura Zapata.

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at <http://www.visalaw.com/subscribe2.html> . To unsubscribe, send your request to visalaw-unsubscribe@topica.com

To subscribe to the free Siskind's Immigration Professional Newsletter, go to <http://www.visalaw.com/sip-intro.html>

1. Openers
 2. The ABC's Of Immigration: I Visas for Media and Foreign Press
 3. Ask Visalaw.com
 4. Border and Enforcement News
 - Former chiefs of USCBP urge expeditious appointment
 5. News from the Courts
 - Immigration courts filled with cases, not judges
 - U.S. funds immigration cops, but not courts
 - SCOTUS reluctant to hold docs accountable for detention care
 6. News Bytes
 - State Dept. debuts new online visa process
 - DHS: Only 34,500 Haitians have applied for TPS
 - Key DHS positions remain unfilled
 - AZ bill that would criminalize presence of undocumented migrants tabled
 - Immigration rendering white Americans a minority over next 50 years
 - Experts warn of weakness in tracking foreign students
 7. Washington Watch
 - Rep. Gutierrez: immigration provisions may torpedo health bill
 - Axelrod: Illegal immigration won't be addressed in health bill
 8. Notes from the Visalaw.com Blogs
 9. State Department Visa Bulletin: April 2010
-

1. Openers

Dear Readers:

This week officially marks the kick off of the immigration reform debate in Congress. Democratic Senator Chuck Schumer, the Immigration Subcommittee Chair and South Carolina Republican Lindsey Graham co-wrote an opinion piece that will appear in the March 19th Washington Post that introduces the major concepts in a comprehensive immigration reform bill they will shortly introduce:

According to the Senators:

Our plan has four pillars: requiring biometric Social Security cards to ensure that illegal workers cannot get jobs; fulfilling and strengthening our commitments on border security and interior enforcement; creating a process for admitting temporary workers; and implementing a tough but fair path to legalization for those already here. (<http://tinyurl.com/y8cmzxe>)

Next up will be the release of a summary document going through the bill's major provisions. And then we should see the actual bill document.

The bill will look similar to previous bills, but we now learn that it will have some new features. They include the introduction of the controversial new national identification card (a biometric social security card). The legalization program will now include community service in addition to other penalties. And those receiving advanced degrees from US universities will be exempt from green card caps.

There WILL be a guest worker program in the bill, though it is hard to tell exactly how it will work with this limited description:

Our blueprint also creates a rational system for admitting lower-skilled workers. Our current system prohibits lower-skilled immigrants from coming here to earn money and then returning home. Our framework would facilitate this desired circular migration by allowing employers to hire immigrants if they can show they were unsuccessful in recruiting an American to fill an open position; allowing more lower-skilled immigrants to come here when our economy is creating jobs and fewer in a recession; and permitting workers who have succeeded in the workplace, and contributed to their communities over many years, the chance to earn a green card.

As soon as we get the bill summary, I'll post it on my blog at <http://blogs.ilw.com/gregsiskind>.

In the mean time, many are predicting that health care reform will be finished in the next few days which would take a major item off the legislative table and hopefully open the door for immigration reform. That's not just a matter of opening up room on the calendar. It also means that the White House will be coming off a major victory and may feel more empowered to take on other issues. Of course, some argue that a loss on health care will increase pressure on Congress to pass immigration so there is at least one legislative success to run on in November. And then there are others saying that immigration is still too controversial to pass in a recession. So it's anyone's guess at this point what will happen.

Finally, we would invite readers interested in becoming Siskind Susser clients to contact us. My email is gsiskind@visalaw.com and my phone number is 901-682-6455 . Our firm assists clients locating anywhere in the US and we have attorneys with expertise in most areas of immigration law. You can also request an appointment by filling out a request form at <http://www.visalaw.com/intake.html>.

