

Siskind's Immigration Bulletin – March 11, 2011

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1. Openers

Dear Readers:

Legislatures all over the country are considering immigration bills. Most focus on enforcement and most are of questionable constitutionality. So it was with mixed feelings that the pro-immigration community greeted Utah's just passed bill that would create a state guest worker program open to those illegally present in the US. The bill calls on the state to negotiate with the federal government to secure Washington's blessing. But it also requires the guest worker program to be implemented without Washington's support if a deal cannot be reached.

It is encouraging to see a state sending a message to Washington that not only does enforcement need to be addressed, but solutions for the illegally present immigrants are also needed. But just as the numerous enforcement laws passing at the state level violate the Constitution's mandate that immigration law be dealt with at the federal level, so too does the Utah guest worker bill.

USCIS has a tendency to be tone deaf when it comes to pursuing policies affecting the health care profession. Despite well-documented shortages in many health care fields, the agency has been pursuing ever more aggressive policies that have made work visas more difficult to secure.

The latest example was

Readers are reminded that they are welcome to contact my law office if they would like to schedule a telephone or in person consultation with me or one of my colleagues. If you are interested, please call my office at 901-682-6455.

Regards,

Greg Siskind

2. ABCs of Immigration Law: J-1 Visas for Exchange Visitors

What is a J-1 Visa?

The J-1 visa is given to those who will be entering the US to participate in an approved educational or cultural program. It is one of the more complex types of visas, so we will be breaking our coverage of it into three articles. In this first article, we deal with the visas themselves, while later articles will address J-1 program designations and waivers of the two-year home residency requirement.

The J-1 non-immigrant visa category was created to promote educational and cultural exchange activities between the United States and other countries. First begun in 1948, the J-1 exchange visitor program is presently overseen by the State Department. The program went through a major overhaul in 2003 with the implementation of the Student and Exchange Visitor Program (SEVP). The program requires the J sponsors to track their exchange visitors and report certain changes in their program or personal information, as well as other activities, electronically. Also, the SEVP has implemented a new exchange visitor fee of \$100 for each J visitor, effective September 1, 2004. The exchange visitor program is credited with exposing millions of foreign visitors to the United States, its peoples, cultures, business techniques and educational institutions.

What is a J-1 exchange visitor?

The J-1 exchange visitor is broadly defined by the Immigration and Nationality Act (INA) as an alien having a residence abroad, which he has no intention of abandoning, who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge; who is coming temporarily to the United States as a participant in a program designated by the State Department for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

What type of exchange programs are available?

Exchange programs are available for the following individuals:

- College and university students
- Secondary school students
- Short-term scholars
- Trainees
- Teachers
- Professors and research scholars
- Specialists
- Alien physicians
- International and government visitors
- Camp counselors
- Summer work/travel students
- Au pairs
- Special education exchange visitors

What are the specifications of each program?

The limits of a person's stay in each type of program, as well as the activities allowed in each program, are discussed below.

College and University Students

The J-1 student visa category is reserved to those who are pursuing a full-time formal course of study at a college or university, and to those who are receiving English language training at an accredited educational institution. J-1 students are eligible for two types of employment – academic training and student employment. For academic training, it must be related to the field of study, the student must be in good academic standing, and the school's responsible officer must approve it in writing. Part time (no more than 20 hours a week) student employment is allowed if it is part of a scholarship or fellowship, is on campus, or is off campus and necessary because of unforeseen economic circumstances. This employment authorization is valid until the course of study is over, or 12 months, whichever is less. Following the completion of studies, undergraduate and pre-doctoral students are eligible for up to 18 months of practical training, and post-doctoral students are available for up to 36 months of training.

Secondary School Students

Foreign students can attend secondary schools in the US for at least one but no more than two semesters on a J-1 visa. Along with providing a place at school for the visitor, the program sponsor must also secure a host family with whom the student will stay. The screening process for host families is a rigorous one. J-1 secondary students are not authorized to work, except for intermittent work such as babysitting.

