

Siskind's Immigration Bulletin – February 22, 2011

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Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>

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### 1. Openers

Dear Readers:

This week reminded us that while addressing the dysfunctional legal immigration system and dealing with the millions of illegally present immigrants is not going anywhere, the relentless enforcement strategy that began in 2007 under President Bush continues at full throttle. This week, the Associated Press and New York Times reported on 15,000 pages of internal Department of Homeland Security documents released as part of a Freedom of Information Act request. The subject was the Secure Communities and what was revealed was a plan to mandate that all law enforcement agencies around the country share information with Immigration and Customs Enforcement whether the local agency is interested in or not. Whether this is legal or not, or good policy or not, has been overshadowed by the deliberate misleading of states and municipalities over the fact that once you sign up for the program, there is no way to opt out. In fact, by 2013, DHS plans on requiring every law enforcement agency in the country to be participating in Secure Communities.

This week we also learned that 1000 more companies across the country are going to be randomly selected for I-9 audits. This follows recent news that the amount of I-9 fines levied against the nation's employers has increased 1000% over the last three years.

Advocates for immigration reform had previously pushed for comprehensive change – dealing with legalization of the undocumented, enforcement and legal immigration reform all at the same time. But that strategy was quietly abandoned for the enforcement first approach demanded by many.

The problem with this approach is the “moving of the goal posts” recently pointed out by Secretary of Homeland Security Janet Napolitano. In short, no matter how much progress is made in securing the border, it will never be enough to satisfy the anti-immigrants.

So it was refreshing to see that Senator John McCain, who recently decided to become re-engaged in the immigration reform debate, revealed that he was working with the Obama Administration on establishing benchmarks to demonstrate that the border has been secured. Once those benchmarks are in place, it will be easier to move toward the next stage of reform.

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In firm news, congratulations to my law partner Lynn Susser who was in Washington this week being sworn in to practice in front of the US Supreme Court. She was still in DC as of the writing of Openers and I haven't heard the skinny on the experience, but I can't wait to find out what it was like.

I was also on the road this week having delivered a talk at Boston University School of Medicine on immigration options for physicians and post-docs. This coming Friday I'll be in Philadelphia speaking at the ABA New Partner and In House Counsel Conference in Philadelphia. I'll be speaking on marketing at this always excellent conference. You can find out more at <http://www2.americanbar.org/calendar/new-partner-and-in-house-counsel-conference/Pages/default.aspx> .

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## **2. ABCs of Immigration Law: S Visas for Aliens Assisting Law Enforcement**

We hope that none of our readers ever need to make personal use of this information, but in the interest of making a complete survey of the nonimmigrant visa classifications, this week's article discusses the S visa, often known among practitioners as the "snitch visa."

### **What is an S visa?**

The S visa is given to aliens who assist US law enforcement to investigate and prosecute crimes and terrorist activities. Until 1994, there was no separate classification for such people. Instead, they were admitted into the US in parole status. In 1994, The Violent Crime Control and Law Enforcement Act created the S category. There are two types of S visas, the S-5 and S-6.

### **How does one qualify for an S-5 visa?**

To qualify for an S-5 visa, the Attorney General must determine that the person -

- \* Possess reliable information regarding an important aspect of a crime or pending commission of a crime,
- \* Is willing to share this information with law enforcement officials or to testify in court, and
- \* That their presence in the US is necessary to the successful investigation or prosecution of the case.

### **How does one qualify for an S-6 visa?**

To qualify for an S-6 visa, both the Attorney General and the Secretary of State must determine that the person -

- Possesses reliable information regarding an important aspect of a terrorist organization or plot,
- Is willing to share this information with law enforcement officials or to testify in court,

- Has or will be placed in danger for providing that information, and
- Is eligible to receive an award from the State Department for providing such information.