Regards,

Greg Siskind

2. The ABC'S of Immigration Law: I Visas for the Media and Foreign Press

The I visa is a nonimmigrant visa for persons entering the United States temporarily who are representatives of the foreign media traveling the U.S. to engage in their profession. The I visa has a few key advantages over other visa categories including:

- No need to get USCIS approval before applying at a consulate
- Admission is granted on a "duration of status" basis and as long as the media representative continues working for the sponsoring employer, no extensions of stay in the US are needed
- The amount of documentation required to secure I visa status is much less than in other visa categories

What qualifies a recipient for an I Visa?

The Immigration and Nationality Act (INA) has specified what qualifications must be met by foreign media to obtain an I visa:

- The applicant must be engaging in qualifying activities for a media organization having its home office in a foreign country.
- The activity must be essentially informational, and generally associated with the news gathering process, reporting on actual current events.

Who is eligible for an I visa?

The INA categorizes certain individuals of the media who could qualify for an I visa:

- **Members of the media engaged in the production or distribution of film** will only qualify for a media visa if the material being filmed will be used to disseminate information or news. Additionally, the primary source and distribution of funding must be outside the United States
- **Primary employees of foreign information media** engaged in filming a news event or documentary.
- **Journalists working under contract-** Persons holding a credential issued by a professional journalistic organization, if working under contract on a product to be used abroad by an information or cultural

medium to disseminate information or news not primarily intended for commercial entertainment or advertising. Please note that a valid employment contract is required.

- **Employees of independent production companies** when those employees hold a credential issued by a professional journalistic association.
- **Foreign journalists working for an overseas branch office or subsidiary of a U.S. network**, newspaper or other media outlet if the journalist is going to the United States to report on U.S. events solely for a foreign audience.

Accredited representatives of tourist bureaus, controlled, operated, or subsidized in whole or in part by a foreign government, who engage primarily in disseminating factual tourist information about that country, and who are not entitled to A-2 visa classification.

How can I apply for an I visa?

Each candidate must submit the following forms at a US consulate:

- **Nonimmigrant Visa Application, Form DS-156**
- **Supplemental Nonimmigrant Visa Application, Form DS-157**, provides information about your travel plans
- **A passport valid for travel to the United States**
- **One 2x2 photograph**
- **Proof of Employment** – Specific to the actual work involved, the following must be provided:
 - **Staff Journalist:** A letter from the employer that gives the employees name, position held within the company, and purpose and length of stay in the United States.
 - **Freelance Journalist under contract to a media organization:** A copy of the contract with the organization, which shows the employees name, position held within the company; purpose and length of stay in the United States and duration of contract.
 - **Media Film Crew:** a letter from the employer which gives the following information: name; position held within company; title and brief description of the program being filmed and period of time required for filming in the United States.
 - **Independent Production Company under contract to media organization:** a letter from the organization commissioning the work which gives the following information: name; title and brief description of the program being filmed; period of time required for filming in the United States and duration of contract.
- **Nonimmigrant visa application processing fee**

Who is not eligible for an I visa?

- **Those gathering material for commercial entertainment or advertising paper**

- **Proofreaders, librarians, set designers** – they may qualify for other qualification, such as H, O, P visas.
- **Coverage of stories which include staged events, television, and quiz shows** – stories which revolve around staged events, even when unscripted, such as reality television shows or talk shows
- **Artistic media content production**

I've heard I can enter on a visitor visa?

It used to be much easier for journalists to enter on visitor visas or visa waivers. But today, CBP examiners at the border are routinely denying entry to journalists without proper visas. Officers are, however, given the discretion to grant a one time B status with the warning that all future entries must be on the proper visa. This authority is, of course, discretionary and ideally the journalist will enter on the I visa or another proper work visa.

How many people enter on I status each year?

Approximately 32,000 including spouses and children.

Who may pay the employee – the foreign entity or the US entity?

According to the State Department, either can. Whether the US entity must be wholly owned by the foreign entity is not clear.

Do I have to show I have a residence abroad I am maintaining?

No. You do not need to show you have a residence you do not intend to abandon.