Short-Term Scholars

This category encompasses professors, research scholars or persons with similar skills who are coming to the US to lecture, observe, consult or participate in workshops, seminars, conferences, and the like. The purpose of the short-term scholar category is to foster professional relationships between US and foreign scholars. The maximum period of entry for short-term scholars is six months, and no extensions are authorized. Unlike the others J-1 categories, there is no minimum period of stay in the US.

Trainees and Interns

A J-1 trainee or intern is an individual who comes to the United States to participate in a structured program conducted by the selecting sponsor. In 2007, the State Department issued regulations covering the trainee category that split the category into trainees and interns. Interns differ from trainees in that a trainee must have either a degree or professional certificate from a foreign postsecondary academic institution and at least one year of prior related work experience in his or her occupational field acquired outside of the United States, or five years of work experience outside the United States in his or her occupational field.

This category is reserved for individuals seeking to enhance their skills in either "specialty" or "non-specialty" occupations. Training or interning in unskilled occupations is not available. Under State Department rules, the following fields are eligible for training and internship programs:

- Arts and culture
- Information media and communications
- Education, social sciences, library science, counseling and social services
- Management, business, commerce and finance
- Health-related occupations
- Aviation
- Science, engineering, architecture, mathematics, and industrial occupations
- Construction and building trades
- Agriculture, forestry and fishing
- Public administration and law
- Other fields specified by the program sponsor

The training cannot duplicate training the alien has already received, and must provide training at the appropriate level. The maximum period of stay is 18 months, 24 months for aviation training programs.

Teachers

This category is available to individuals teaching full-time in a primary or secondary school. To be eligible for a J-1 teachers visa the person must meet the following requirements:

- Be qualified to teach primary or secondary school in their home country
- Meet the standards of the US state in which they will teach
- Be of good reputation and character
- Intend to teach full time at an accredited primary or secondary school
- Have three years of teaching experience.

Professors and Research Scholars

Professors are aliens who have come to the US to teach, lecture, observe or consult at post-secondary educational institutions. They may also conduct research unless their program sponsor specifically forbids it. Research scholars are individuals who are in the US primarily to conduct research, observe or consult at research institutions, educational institutions and similar organizations. Unless specifically forbidden by the program sponsor, research scholars may teach and lecture. The position filled by the J-1 alien must be temporary. J-1 professors and research scholars may enter for a three-year period, initially, and the program sponsor may approve a six-month extension. After this extension, the person's stay can be extended another three years, with the approval of the State Department.

Specialists

Specialists are experts in a field of specialized knowledge or skill. They may come to the U.S. to observe, consult or demonstrate special skills. The category specifically excludes short-term scholars, professors and research scholars, and alien physicians in graduate medical training. The maximum authorized stay in the US is one year.

Alien Physicians

Graduates of foreign medical schools may enter the United States to pursue graduate medical training or education. This category is highly regulated. The program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG). Other programs can sponsor alien physicians so long as there will be little or no patient contact, and the program involves observation, consultation, teaching or research. When other programs than the ECFMG sponsor J-1 physicians, they must include a special certification regarding the amount of patient care that will be provided. The duration of authorized stay is generally limited to the time necessary to complete the program or seven years. Caution: Individuals participating in this category are automatically subject to the two-year home country physical presence requirement of INA §212(e).

International and Government Visitors

This category is reserved for the exclusive use of US federal, state or local government agencies. International visitors are those selected by the State Department for consultation, observation, training or demonstration of special skills in the US. Government visitors are essentially the same, only they are selected by governmental agencies. The maximum period of stay for international visitors is 12 months, and for government visitors it is 18 months.

Camp Counselors

A foreign national who is at least eighteen-years of age and either a bona fide youth worker, student, teacher or an individual with a special skill may qualify as a summer camp counselor. This category is limited to a four-month stay.

Summer Work/Travel Students

This category allows sponsors to bring foreign university students to the US during their summer vacations to travel and work in the US. Sponsors are encouraged to select visitors who, because of their distance from the US, would most likely not be able to afford to come to the US without temporary work authorization. This is the only J-1 category in which the number of foreign nationals the sponsor helps enter the US must be the same as the number of US students it sends abroad.