### **How does one apply for an S visa?**

The petitioner in an S visa classification is the law enforcement agency with which the alien is cooperating. The application is made on Form I-854, called the Inter-Agency Alien Witness and Informant Record. The application must include the agency's reasons for seeking the cooperation of the alien. The law enforcement agency must also assume responsibility for the alien from their admission until departure. Spouses unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. They must be included on the Form I-854.

### **How many S visas are issued annually?**

Only 200 people may be admitted in S-5 status each year, and only 50 may be admitted in S-6 status. The maximum period of admission in S status is three years.

It may strike many as odd that the US has a special program for admitting S nonimmigrants. These people must be sufficiently involved in criminal or terrorist activity to provide information to US law enforcement, which would ordinarily render them inadmissible. They are allowed in the US because under the S visa program the Attorney General is authorized to waive all grounds of exclusion except those involving Nazi persecution and genocide if such a waiver is in the national interest.

### **Are there any restrictions for S visa holders while they are in the US?**

S nonimmigrants are subject to many restrictions while in the US. These are:

- Reporting to the Attorney General every three months regarding their whereabouts and activities;
- Not being convicted of a crime that is punishable by one or more years in prison;
- They must agree that they will not contest a deportation order by any means other than an application for withholding based on fear of persecution if returned home if the deportation proceedings are begun before the alien becomes a permanent resident; and
- They must adhere to any other conditions on their stay the Attorney General imposes.

### **Can S visa holders adjust their status?**

S visa holders are allowed to adjust status to permanent resident under a special provision under Section 245(j) of the Immigration and Nationality Act. If the information supplied by the alien has "substantially contributed" to a successful investigation or prosecution of a crime, they are eligible for adjustment of status. Similarly, if the alien's information "substantially contributed" to the prevention of an act of terrorism, or to the apprehension of a person involved in terrorist activities, they are allowed to adjust their status.

### **What options do family members of S visa holders have?**

Spouses, unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. Family members who have been admitted in S-7 status are allowed to adjust status as well. As with the initial application for S status, the application for permanent residency must be made by the law enforcement agency and must be filed on Form I-854. The application must be approved by the Assistant Attorney General in charge of the Criminal Division of the Justice Department and by the Commissioner of BCIS. After this approval, the alien is allowed to apply for adjustment of status on Form I-485.

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### 3. Ask Visalaw.com

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

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

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#### 1) Question:

I filed a green card petition for my siblings in October of 2001. Last September NVC informed us that it was time to begin the visa application process, but now the state department is regressing the dates back to January 2000. My understanding was that the NVC would not have begun the visa process unless a visa was available. So will this change affect my eligibility to receive a visa? If so, do you anticipate the date changing back to January 2002 soon or will it take another two years for our case to be processed?

Answer:

The NVC usually send the fee bills a bit early, before the priority date is reached but about a month or so before they expect the priority date to be reached. So just because the NVC sent the fee bills does not mean a visa was yet available.

The DOS does sometimes retrogress the visa numbers. Their calculations are complicated and imperfect and sometimes they feel the need to move the numbers back to ensure that the number of visas and green cards issued does not exceed the quota established by Congress. When numbers retrogress, the DOS will hold pending visa applications until a visa becomes available again for that petition.

It is not possible to say for sure how long it will take for the priority date to be reached again.

2) Question:

I am planning on coming to the U.S. on a K-1 fiancé visa. Once I marry my fiancé within the 90 day period of his arrival to the US, how long before I am allowed to leave the country? We would like to visit my family in the U.K. after the marriage.

Answer:

A foreign national who enters the U.S. on a K-1 fiancé visa must marry their fiancé within 90 days. Once the foreign national has married within 90 days of entering the U.S., they should apply for Adjustment of Status (green card). With this application, they can apply for an Advance Parole travel permit. Once they have the Advance Parole, they can travel abroad. The foreign national will only need to travel on the Advance Parole document until their application for Adjustment of Status is approved. After that they can travel using the green card.