How long will I be able to stay on my I visa?

You will be admitted for "duration of status" which means that you can stay as long as you work in your approved employment. The fact that one has "duration of status" annotated on their I-94 means that an extension will not be necessary. The same holds true for family members who are also admitted for "duration of status."

Can I change from another visa status in the US to I status?

Yes, this is possible and can be done using the I-539 change of status petition.

Can my spouse or child work?

No. However, the Department of Homeland Security will not deem such work to violate status for deportation purposes. Note, however, that unauthorized work might very well make someone ineligible for adjustment of status and that may force an applicant to have to pursue a green card at a consulate abroad.

Can I change employers or information medium after arriving in I status?

Not without getting permission of USCIS first. The regulations give no guidance on how this is to be accomplished except that the local office District Director would give such permission.

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.

* * *

1) Question:

I have been in US for more than 3 years on an L-1B Visa. I am now planning on changing to an H-1B visa with a different employer. Can I start working for the new employer from the day the H-1B is filed? If not, if the H-1B is approved, when can I start working for the new employer?

Answer:

A foreign national who is changing their status from an L-1 to an H-1B nonimmigrant cannot begin working on the H-1B when the petition is filed. Many people become confused about this point, since the H-1B is portable. This means that if a foreign national is working on an H-1B and another employer files an H-1B petition for them, the employee can begin working for the new employer as soon as the new petition is filed. This only happens, however, when the foreign national is already in H-1B status.

In cases where the foreign national is filing to change of status from another nonimmigrant visa to an H-1B, they cannot begin working on the new H-1B until the start date on the I-94 that is issued upon approval of the petition. If that start date is the same as the date the petition was approved, the foreign national can begin employment as soon as the petition is approved. If, however, the H-1B petition is being filed under the H-1B cap "lottery" between April 1st and September 30th, then the I-94 will have a date of October 1st, and the foreign national will not be able to begin employment on the H-1B until that date. They must maintain their nonimmigrant status until that date.

2) Question:

If someone is out of status and has given birth to a child here in the U.S., can they apply for a green card or can they apply for work permit?

Answer:

Probably not. A U.S. citizen can file an I-130 immigrant visa petition for their parent, as an Immediate Relative; however, the child cannot file the I-130 until they are at least 21 years old.

Also, while Immediate Relatives (parent, spouse and unmarried children under 21 of U.S. citizens) are eligible to apply for a green card despite having fallen out of status, this rule only applies when the foreign national's last entry into the U.S. was a legal admission or parole after going through inspection at the port of entry. A foreign national who entered the U.S. without inspection is usually not eligible to apply for a green card in the U.S., although some exceptions exist, such as 245(i). They may be eligible to apply for an immigrant visa at the U.S. consular post in their home country.

If, however, a foreign national with a U.S. child is put in immigration proceedings before an Immigration Judge, they may be eligible to apply for Cancellation of Removal based upon showing sufficient hardship to the child. Be aware though, that Cancellation of Removal is a relief from removal that is entirely up to the Immigration Judge's discretion.

3) Question:

I am a U.S. citizen, and I am planning on getting married soon. I want to apply for my husband's green card. The problem is that I am only 17. My parents are consenting to the marriage. Will I be able to apply to sponsor my husband for a green card?

Answer:

There are two issues raised in your question (I am going to assume that your husband is either outside the U.S. or entered the U.S. legally). The first issue is whether your marriage will be recognized by USCIS so that you can file a petition for your husband. The second issue is whether a minor can petition for their spouse.

USCIS will recognize a marriage as valid when two conditions are met. First, the marriage is considered legal where it occurred, and second, the marriage is not considered to be void in the state where you intend to live together. As long as the marriage will be recognized as legal in the state or country where you will be getting married and as long as the state you will be living in recognizes the marriage as valid, then USCIS will recognize the marriage as valid despite the fact that you will be married as a minor.