Au Pairs

The au pair program is one of the most closely monitored of the exchange visitor programs. The category allows the entry of individuals between the ages of 18 to 26, who are coming to perform childcare services for a US host family while attending a post-secondary school. Au pair participants may elect to participate in the 'EduCare' program, a subset of the au pair program, which allows the au pair to reduce the number of hours per week spent on child care and to pursue academic studies more vigorously. The foreign national must be proficient in English and a high-school graduate. Prospective au pairs are extensively screened, including a background investigation, criminal check, physical and psychological exams. The screening process for host families is almost as demanding. The host family must pay the au pair at least the minimum wage, and cannot request the au pair to provide more than 45 hours of childcare a week. The au pair must also be provided

with a private bedroom. An au pair cannot be placed in the following situations: there is a child under three months in the home, unless a parent is home as well, or in a family where there are children under 2, unless the au pair has over 200 hours of prior infant care experience. The program sponsor must provide the au pair with at least eight hours of child safety instruction, and at least 24 hours of child development instruction.

Special Education Exchange Visitors

This category is limited to fifty individuals per year and permits an alien to enter the US for up to 18 months to obtain practical training and experience in the education of children with physical, mental or emotional disabilities.

How does the exchange visitor program work?

Each exchange visitor must be sponsored. The sponsor of the J-1 visa program is a legal entity designated by the State Department to conduct an exchange visitor program. The following entities are eligible to apply for designation as a sponsor:

- United States federal, state and local government agencies;
- International organizations of which the U.S. is a member and which have an office in the United States; or
- Reputable organizations that are citizens of the United States.

The sponsoring entity is required to submit an application (DS-3036) to the State Department through the Student and Exchange Visitor Information System (SEVIS) and to comply with all provisions of 22 CFR Part 514. Once the program is approved, it receives notification through the SEVIS system. Alternatively, if State Department has not designated the organization as a sponsor, the organization may participate in the program through an intermediary, known as an umbrella organization, which acts as the sponsoring agency.

How do I know if I am subject to the two-year home country physical presence requirement?

An alien admitted in J-1 status may be subject to a two-year foreign (home country) residence requirement. Without a waiver of this requirement, the alien is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. An alien is subject to the home residence requirement if:

- The alien's participation in an exchange visitor program was financed by the government of the country of his or her last residence;
- At the time of admission, the alien was a national or resident of a country which the Department of State had designated as clearly requiring the services of individuals with the alien's special skills or knowledge; or

- The alien came to the United States to receive graduate medical education or training.

Limited waivers of the two-year foreign residence requirement are available in certain situations. The ways in which a waiver can be obtained will be discussed in a future article.

3. Ask Visalaw.com

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

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

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1) Question:

I have a green card and have been living in the U.S. since 1991. I applied for citizenship but don't know if I'll have my passport in time for an upcoming trip abroad. Do I need a re-entry permit or any other documentation to re-enter the U.S.?

Answer:

If your trip will be shorter than 180 days you shouldn't need a re-entry permit. As long as you will be traveling before you are sworn in as a U.S. citizen, you can continue to travel on your green card. You will need to tell USCIS about your trip abroad at your naturalization interview (or at the oath ceremony if you have already had your interview). Once you have been sworn in as a U.S. citizen, your green card is no longer valid and you will need a U.S. passport to travel.

2) Question:

I am a Permanent Resident. I filed an I-130 for my daughter. The priority date has just become current. While we were waiting for the priority date to become current my daughter married and then subsequently divorced. Did the marriage automatically cancel the petition or did the subsequent divorce keep her eligibility under the 2B category?

Answer:

U.S. Permanent Residents can only file immigrant petitions for their unmarried children. When a Permanent Resident petition (I-130) is filed for a child under the F2A or F2B categories the petition becomes automatically revoked if the child marries. The petition remains invalid even if the child later divorces. However, if the petitioner becomes a U.S. citizen before the child marries, the petition will remain valid.