If the application for Adjustment of Status was not filed until after the expiration of the foreign national's I-94 Entry Document, they should consult with an attorney before traveling abroad. Travelling prior to receiving the Advance Parole document could possibly lead to USCIS considering the application for Adjustment of Status to be abandoned.

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

##### **ICE fails to flag 4% of California inmates**

*The Associated Press* reports that a government audit for fiscal year 2009 shows that immigration agents failed to identify four percent of California inmates who were eligible for deportation. ICE agents blamed staffing shortages for this failure.

[http://articles.sfgate.com/2011-02-04/news/27103423\\_1\\_immigration-agents-state-inmates-face-deportation](http://articles.sfgate.com/2011-02-04/news/27103423_1_immigration-agents-state-inmates-face-deportation)

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##### **Border officer hiring binge got ahead of screening**

*The San Diego Union Tribune* reports that a growth in the number of Customs and Border Protection officers has led to lax screening methods, resulting in 123 arrests of Border Patrol agents since 2004. In testimony before Congress, a top Internal Affairs official acknowledged that only fifteen percent of applicants are tested, meaning many agents who joined during the hiring spree were not subject to a polygraph.

In response to corruption within the organization, Congress passed 'The Anti-Border Corruption Act of 2010,' requiring all new hires over the next two years to participate in a polygraph test. Spokeswoman Kelly Ivahnenko said the agency will be able to meet the legislative requirements by the end of 2012.

<http://www.signonsandiego.com/news/2011/feb/05/border-officer-hiring-binge-got-ahead-of-screening/>

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### **Top official notes progress on border**

*The Arizona Daily Star* reports that U.S. Customs and Border Protection Commissioner Alan Bersin said that the border is safer and more secure due to efforts by The Alliance to Combat Transnational Threats. The alliance was launched in September 2009 and consists of sixty federal, state, local, and tribal law enforcement agencies in Arizona working together to drive down human and drug trafficking across the border. He pointed to a six-year decrease in apprehensions of illegally present immigrants and an increase in drug, cash, and weapon seizures as evidence of a more secure border.

[http://azstarnet.com/news/local/border/article\\_ee3c2082-3269-5b17-8d47-3c0f2e85c949.html](http://azstarnet.com/news/local/border/article_ee3c2082-3269-5b17-8d47-3c0f2e85c949.html)

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### **Arizona proposal would use donations to build border fence**

*Capitol Media Services* reports that the Arizona Senate voted to start taking private donations to build a border fence. A spokesman from the Border Action Network claimed that while it is costing the federal government \$4 million a mile to build fencing, it would be of minimal cost to the state if it accepted private donations and utilized inmate labor. The bill's sponsors argue that the federal government's efforts have been insufficient to secure the border and propose to build a third of the 370 mile long border fence on private land with the balance being constructed on the Tohono O'odham reservation and federal land.

[http://azstarnet.com/news/local/border/article\\_539a55c0-357b-11e0-900b-001cc4c03286.html](http://azstarnet.com/news/local/border/article_539a55c0-357b-11e0-900b-001cc4c03286.html)

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### **Northern border may be more secure than depicted**

*The Associated Press* reports that U.S. Border Patrol Chief Michael Fisher said in a House panel that the northern border is more secure than a report by the Government Accountability Office (GAO) had depicted. On February 1<sup>st</sup>, the GAO released a report stating that the Border Patrol has 'operational control,' meaning they can effectively detect illegal activity and make arrests, over just 32 of the border's 4,000 miles. Speaking to the House Homeland Security subcommittee, however, Fisher said whether his agency has operational control over an area 'is not in and of itself an assessment of border security.' Border Patrol is developing a new strategy to assess security that will be risk-based and depend on information and intelligence.