The second issue is a bit more complicated. There is no age limit for a U.S. citizen or permanent resident to file an I-130 petition for their spouse. Therefore as a 17 year old, you can file the petition for your husband. However, in order for your husband to be able to apply for a green card in the U.S. or an immigrant visa at the consulate abroad, you must submit an Affidavit of Support on their behalf. An Affidavit of Support cannot be filed by a minor. Therefore, you can start the process once you are married, by filing the immigrant petition. But your husband will not be able to apply for a green card or immigrant visa until you turn 18.

4. Border and Enforcement News:

Former chiefs of USCBP urge expeditious appointment

The Government Executive reports that there is no acting commissioner at Customs and Border Protection (CBP). A gap in leadership at the CBP bureau has former commissioners concerned about vacancies at the top of the bureau, especially after the attempted Christmas Day bombing of Northwest Flight 253.

When Homeland Security was cobbled together from elements of 22 pre-existing agencies in 2003, more than 80 congressional committees and subcommittees retained authority over funding and oversight matters related to those agencies. The Finance Committee's responsibility is a legacy of its role in monitoring the now-defunct U.S. Customs Service.

The Senate Finance Committee's jurisdiction over what essentially is a border security post speaks to the convoluted nature of congressional oversight.

<http://www.govexec.com/dailyfed/0310/030210kp1.htm>

* * * * *

5. News from the Courts:

Immigration courts filled with cases, not judges

The Houston Chronicle reports that the nation's immigration courts are facing their largest backlog in history. The national backlog amounts to 228,400 cases, and cases can expect to wait over 400 days to be heard. The four states that are most backed up and overflowed are California, New York, Florida, and Texas, respectively. This backlog has rapidly increased by 23 percent in the past 18 months.

The problem is neither inefficient judicial work, nor even a significant increase in cases, but rather an overall shortage of immigration judges. Of the 239 judicial positions available in the country's 55 immigration courts, there are 48 vacancies. An effort to fill 24 vacancies in 2006, spearheaded by then Attorney General Alberto Gonzalez, had little effect, and no actions have been taken by the current administration yet either.

<http://www.chron.com/disp/story.mpl/metropolitan/6909471.html>

* * * * *

U.S. funds immigration cops, but not courts

An author with the *Harvard Law Record* reports that the increasing immigration court backlog is due in large part to the increased funding for organizations such as Immigration and Customs Enforcement (ICE), while at the same time, the Justice Department and the immigration court systems have received no similar increase in funds, and already face personnel shortages. One expert explained that Congress is "funding cops, but not courts."

Some immigrants face up to a four year wait for their cases to be heard. While not only inconvenient, this delay can cause serious hardship to the immigrant. Many times, while waiting for adjudication of their cases, immigrants are not legally eligible to work, so are forced into increasing desperation, and must choose between the

extreme poverty that results, and returning to their home country, which some have fled in the first place out of fear of persecution.

<http://www.hlrecord.org/opinion/u-s-funds-immigration-cops-but-not-courts-1.1265255>

* * * * *

SCOTUS reluctant to hold docs accountable for detention care

The LA Times reports that the Supreme Court is hearing arguments in a case centered on a San Salvadorian immigrant who died from penile cancer after negligent treatment. The immigrant's complaints of pain and discomfort were ignored for weeks, as he was treated with generic painkillers. By the time the cancer was discovered, it had spread, and was terminal.

Federal authorities admitted negligence in the doctors' poor treatment, but argued that the individual doctors should not be held liable. The 9th US Circuit Court of Appeals disagreed, and ruled against them. The Supreme Court is now scheduled to receive the case. At the center of the debate is a 1970 law passed by Congress that gave immunity to Public Health Services doctors who treat immigrants in detention. A decision is expected from the court later this year.

<http://www.latimes.com/news/nationworld/politics/wire/sns-ap-us-supreme-court-immigrant-death,0,7073470.story>

* * * * *

6. New Bytes:

State Dept. debuts new online visa process

NextGov.com is reporting that the State Department's Bureau of Consular Affairs is rolling out a new online application process for nonimmigrant visas aimed at reducing processing time.