4. Border and Enforcement News:

Border apprehensions down 36 percent, says CBP

The Associated Press reports that U.S. Customs and Border Protection says the number of illegally present immigrants apprehended in 2010 fell by 36 percent from the previous year. CBP also said it seized over 2,000 tons of narcotics.

<http://www.chron.com/dispatch/sory.mpl/ap/tx/7443206.html>

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ICE announces more audits of hiring records

The Packer reports that ICE issued a notice of inspection to one thousand employers across the country, alerting those businesses that ICE will be inspecting their hiring records. Rather than targeting a specific industry, ICE said this latest round of audits will include a broad spectrum of employers across all fifty states.

<http://thepacker.com/ICE-announces-more-audits-of-hiring-records/Article.aspx?oid=1308497&fid=PACKER-TOP-STORIES&aid=117>

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U.S. arrests 678 with foreign drug-trafficking ties

Bloomberg News reports that a coordinated effort by federal and local law enforcement authorities in 168 U.S. cities led to the arrest of 678 gang members and associates linked to 13 Mexican drug organizations. In addition, 164 individuals were arrested for criminal and administrative immigration violations. The crackdown by ICE, known as Project Southern Tempest, lasted from December to February and led to the seizure of more than \$4 million.

<http://www.sfgate.com/cgi-bin/article.cgi?f=%2Fg%2Fa%2F2011%2F02%2F28%2Fbloomberg1376-LHE2IN1A1I4H01-5TU77H25AD38N53NPLEJ6P4IFC.DTL>

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ICE outlines civil immigration enforcement priorities

ICE issued a memorandum outlining its priorities for the apprehension, detention, and removal of aliens. Noting that ICE only has resources to remove approximately 4 percent of illegally present immigrants in the United States each year, the memorandum included a priority list to ensure that removals promote the agency's overall goals of national security, public safety, and border security:

1. Aliens who pose a danger to national security or a risk to public safety
2. Recent illegal entrants
3. Aliens who are fugitives or otherwise obstruct immigration controls

In addition, the memorandum stressed that ICE field office directors should not expend detention resources on aliens who are suffering from physical or mental illness, are disabled, elderly, pregnant or nursing, or are the primary caretaker of children or an infirm person.

<http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>

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5. News from the Courts:

Arizona immigration bill legal defense cost \$1.5 million

The Arizona Republic reports that Arizona Governor Jan Brewer has spent \$1.5 million from the state's legal fund in defense of Senate Bill 1070, the state's controversial immigration law. Brewer created the Border Security and Immigration Legal Defense Fund and to date, more than 43,000 individuals from all fifty states have contributed over \$3.7 million.

<http://www.azcentral.com/arizonarepublic/local/articles/2011/02/25/20110225arizona-immigration-bill-lawsuit-cost-millions.html>

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Supreme Court leaves alone state job compensation rules

Fox News reports that the Supreme Court passed on an opportunity to hear arguments relating to Louisiana job compensation rules for illegally present immigrants. Although federal law explicitly prohibits illegally present immigrants from working in the United States, under certain state laws, those same workers can collect back pay and compensation benefits if they miss work due to an injury on the job.

This issue has come up in various state courts with mixed results. Judges in Louisiana, Pennsylvania, and Georgia have said that illegally present immigrants can receive compensation since there is no state law expressly prohibiting them from doing so. On the other hand, judges in Virginia, Michigan, and Nevada have pointed to the Immigration Reform and Control Act of 1986, saying it prohibits illegally present immigrants from collecting benefits for work they should never have been allowed to perform.

<http://www.foxnews.com/politics/2011/02/28/supreme-court-leaves-states-job-compensation-rules-illegal-workers/>

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Lawsuit: company sought to hire illegally present immigrants

The Associated Press reports that a discrimination lawsuit was filed in U.S. District Court on behalf of four African-American women who claim that Howard Industries gave preferential treatment to Latino applicants and workers. In 2008, ICE agents

detained nearly 600 illegally present immigrants at Howard Industries' electrical transformer plant in Mississippi in the largest such raid in U.S. history. The company pled guilty to conspiracy to violate immigration laws and was fined \$2.5 million. Former human resources manager Jose Humberto Gonzalez was sentenced to six months under house arrest.