[http://azstarnet.com/news/us/article\\_37190b59-e566-5f3c-a465-dc54c0658148.html](http://azstarnet.com/news/us/article_37190b59-e566-5f3c-a465-dc54c0658148.html)

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### **ICE agent killed in Mexico**

*The Los Angeles Times* reports that the ICE agent killed in an area of Mexico under control off drug cartels has been identified as Jaime J. Zapata, a native of

Brownsville, TX and four-year veteran of the agency. Zapata, along with another unidentified agent, were dispatched from the U.S. Embassy in Mexico City and were shot in the state of San Luis Potosi as they were traveling north to Monterrey. The second agent was reportedly in stable condition after suffering several gunshot wounds.

Gunmen from the notorious Zetas gang blocked the road before opening fire on the agents as part of a 'narco-blockade,' a practice meant to impede law enforcement from patrolling drug trafficking routes. In statement responding to the attack, Homeland Security Secretary Janet Napolitano vowed that such an act of violence would not diminish the U.S. role in Mexico's drug war.

<http://articles.latimes.com/2011/feb/16/world/la-fg-mexico-agent-killed-20110217>

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### **Surge of immigrants from India baffles border officials in Texas**

*The Los Angeles Times* reports that more than 1,600 illegally present Indian immigrants have been caught in Texas, while thousands more have entered the U.S. undetected. In the last three months of 2010, around 650 Indians were arrested in southern Texas. Motels such as America's Best Value Inn in Raymondville house about twenty Indians per week as they try to make their way north. Mexico requires visas for Indians so many of these immigrants are traveling to South America and then sneaking across the Guatemala-Mexico border before entering the U.S.

Some of the immigrants claim they are fleeing religious and political persecution, but human rights experts say the political conditions in India do no explain the migration. Although many of the immigrants are Sikhs, a religious minority within India, political experts say this group has not been targeted since the 1980s and that these claims are false. Despite this analysis, some Indian immigrants have successfully embarked upon the path towards full asylum, convincing asylum officers they have a 'credible fear' of persecution if they return to India.

<http://articles.latimes.com/2011/feb/06/nation/la-na-border-indians-20110206>

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

### **Chipotle workers fired over immigration status sue for back pay**

*The Star Tribune (MN)* reports that two former employees of Chipotle Mexican Grill in Minnesota have filed a lawsuit claiming the restaurant failed to pay their wages in a timely fashion. The workers were among hundreds who were fired after an audit by ICE raised questions about their immigration statuses. The lawsuit claims that under Minnesota law, the employees should have been paid their earned compensation immediately upon their dismissal.

[http://www.startribune.com/business/115234749.html?elr=KArks:DCiU10iP:DiiUiD3aPc:\\_Yyc:aULPQL7PQLanchO7DiU](http://www.startribune.com/business/115234749.html?elr=KArks:DCiU10iP:DiiUiD3aPc:_Yyc:aULPQL7PQLanchO7DiU)

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### **BIA overturns previous ruling, narrows grounds for deportation**

*The American Immigration Council* reports that the Board of Immigration Appeals (BIA) modified its interpretation of a law which multiple federal courts ruled had ignored the intent of Congress. Under current law, immigrants may be deported for 'crimes of moral turpitude' if the crime was committed within five years of admission to the United States. Previously, BIA held that the five year clock restarted when noncitizens adjust to lawful permanent resident status from inside the United States. In response to federal ruling, however, BIA will not restart the five-year clock in such cases.

<http://www.americanimmigrationcouncil.org/newsroom/release/board-immigration-appeals-overturns-previous-ruling-narrows-grounds-deportation>

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### **Arizona sues feds over immigration issues**

*The Arizona Republic* reports that Arizona filed a lawsuit in U.S. District Court in Phoenix against the federal government over its immigration policies. Governor Jan Brewer said the intent of the lawsuit is to force the federal government to protect Arizonians. The lawsuit alleges that the federal government has failed in five areas: to maintain 'operational control' of the border, to protect Arizona against 'invasion,' to enforce immigration laws, to reimburse Arizona for the cost of incarcerating criminal illegally present immigrants, and to uphold the 10<sup>th</sup> amendment, which states that powers not explicitly delegated to the federal government are reserved to the states. The lawsuit asks for a court mandate requiring the government to finish building 700 miles of fence along the border and increase the number of immigration officers in the state.