Nonimmigrant visas generally are required for temporary visitors entering the country with a specific purpose, for instance, international students or tourists seeking medical treatment. The government issued more than 6.6 million nonimmigrant visas at Foreign Service posts in 2008, up 1.2 million from 2005. The number of temporary visitors in the United States dropped from 6.6 million in 2008 to 5.8 million in 2009.

This is the bureau's first step to building the Consular Electronic Application Center, a Web-based system that eventually will host online applications for immigration visas and passports. The new system cuts down on paperwork: Applicants only need to print out a confirmation sheet with a bar code that allows consular officers to locate the candidate's case in the department's database.

The new nonimmigrant visa application, DS-160, combines three forms into one online platform. Once an applicant submits the document online, consular officers can screen it before the visa interview and ask the candidate to fill in any missing information. Applicants must complete the form in English, but they can view as pop-ups foreign translations of the questions.

The bureau expects that DS-160 will be used at every overseas visa-issuing post by the end of April. So far, DS-160 is available in 11 foreign languages, and five more translations are ready to be added and six translations are in the works.

http://www.nextgov.com/nextgov/ng_20100304_4399.php?oref=topnews

* * * * *

34,500 Haitians in U.S. seek protected status

The New York Times reports that more than 34,500 Haitians living in the United States have applied for protection from deportation since January, immigration officials say. Immigration officials estimate that between 100,000 and 200,000 Haitians in the United States could be eligible to apply for TPS. They have until late July to apply.

The Obama administration suspended deportations of Haitians who had been in the U.S. by Jan. 12, when the 7.0-magnitude earthquake Haitians would be eligible to apply for an immigration benefit known as Temporary Protected Status, or TPS, which allows those who receive it to live and work here for up to 18 months.

TPS generally is granted to undocumented immigrants living in the U.S. whose native country is stricken by such things as natural disasters and armed conflicts. Although TPS usually is granted for 18 months, it is often extended when a certain region is determined not to have recovered to the point where it can absorb numerous deportees. Experts had expected more Haitians to apply by now.

<http://www.nytimes.com/2010/03/16/nyregion/16haiti.html?emc=tnt&tntemail1=y>

* * * * *

Key Homeland Security posts go unfilled

CNN is reporting that the Obama administration and Congress have not yet filled some key positions in the Department of Homeland Security -- notably the top jobs at the Transportation Security Administration and Customs and Border Protection. Together, the two posts manage about half of all DHS employees. But for differing reasons, the posts are unfilled or occupied by placeholders.

In the case of the TSA, the person nominated in September withdrew from consideration in January after a contentious confirmation battle. The White House has yet to name a new nominee.

In the case of Customs and Border Protection, Obama nominated insider Alan Bersin in September. But the Senate Finance Committee has yet to schedule a confirmation hearing.

Officials inside and outside DHS said the top vacancy has hamstrung certain decisions. For instance, the department can't permanently assign border sector chiefs because that requires the commissioner's approval.

<http://edition.cnn.com/2010/POLITICS/03/04/homeland.security.posts/>

* * * * *

AZ bill that would criminalize presence of undocumented immigrants tabled

Lawmakers in the Arizona State House have postponed a vote on a bill that would criminalize the presence of illegal immigrants. The bill had previously passed in the Senate.

The bill expands the rights of the state to prosecute people on the grounds of trespassing, and requires that police do their best to ascertain whether anyone they are responding to a call for is in the United States legally.

Opponents cited the risk of immigrants fearing the authorities as a result of this bill, and being hesitant to report crimes as a result. Arizona would become the only state in the country to take this interpretation of their trespassing laws, if the bill is eventually voted and signed into law.