<http://abcnews.go.com/Business/wireStory?id=13021806>

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6. News Bytes:

USCIS naturalizes 53 soldiers during President's Day ceremony in Iraq

USCIS reports that Robert Daum, director of the USCIS Field Office in Rome, led a naturalization ceremony in Al Faw Palace in Baghdad on February 21st, administering the Oath of Allegiance to 53 U.S. soldiers who officially became U.S. citizens. USCIS held its first naturalization ceremony in Iraq in October 2004, and since then, 3,426 members of the armed forces have become citizens of the United States while deployed there.

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=6bd081eb0c25e210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

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Report: Insiders pose threat to USCIS IT

GovInfoSecurity.com reports that a recent report issued by the Department of Homeland Security, 'Examining Insider Threat Risk at the U.S. Citizenship and Immigration Services,' reveals that the USCIS IT systems are vulnerable to insider threats from employees and contractors. The report says that because USCIS employees 'hold the keys' to U.S. citizenship, they make an attractive target for recruitment for theft and unauthorized modification of data. The report included eighteen recommendations aimed at strengthening the agency's security, including centralizing records of misconduct and violations by employees in the scope of their jobs and reexamining human resources screening procedures for high-risk positions. USCIS agreed with the recommendations and says it has begun implementing them.

The report is available at: http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_11-33_Jan11.pdf

http://www.govinfosecurity.com/articles.php?art_id=3387

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NM, WA reject bills to ban illegally present immigrant driver's licenses

Insurance Journal reports that the New Mexico Senate has rejected a bill that would have prevented the state from issuing driver's licenses to illegally present immigrants. The Republican-backed measure sought to change a 2003 law that allows illegally present immigrants to obtain licenses, arguing that current licensing system poses a security threat.

The Associated Press reports that a similar bill that would have restricted driver's license access to illegally present immigrants in Washington state was defeated in the senate. The bill would have required applicants for a driver's license to provide proof of residency and a Social Security number. While supporters say the measure was aimed at stopping identification fraud, opponents said the bill would have led illegally present immigrants to drive without licenses and car insurance.

<http://www.insurancejournal.com/news/west/2011/02/28/188399.htm>

http://seattletimes.nwsourc.com/html/localnews/2014429238_apwaxgrillegalimmigrantslicenses3rdldwritethru.html

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Study: U.S. scores well in integrating migrants

According to *The Associated Press*, a new study released by the British Council, a charity specializing in international education and cultural opportunities, shows that U.S. policies to integrate migrants ranks ninth among the 31 countries studied in Europe and North America. Sweden, Portugal, and Canada led the list, while Cyprus and Latvia ranked last.

The report is available at: <http://www.mipex.eu/>

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/28/AR2011022801822.html>

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Oklahoma House panel backs comprehensive anti-immigration measure

The Oklahoman reports that a House committee passed a wide-ranging anti-immigration measure that would give law enforcement officials more authority to check the immigration status of motorists stopped for committing traffic violations. In addition, the bill would allow police officers to confiscate the property of illegally present immigrants to help fund their incarceration and deportation. The bill's sponsor, Rep. George Faught of Muskogee, wants the bill to be the state's only immigration measure this year and included a provision that would prohibit undocumented students from qualifying for state-funded scholarships.

<http://newsok.com/article/3544759>

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Utah House passes amended bill repealing in-state college tuition for illegally present immigrants

The Deseret News (UT) reports that a bill that would repeal in-state tuition for undocumented college students was passed in Utah. Originally, the language in the bill explicitly said undocumented workers could not pay in-state tuition. The amended bill, however, says a student will be required to prove that they or a legal guardian has paid Utah state taxes in order to qualify for in-state tuition.