Other similar suits against the federal government have failed in the past. In 1996, a suit by California alleging that President Clinton failed to live up to a 1994 law requiring the U.S. attorney general to reimburse states for prison costs or transfer inmates to federal prison was dismissed. In 2006, Colorado passed Referendum K, ordering the state's attorney general to file suit against the federal government for failure to enforce immigration laws. That lawsuit was eventually dismissed.

<http://www.azcentral.com/arizonarepublic/news/articles/2011/02/11/20110211arizona-to-sue-federal-government-over-border-security.html>

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## **6. News Bytes:**

### **Immigration report: no rush across border to give birth**

*USA Today* reports that a new report by the Pew Hispanic Center found that the majority of illegally present immigrants who had children in the United States in 2010 had entered the country several years earlier. 350,000 babies were born between March 2009 and March 2010 to at least one illegally present immigrant, 91% of whom had arrived in the U.S. before 2008. A spokeswoman from the Center for American Progress argued that this data dispels the notion that birthright citizenship is a major motive for illegally present immigrants.

[http://www.usatoday.com/news/nation/2011-02-03-anchor03\\_ST\\_N.htm](http://www.usatoday.com/news/nation/2011-02-03-anchor03_ST_N.htm)

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### **Alabama senator says 'empty the clip' remark did not advocate violence**

*The Associated Press* reports that Alabama State Senator Scott Beason said it's time to 'empty the clip' when speaking about immigration to the Cullman County Republican Club. Critics called the comment insensitive in light of the recent shooting in Tucson, Arizona in which six people were killed and thirteen wounded by a gunman using a pistol with a 33-round clip. Beason claims the remark was not meant to advocate violence, but rather demonstrate that a wide array of government action is necessary to solve the nation's immigration problem.

<http://www.cbsnews.com/stories/2011/02/08/ap/national/main7330263.shtml>

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### **USCIS: Attention Former Tri-Valley University Students**

USCIS announced that the Student and Exchange Visitor Program (SEVP) terminated the records of all F-1 students enrolled at Tri-Valley University (TVU) as of January 18, 2011. For questions, call the SEVP Response Center at 703-603-3400. You should be prepared to provide the following information when you call:

- First and last name
- SEVIS ID#
- Mailing address
- Telephone number and e-mail address
- Dates of attendance at TVU
- Level and Major of study at TVU

<http://www.ice.gov/sevis/tri-valley-110118.htm>

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### **USCIS to issue new card for adjustment of status applicants**

USCIS announced that it is now issuing employment and travel authorization on a single card for certain applicants filing an Application to Register Permanent Residence or Adjust Status, Form I-485. The card looks similar to the current Employment Authorization Document (EAD) but will include text that reads, "Serves as I-512 Advance Parole." A card with this text will serve as both employment authorization and Advance Parole document. More information about the card can be found in the following Q&A: [EAD and Advance Parole card Questions and Answers](#)

[USCIS](#)

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### **Sandstrom revises immigration bill**

*The Salt Lake Tribune* reports that Rep. Stephen Sandstrom proposed changes to Utah House Bill 70, an immigration enforcement bill. The change would give local police discretion whether to run immigration status checks on people detained for minor offenses. By offering police this choice, Sandstrom hopes to lower the cost of enforcement that was estimated to between \$5.3 million and \$11.3 million. The bill

allows law enforcement to run status checks on those pulled over for Class B or C misdemeanors.

<http://www.sltrib.com/sltrib/home/51230850-76/xgrimmigration.html.csp>

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### **New Mexico House panel shelves immigrant license revocation**

*The Associated Press* reports that the New Mexico House Labor and Human Resources Committee rejected a proposal to revoke the driver's license of illegally present immigrants. The measure was seen as an alternative to repealing a 2003 law that allows illegally present immigrants to get driver's licenses. Committee chairman Rep. Miguel Garcia says that law has helped reduce the rate of uninsured drivers in the state.