<http://www.azcentral.com/news/articles/2010/03/17/20100317immigration-bill-house-postpones-vote.html>

* * * * *

Minority Births on Track to Outnumber White Births

The Associated Press reports that minorities make up nearly half the children born in the U.S., part of a historic trend in which minorities are expected to become the U.S. majority over the next 40 years. Minorities made up 48 percent of U.S. children born in 2008, the latest census estimates available, compared to 37 percent in 1990.

The numbers are growing because immigration to the U.S. has boosted the number of Hispanic women in their prime childbearing years. More white women are waiting until they are older to have children, but it is not yet known whether that will have a noticeable effect on the current trend of increasing minority newborns.

The numbers highlight the nation's growing racial and age divide, seen in pockets of communities across the U.S., which could heighten tensions in current policy debates from immigration reform and education to health care and Social Security. Currently, roughly 1 in 10 of the nation's 3,142 counties already have minority populations greater than 50 percent. But 1 in 4 communities have more minority children than white children or are nearing that point, according to the study.

<http://www.nytimes.com/aponline/2010/03/10/us/politics/AP-US-White-Minority.html>

* * * * *

Calif. test-taking case shows gap in visa security

The Associated Press reports that a ring allegedly fraudulently obtained and kept U.S. student visas in exchange for tens of thousands of dollars by taking tests for immigrants. The ring is accused of helping people from the Middle East obtain student visas by taking their proficiency exams and classes. The incident has exposed vulnerability in the nation's security tracking system for foreigners who attend U.S. schools.

Officials with U.S. Immigration and Customs Enforcement have not suggested the California ring was linked to any terrorism. Authorities said professional test-takers allegedly used doctored driver's licenses to gain entry to exams, including a language proficiency test that foreign students from non-English speaking countries must pass to qualify for an F-1 student visa. Prosecutors allege that some of the clients traveled

to the Middle East multiple times and gained re-entry to the U.S. by applying for a student visa and registering to study at a different college.

Six of the students have been charged with conspiracy to commit visa fraud. Ten more have been placed in deportation proceedings, and immigration officials are searching for more than 30 more still believed to be in the U.S.

<http://www.google.com/hostednews/ap/article/ALeqM5jNv0BI6SeX5PFdAd2VYxcDMsKZ1gD9EBIHHG2>

* * * * *

7. Washington Watch:

Gutierrez: Health bill's immigration parts enough to vote against

The Hill is reporting that the healthcare bill's immigration provisions are enough to spur Hispanic members of Congress to vote against it, Rep. Luis Gutierrez (D-III.) said Thursday.

Gutierrez, a member of the Congressional Hispanic Caucus (CHC) in which he serves as chairman of its Immigration Task Force, said the caucus still has concerns over the extent to which the healthcare bill excludes undocumented immigrants as well as legal residents from receiving benefits in the healthcare plan.

<http://thehill.com/blogs/blog-briefing-room/news/86317-gutierrez-health-bills-immigration-parts-enough-to-vote-against>

* * * * *

Axelrod: Illegal immigration won't be addressed in health bill

The Hill reports that White House senior adviser David Axelrod made clear that concerns within the Hispanic Caucus about the exclusion of illegal immigrants from the healthcare exchange won't be addressed under the current legislation.

Axelrod said President Barack Obama believes 'this is not the vehicle through which to address our immigration issue.' Under the bill, legal immigrants will be able to purchase insurance through a national health insurance exchange. Resolutions about illegal immigration are for another time, another bill, Axelrod said.

Axelrod said the White House is 'very optimistic' about the health bill's passage.