<http://www.deseretnews.com/article/705367657/House-passes-amended-bill-repealing-Utah-college-tuition-for-illegal-immigrants.html>

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Georgia House passes Arizona-style immigration bill

The Atlanta Journal Constitution reports that the Georgia House passed House Bill 87, a new measure aimed at illegally present immigrants. Known as the Illegal Immigration Reform and Enforcement Act of 2011, this legislation would authorize state and local police to verify the immigration status of certain suspects. The bill's supporters echoed Arizona's argument, claiming that the federal government has failed to adequately enforce the nation's immigration laws. The ACLU and other civil rights groups have spoken out against law, calling it unconstitutional and threatening to file a lawsuit if the legislation is passed by the Senate and signed into law by Republican Governor Nathan Deal.

<http://www.ajc.com/news/georgia-politics-elections/house-passes-arizona-style-859989.html>

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Immigrant sponsorship bill passes Utah House

The Salt Lake City Tribune reports that the Utah House passed a proposal that would allow any U.S. citizen living in the state to sponsor an immigrant from any nation not currently listed by the State Department as a terrorist threat. The sponsorship program would be run by the Governor's Office and would include a fee of approximately \$210. Although the bill has many supporters and passed with a 55-16 vote, it has a constitutional note attached to it by legislative attorneys warning that there is a high likelihood of the bill being challenged in court.

<http://www.sltrib.com/sltrib/home/51359927-76/allow-bill-committee-federal.html.csp>

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USCIS to close Vietnam office at end of month

USCIS reports that it will close its office in Ho Chi Minh City, Vietnam on March 31st, 2011. As of March 25th, applications previously accepted by that office will be received by the U.S. Department of State Consular Section there.

[USCIS.gov](http://uscis.gov)

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USCIS announces new filing location for change of address form

USCIS announces that beginning March 15, 2011 all Change of Address (Form AR-11) and Alien's Change of Address (Form AR-11SR) will change filing locations. New forms must be filed at the following address:

DHS/USCIS
Harrisonburg File Storage Facility
Attn: AR-11
1344 Pleasants Drive
Harrisonburg, VA 22801

Change of address forms mailed to the old location will be forwarded to the above address until April 28, 2011.

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1bdd49c62ed6e210VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>

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Partial reduction of visa operations at U.S. Consulate, Mumbai

The U.S. Consulate in Mumbai announced that until its new facility opens later this year, it will have to close several interview windows, limiting the number of applicants that can be accommodated at a given time. If an applicant has already scheduled an H or L interview, that interview time will be honored but no new appointments will be accepted.

<http://www.aila.org/content/default.aspx?docid=34760>

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7. Washington Watch:

Obama backs extradition in ICE agent killing

The Houston Chronicle reports that President Obama is seeking the extradition of the suspect arrested in Mexico in the killing of ICE agent Jaime Zapata. In a joint news conference with Mexican President Felipe Calderon in Washington D.C., Obama said he expects 'the full weight of the law to be brought against this perpetrator.' Mexican officials are still weighing a decision on extradition, but Calderon ensured listeners that the individual will be brought to justice, regardless of whether it is in the United States or Mexico.

<http://www.chron.com/dispatch/story.mpl/nation/7456402.html>

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8. Updates from the Visalaw.com Blogs