[http://www.necn.com/02/10/11/House-panel-shelves-immigrant-license-re/landing\\_politics.html?&blockID=3&apID=58c1f5e3c07645b9a4c5756c9a264420](http://www.necn.com/02/10/11/House-panel-shelves-immigrant-license-re/landing_politics.html?&blockID=3&apID=58c1f5e3c07645b9a4c5756c9a264420)

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### **Immigration enforcement bill dies in Colorado**

*Fox News Latino* reports Colorado State Rep. Randy Baumgardner will back off House Bill 1107, an Arizona-style immigration bill that he sponsored that would have allowed police to arrest illegally present immigrants if they had probable cause to suspect they were in the country illegally. Baumgardner cited potential costs to taxpayers resulting from ensuing litigation if the bill were passed. Although Baumgardner effectively killed this legislation, a similar bill is still alive in the Colorado Senate.

<http://latino.foxnews.com/latino/politics/2011/02/10/arizona-style-immigration-die-colorado>

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### **Arizona bill brings hospitals into immigration fray**

*Politico* reports that Republican state legislators in Arizona are proposing a bill that would require hospitals to check a patient's immigration status. Doctors and others in the medical industry fear the bill will deter some immigrants from seeking care and will prevent them from doing their jobs by forcing them to effectively act as immigration agents. Supporters counter that the requirement would only be for non-emergency situations and that the bill would save hospitals millions of dollars they currently spend on care for illegally present immigrants.

<http://www.politico.com/news/stories/0211/49546.html>

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### **Oklahoma Senate panel pushes forward bill eliminating 'birthright citizenship'**

*The Associated Press* reports that the Oklahoma Senate Judiciary Committee approved two bills aimed at illegally present immigrants. The first bill would deny Oklahoma citizenship to babies born to illegally present immigrants. The second bill, dubbed 'Arizona-plus' by its author Republican Sen. Ralph Shortey, would not only

allow police to question people about their immigration status, but would also allow police to confiscate property of illegally present immigrants. Shortey said he added the 'asset forfeiture' provision to incentive police officers to enforce the law. He also hopes the money from the sale of such property would help pay to incarcerate and prosecute illegally present immigrants.

<http://www.foxnews.com/politics/2011/02/16/oklahoma-senate-panel-pushes-forward-eliminating-birthright-citizenship/>

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### **Bill to bar illegally present immigrants in public colleges clears panel**

*The Atlanta Journal Constitution* reports that the Georgia House Higher Education Committee passed a bill that would prevent illegally present immigrants from enrolling in the state's public colleges. House Bill 59 would require students' immigration status to be checked by running their names through the federal database Systematic Alien Verification for Entitlement (SAVE).

Republican Rep. Tom Rice says he was inspired to write the bill to ensure that the children of taxpaying Georgians are not displaced by illegally present immigrants. Erroll Davis, Chancellor of the University System of Georgia, said he has already taken the necessary steps to protect Georgia citizens, including requiring illegally present immigrants to pay out-of-state tuition. He said the state's education capacity is not stressed by undocumented students, with only 501 of the state's 310,361 students classified as such.

<http://www.ajc.com/news/georgia-politics-elections/bill-to-bar-illegal-839985.html>

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## **7. Washington Watch:**

### **Rep. Royce plans to push national-level version of Arizona immigration law**

*The Daily Caller* reports that Rep. Ed Royce (R-CA) is planning to introduce a national-level version of Arizona's controversial Senate Bill 1070. Royce said his legislation would give state-level law enforcement authority to enforce federal immigration laws. The bill would 'establish operational control of the border' by keeping the secretaries of Interior and Agriculture from over-regulating fencing on federal land. In addition, Homeland Security would be required to review all visas from certain 'high-risk' consulate posts, including conducting a face-to-face interview with these visa-holders.