<http://thehill.com/blogs/blog-briefing-room/news/86617-axelrod-illegal-immigration-wont-be-addressed-in-this-health-bill>

* * * * *

8. Notes from Visalaw.com Blogs

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

- SPAT BETWEEN AFL-CIO AND US CHAMBER REGARDING CIR GOES PUBLIC
- IMMIGRATION REFORM BACKERS HEADING FOR MASSIVE DC RALLY
- APRIL VISA BULLETIN SHOWS MIXED RESULTS

- DETAILS STARTING TO EMERGE REGARDING CIR BILL
- GRAHAM: PASS HEALTH CARE AND WE'LL KILL IMMIGRATION REFORM
- USCIS REMINDS CHILEANS OF IMMIGRATION ACCOMODATIONS
- NATIONAL ID CARD PROPOSAL BECOMES IMMIGRATION REFORM LIGHTNING ROD
- THE WAIT
- NY GOVERNOR PARDONS IMMIGRANT FACING DEPORTATION
- LIP SERVICE?
- WHITE HOUSE WANTS TO TAKE RESPONSIBILITY FOR DETENTION ABUSES, BUT NOT TOO MUCH
- START ME UP
- CHAVEZ MAKES THE CONSERVATIVE CASE FOR BEING PRO-IMMIGRATION

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

- VIRGINIA PASSES BILL REQUIRING E-VERIFY USE BY STATE AGENCIES
- UTAH PASSES E-VERIFY BILL
- ARIZONA SANCTIONS FIRST EMPLOYER
- IDAHO DITCHES E-VERIFY MANDATE
- ICE INCREASINGLY TARGETING EMPLOYERS WITH HUMAN TRAFFICKING CHARGES
- OKLAHOMA ASKS COURT TO RECONSIDER DECISION
- UTAH E-VERIFY BILL PASSES STATE SENATE
- DHS TARGETS EMPLOYERS ABUSING E-VERIFY
- IMPROVING E-VERIFY
- YAKIMA, WA CONSIDERING E-VERIFY CONTRACTOR MANDATE

[Visalaw Healthcare Immigration Blog](#)

- LAS VEGAS PHYSICIAN PRACTICES UNDER DHS INVESTIGATION FOR J-1 VIOLATIONS

[Visalaw Investor Immigration Blog](#)

- START UP VISA SEEN AS HELPING SW FLORIDA
- NATIONAL PUBLIC RADIO EXAMINES THE EB-5 PROGRAM
- MEXICAN INVESTORS PURSUING US VISAS
- BIPARTISAN INVESTOR VISA BILL INTRODUCED

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

- USCIS DENIES EB-1 FOR SOVIET OLYMPIC MEDALIST
- LATINO ENTERTAINERS HAVING INCREASING SUCCESS

[Visalaw International Blog](#)

- CANADA: CONCERN OVER CHILD MARRIAGES RISING
- CANADA: REFUGEE REFORM POLITICALLY DIFFICULT
- CANADA: ARE THE IRISH MIGRATING OR NOT?
- CANADA: COURTS STRUGGLE WITH MEDICAL "EXCESSIVE DEMAND" ISSUES
- CANADA: OLYMPICS AND REFUGEES
- CANADA: SERGIO R. KARAS QUOTED BY CANWEST NEWS

- LENOVO MORPHS NOTEBOOK AND TABLET

9. State Department Visa Bulletin: April 2010

VISA BULLETIN FOR APRIL 2010

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **April**. 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 May **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	08JUL04	08JUL04	08JUL04	15OCT92	01MAR94
2A	01JUN06	01JUN06	01JUN06	01JAN05	01JUN06

2B	01MAR02	01MAR02	01MAR02	15JUN92	15SEP98
3rd	22MAY01	22MAY01	22MAY01	15OCT92	01MAR92
4th	01MAR00	01MAR00	01MAR00	08DEC95	08SEP87

*NOTE: For April, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN05. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN05 and earlier than 01JUN06. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	22AUG05	01FEB05	C	C
3rd	01FEB03	01FEB03	08SEP01	01JUL02	01FEB03
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	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 **April**, 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	31,700	Except: Egypt: 20,800 Ethiopia: 19,300 Nigeria: 14,600
ASIA	13,600	
EUROPE	26,300	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	1,000	
SOUTH AMERICA, and the CARIBBEAN	1,000	