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

- [APRIL 2011 VISA BULLETIN RELEASED](#)
- [ALABAMA BILL WOULD MAKE IT A CRIME TO BE OUT OF STATUS](#)
- [IMMIGRANT OF THE DAY: ANDY BECHTOLSHEIM - ENTREPRENEUR](#)
- [IMMIGRANT OF THE DAY: MARTIN KLEPPMANN - ENTREPRENEUR](#)
- [NBC NEWS: RESTRICTIVE H-1B POLICIES ARE A JOB KILLER FOR AMERICANS](#)
- [UTAH HEADS IN DIFFERENT DIRECTION THAN ARIZONA](#)
- [VETERAN SOLDIER FACES DEPORTATION](#)
- [FED UP ARIZONANS BEGIN PUSH TO SECEDE FROM STATE](#)
- [NBC EXPLORES REVERSE BRAIN AND NEED FOR VISA REFORM](#)
- [IMMIGRANT OF THE DAY - NATALIE PORTMAN - BEST ACTRESS](#)
- [ARPAIO WON'T SEEK SENATE SEAT](#)
- [FORDHAM LAW SCHOOL CONSIDERS IMMIGRATION POLICY](#)
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- [ARMY VETERAN AWARDED \\$400,000 FROM ICE FOR WRONGFUL IMPRISONMENT](#)
- [BREAKING: JUSTICE DEPARTMENT WON'T DEFEND DEFENSE OF MARRIAGE ACT](#)
- [IMMIGRANT OF THE DAY: GERDA WEISSMAN KLEIN - SURVIVOR](#)
- [ARIZONA EXTREMIST BILLS COULD LEAD TO EXPANDED BOYCOTT](#)

The SSB I-9, E-Verify, & Employer Immigration Compliance Blog

- [CHIPOTLE WORKERS QUIT IN ANTICIPATION OF I-9 AUDIT](#)
- [MISSISSIPPI FIRM NOW FACING CIVIL SUIT](#)
- [FAY ARTICLE EXPLAINS I-9 FINE CALCULATIONS](#)
- [STAFFING COMPANY EMPLOYEES SENTENCED TO PRISON](#)
- [HOWARD INDUSTRIES AGREES TO PAY \\$2.5 MILLION FINE](#)

The Visalaw Healthcare Immigration Blog

- USCIS PLANS TO CLARIFY THAT TEACHING HOSPITALS REMAIN EXEMPT FROM H-1B CAP

Karen Weinstock's Visalaw Georgia Immigration Blog

- [GEORGIA GOVERNOR ON TIGHT IMMIGRATION SPOT](#)

9. State Department Visa Bulletin: April 2011

*Number 31
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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 March **8th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: (F1) 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. **(F2A)** Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) 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-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01MAY04	01MAY04	01MAY04	15FEB93	01APR95
F2A	01APR07	01APR07	01APR07	01JUL06	01APR07
F2B	15APR03	15APR03	15APR03	15JUL92	01DEC99
F3	15MAR01	15MAR01	15MAR01	08NOV92	01JAN92
F4	01FEB00	01JAN00	01FEB00	01FEB96	08MAR88

*NOTE: For April, F2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JUL06. F2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JUL06 and earlier than 01APR07. (All F2A numbers provided for MEXICO are exempt from the per-country limit; there are no F2A 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	22JUL06	08MAY06	C	C
3rd	22JUL05	01MAR04	08APR02	08MAY04	22JUL05
Other Workers	22JUL03	22APR03	08APR02	22JUL03	22JUL03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C

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

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

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2011 annual limit being reduced to 50,000.** DV visas are divided among six

geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **April**, immigrant numbers in the DV category are available to qualified DV-2011 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	35,450	Except: Egypt 27,600 Ethiopia 22,150 Nigeria 14,100
ASIA	19,250	Except: Bangladesh 18,350
EUROPE	23,200	
NORTH AMERICA (BAHAMAS)	8	
OCEANIA	1,000	
SOUTH AMERICA, and the CARIBBEAN	1,075	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2011 program ends as of September 30, 2011. DV visas may not be issued to DV-2011 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2011 principals are only entitled to derivative DV status until September 30, 2011. DV visa availability through the very end of FY-2011 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For **May**, immigrant numbers in the DV category are available to qualified DV-2011 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	42,000	Except: Egypt 31,200 Ethiopia 26,200

		Nigeria 15,450
ASIA	23,500	
EUROPE	27,800	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,175	
SOUTH AMERICA, and the CARIBBEAN	1,150	

D. RETROGRESSION OF FAMILY PREFERENCE CUT-OFF DATES

Continued heavy applicant demand for numbers in the Family First (F1) preference category has required the retrogression of the Worldwide, China-mainland born, and India cut-off date for the month of April.

Further retrogressions cannot be ruled out should demand continue at the current levels for some categories and countries.

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*)

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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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