Rep. Royce visited the U.S.-Mexico border with Rep. Steve King (R-IA) and Rep. Phil Gingrey (R-GA) and said the border security situation was much grimmer than the picture painted by Homeland Security Secretary Janet Napolitano. He said border communities are complaining of higher levels of violence and vandalism more than they have in the past.

<http://dailycaller.com/2011/02/03/rep-royce-plans-to-push-national-level-version-of-contentious-arizona-immigration-law/>

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### **Sen. Orrin Hatch to propose immigration bill**

*The State Column* reports that Senator Orrin Hatch (R-UT) will propose a bill to strengthen immigration enforcement. Although no specific details were released, Sen. Hatch said the bill would seek to secure the borders while proposing a plan to begin deporting illegally present immigrants. He said the bill is in response to Republican disagreement with the Obama administration's immigration reform policies.

[http://www.thestatecolumn.com/state\\_politics/utah/sen-orrin-hatch-to-propose-illegal-immigration-bill/](http://www.thestatecolumn.com/state_politics/utah/sen-orrin-hatch-to-propose-illegal-immigration-bill/)

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### **'America's toughest sheriff' considering Arizona Senate run**

*The Hill* reports that Arizona Sheriff Joe Arpaio, the conservative sheriff who has made national headlines for his hard-line anti-immigration stances, is considering running for the seat of retiring Sen. Jon Kyl (R-AZ) in 2012. A poll by the Summit Consulting Group found Arpaio leading other possible Republican candidates for the Senate seat, with 21 percent of likely GOP voters favoring Arpaio. Arpaio said the main factor in his decision would be whether he would be willing to leave his job as sheriff, a position he has held for five terms.

<http://thehill.com/blogs/blog-briefing-room/news/144043--popular-arizona-sheriff-considering-a-us-senate-run>

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### **Janet Napolitano invites Hill leaders to Mexican border**

*Politico* reports that Homeland Security Secretary Janet Napolitano invited top Democrats and Republicans in both chambers of Congress to join her in a trip to the Mexican border this spring. She hopes the bipartisan group will 'jointly asses the progress that has been made' at the border and continue the discourse in Congress. The group includes Senate Majority Leader Harry Reid (D-NV), Senate Minority Leader Mitch McConnell (R-KY), House Speaker John Boehner (R-OH), and Minority Leader Nancy Pelosi (D-CA).

<http://www.politico.com/news/stories/0211/49270.html>

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## **8. Updates from the Visalaw.com Blogs**

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

- [FASHION INDUSTRY JOINS LEGAL IMMIGRATION REFORM COALITION](#)
- [EMMANUEL'S OPPONENTS SLAM MAYORAL CANDIDATE ON IMMIGRATION POSITIONS](#)
- [THE FRIENDS VISA](#)
- [OKLAHOMA SEEKING TO COPY ARIZONA BIRTHRIGHT CITIZENSHIP MEASURE](#)
- [FREEDOM OF INFORMATION ACT REQUEST REVEALS ICE MISLED COMMUNITIES ON OPTING OUT OF SECURE COMMUNITIES](#)
- [LUONG UNG - IMMIGRANT OF THE DAY - HUMAN RIGHTS ACTIVIST](#)
- [WHAT WE'RE DEALING WITH](#)
- [MORE WAKE UP CALLS FOR REPUBLICANS](#)
- [IMMIGRANT OF THE DAY: MICHAEL BUBLE - MUSICIAN](#)
- [NUMBERS USA GRADES 2012 PRESIDENTIAL HOPEFULS](#)
- [IMMIGRATION RETURNS TO THE TOP OF HISPANICS' LIST OF MOST PRESSING ISSUES](#)
- [VIVEK WADHWA: HOW TO FIX THE FLAWED STARTUP VISA ACT](#)
- [ILLEGALLY PRESENT MEN NOW REQUIRED TO REGISTER FOR SELECTIVE SERVICE](#)
- [MARCH 2011 VISA BULLETIN RELEASED](#)
- [USCIS TO COMBINE WORK AND TRAVEL DOCUMENTS IN GREEN CARD CASES](#)
- [IMMIGRANT OF THE DAY: ERICK DE LEON - BOXER](#)