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 MAY

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	
AFRICA	39,200	Except: Egypt: 23,600 Ethiopia: 22,500 Nigeria: 16,200
ASIA	16,400	
EUROPE	29,250	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	1,100	
SOUTH AMERICA, and the CARIBBEAN	1,200	

D. BACKGROUND INFORMATION ON FREQUENTLY MISUNDERSTOOD POINTS

Applicants entitled to immigrant status become documentarily qualified at their own initiative and convenience. By no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, a significant amount of demand is received each month for applicants who have priority dates which are significantly earlier than the applicable cut-off dates. In addition, fluctuations in demand can cause cut-off date movement to slow, stop, or even retrogress. Retrogression is particularly possible near the end of the fiscal year as visa issuance approaches the annual limitations.

Per-country limit: The annual per-country limitation of 7% is a cap which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however.

Applicability of Section 202(a)(5): INA Section 202(a)(5), added by the American Competitiveness in the 21st Century Act, removed the per-country limit on Employment-based immigrants in any calendar quarter in which applicant demand for numbers in one or more Employment-based preferences is less than the total of such numbers available. In recent years, the application of Section 202(a)(5) has allowed countries such as China – mainland born and India to utilize large amounts of Employment First and Second preference numbers which would have otherwise gone unused. Such numbers are provided strictly in priority date order without regard to the foreign state chargeability, and the same cut-off date applies to any country benefiting from this provision.

Applicability of Section 202(e): When visa demand by documentarily qualified applicants from a particular country exceeds the amount of numbers available under the annual numerical limitation, that country is considered to be oversubscribed. Oversubscription may require the establishment of an earlier cut-off date than that which applies to a particular visa category on a worldwide basis. The prorating of numbers for an oversubscribed country follows the same percentages specified for the division of the worldwide annual limitation among the preferences. (Note that visa availability cut-off dates for oversubscribed areas may not be later than worldwide cut-off dates, if any, for the respective preferences.)

Furthermore, Section 202(a)(2) reads, "2) Per country levels for family-sponsored and employment-based immigrants. Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed seven percent (in the case of a single foreign state) or two percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year." The seven percent per-country limit specified in INA 202(a)(2) is considered to be for both Family-sponsored and Employment-based numbers combined.

Allocation of visa numbers under Section 202(e) is accomplished as follows:

1. If based on historical patterns or current demand it appears that during a fiscal year number use by aliens chargeable to a particular country will exceed the per-country numerical limit for both the Family and Employment preferences combined, that country would be considered oversubscribed. Both the Family and Employment preferences would be subject to the prorating provisions of INA 202(e)(1).
2. Sometimes during a fiscal year it may become apparent that because of a lack of demand in the Family preferences, number use by aliens chargeable to an oversubscribed country will be well within the per-country numerical limit. In such case the excess Family numbers would be made available to the Employment preferences subject to the prorating provisions of INA 202(e)(1). Each of the first three Employment categories would receive 28.6% of the excess numbers, and each of the Fourth and Fifth preference categories 7.1%. (Fall-across would likewise apply if an oversubscribed country lacked sufficient demand in the Employment preferences but had excess demand in the Family preferences.)

If a foreign state other than an oversubscribed country has little Family preference demand but considerable Employment preference demand, the otherwise unused Family numbers fall across to Employment (and vice versa) for purposes of that foreign state's annual numerical limit. For example, in FY-2009 South Korea used a grand total of 15,899 Family and Employment preference numbers, of which 1,688 were Family numbers and 14,211 were Employment numbers. This grand total was well within the FY-2009 per-country numerical limit of 25,620 Family and Employment numbers combined, so South Korea was not oversubscribed. The unused Family numbers were distributed within the Employment categories, allowing South Korea to be considerably over the 9,800 Employment limit which would have been in effect had it been an oversubscribed country.

E. OBTAINING THE MONTHLY VISA BULLETIN

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

<http://travel.state.gov>

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

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

listserv@calist.state.gov

and in the message body type: **Subscribe Visa-Bulletin *First name/Last name***
(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