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

- [VIRGINIA ADVANCES BILL TO MANDATE E-VERIFY FOR STATE CONTRACTORS](#)
- [ICE SET TO AUDIT I-9 RECORDS FOR 1000 MORE EMPLOYERS](#)
- [DHS TO RELEASE E-VERIFY SELF CHECK SYSTEM IN MARCH](#)

#### **The Visalaw Healthcare Immigration Blog**

- [PENDING BILL IN ARIZONA WOULD BAR EMERGENCY CARE FOR ILLEGALLY PRESENT IMMIGRANTS](#)

#### **Karen Weinstock's Visalaw Georgia Immigration Blog**

- [BILL TO PROHIBIT UNDOCUMENTED FROM ATTENDING GA PUBLIC UNIVERSITIES PASSES PANEL](#)
- [GEORGIA GOVERNOR WARNS OF IMMIGRATION LEGISLATION](#)
- [ANOTHER BAD PIECE OF PROPOSED LEGISLATION - WHY HB87 IS ALSO BAD](#)

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## **9. State Department Visa Bulletin: March 2011**

## A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **March**. 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 February **9th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

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

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

### FAMILY-SPONSORED PREFERENCES

**First:** Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

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

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

**Fourth:** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

**EMPLOYMENT-BASED PREFERENCES**

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, DOMINICAN REPUBLIC, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	01JAN05	01JAN05	01JAN05	01JAN05	01FEB93	15DEC94
2A	01JAN07	01JAN07	01JAN07	01JAN07	01JAN06	01JAN07
2B	15APR03	15APR03	01JAN01	15APR03	15JUL92	01AUG99
3rd	01JAN01	01JAN01	01JAN01	01JAN01	01NOV92	08DEC91
4th	01JAN00	01JAN00	01JAN00	01JAN00	22JAN96	15JAN88

\*NOTE: For March, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN06. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN06 and earlier than 01JAN07. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	08JUL06	C	08MAY06	C	C
3rd	01JUL05	22JAN04	01JUL05	15MAR02	08JAN04	01JUL05
Other Workers	15JUN03	22APR03	15JUN03	15MAR02	01MAY03	15JUN03
4th	C	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C	C
5th	C	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C	C

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

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

cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

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

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2011 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

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

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	31,950	Except: Egypt 24,275 Ethiopia 18,650 Nigeria 13,100
<b>ASIA</b>	17,200	
<b>EUROPE</b>	20,450	
<b>NORTH AMERICA (BAHAMAS)</b>	7	
<b>OCEANIA</b>	900	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,025	

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 APRIL

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	
<b>AFRICA</b>	35,450	Except: Egypt 27,600 Ethiopia 22,150 Nigeria 14,100
<b>ASIA</b>	19,250	Except: Bangladesh 18,350
<b>EUROPE</b>	23,200	
<b>NORTH AMERICA (BAHAMAS)</b>	8	
<b>OCEANIA</b>	1,000	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,075	

## D. RETROGRESSION OF FAMILY PREFERENCE CUT-OFF DATES

Continued heavy applicant demand for numbers in the Family F2A preference category has required the retrogression of the Worldwide, China-mainland born, Dominican Republic, India, and Philippines cut-off dates for the month of March. Should the current and recent retrogressions have the intended impact to slow demand for numbers, it is anticipated that these cut-off could begin to move forward slowly in the coming months.

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](mailto: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](mailto:listserv@calist.state.gov)

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

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

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

[VISABULLETIN@STATE.GOV](mailto:VISABULLETIN@STATE.GOV)

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

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