Siskind's Immigration Bulletin – December 13, 2010

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

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

Editor: Greg Siskind. Associate Editor: Zachary Kisber . Contributors: Zachary Kisber.

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

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

****

_____

1. Openers

Dear Readers:

Immigration is again front and center in the news with Congress considering passing the DREAM Act. The House of Representatives passed the bill and as of this writing, the Senate is still waiting for the last few votes to come through before it makes it on to the voting schedule. The bill has been popular in the past since it is focused on people who came to the country as children and were not acting on their own volition when they entered the country illegally or overstayed their visa.

But in a year when bipartisanship has become a distant memory, many who previously backed the bill have suddenly come up with reasons why they don't support it. This is true of a number of Republicans like John McCain and Lindsay Graham and it is truly sad since real people's lives are affected by the politicking. One by one concessions are being offered – a standalone vote, expensive fees that will ensure it won't have an effect on the deficit, extending the time it will take to get a green card, etc. But it is still a long shot that the DREAM Act will pass the Senate.

And then there is next year in a much more Republican Congress. I'm not as pessimistic as some that no progress can be made on immigration ssues over the next two years. But it will be a challenge with the House Immigration Subcommittee controlled by the extreme anti-immigrant Congressman Steve King. Congressional Republican leaders will need to bypass King, something they may decide makes sense as the electoral math of winning in a good economy without any minority support starts to look impossible.

*****

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: The DREAM Act Proposal

What is the DREAM Act?

The `Development, Relief, and Education for Alien Minors Act' or DREAM Act has been introduced in every session of Congress for the last decade. The measure is designed to provide a path to legal residency for young people brought to the US as children who meet various requirements that demonstrate good character. Individuals qualified under the act will be adjusted to conditional permanent residency and then will need to meet education or military service requirements to keep their green cards.

The bill was tacked on to a budget bill in September 2010 and will come up again in the "lame duck" session of Congress likely in December 2010. **On December 8, 2010 a new version of the bill was passed in the House of Representatives and this summary reflects that version of the bill.** *Readers should know that this bill has not yet passed and the purpose of the article is only to educate people on how the law would work IF it passes.*

What are the basic requirements to qualify for the DREAM Act?

The latest version of the DREAM Act imposed the following beneficiaries must show the following:

- Entry to the US prior to age 16
- Five continuous years of residence since entering
- For men, compliance with any applicable Selective Service requirements
- Is under age 30 when the bill is enacted (note that this provision is one of the more controversial ones and the age limits have changed from one version of the bill to another)
- Admission to an institution of higher education or graduation from a US high school or GED program
- Be of "good moral character"

What happens if someone is in removal proceedings or ordered removed?

The Secretary of Homeland Security is directed to cancel the removal of anyone who qualifies for the DREAM Act and proceed with adjusting their status to permanent residence. Being placed in removal proceedings will not be considered to disrupt the five year residency requirement. After the law is enacted, anyone with a pending application for conditional status under the DREAM Act shall not be removed until the application is adjudicated as long as the applicant can establish basic eligibility for cancellation of removal and conditional nonimmigrant status.

What grounds would bar someone from applying under the DREAM Act?

An applicant must not be inadmissible under Section 212 of the Immigration and Nationality Act for the following reasons:

- Having a communicable disease that is on the list that the Department of Health and Human Services periodically updates for determining bars on immigration;

- Criminal-related grounds

- Security-related grounds

- Being a public charge
- Engaging in human smuggling
- Engaging in student visa abuse (including using an F-1 visa to attend a public elementary school or a secondary public school for more than a year)
- Draft evaders and those permanently ineligible for citizenship
- Polygamists
- Child abductors
- Illegal voters

Also, those deportable under INA Section 237 for the following reasons are ineligible:

- Human smuggling
- Marriage fraud
- Criminal offenses
- Security-related grounds
- Being a public charge
- Unlawful voting

Aside from these bars, there is a bar for those who have participated in the persecution of others on account or race, religion, nationality, membership in a social group or political opinion. And there is a bar for anyone convicted under Federal or State law for an offense with a punishment of more than a year or conviction of three or more misdemeanors with an aggregate sentence of 90 days or more. Waivers of certain non-criminal and non-security grounds may be possible.

Will I still qualify if I have been outside the US since entering the country?

In order to meet the continuous physical presence requirement, absences will normally disqualify an applicant. However, absences of less than 90 days will not count as long as the total number of days outside the US amount to no more than 180 total days. DHS is authorized to extend these periods if there are exceptional circumstances justifying the absence. Those would include the serious illness of the applicant or the death or serious illness of a parent, grandparent, sibling or child.

Aside from demonstrating the requirements noted above, are there other requirements to apply for conditional nonimmigrant status?

Yes. Applicants must provide biometric data to DHS (presumably fingerprints and photographs), go through a background check, have a medical examination and register for Selective Service if the applicant is subject to such registration.

What status is the applicant granted if they meet these requirements?

Applicants who qualify under the DREAM Act based on meeting these requirements will be granted “conditional” nonimmigrant status. That means they are granted a

residency status that is short of permanent residency and can lose legal status if additional requirements are not met after being granted conditional nonimmigrant status. Conditional nonimmigrants are entitled to work based on that status and will not need a separate work authorization document to prove employment eligibility. Conditional nonimmigrants may travel for up to 180 days at a time on the basis of conditional nonimmigrant status.

How long does the conditional nonimmigrant status last?

Five years for an initial term that can be extended for five more years. After that, the person will either need to convert to an unconditional green card or will be considered out of status.

Can a person's DREAM Act conditional nonimmigrant status be terminated?

Yes. If the applicant no longer meets one of the qualification requirements noted above (such as doing something that shows the applicant no longer is a person of "good moral character") or becomes impoverished and is considered a public charge (which might be the case if a person applies for need based public benefits), or if the applicant is discharged from the military for reasons that are not honorable, then DHS is authorized under the DREAM Act to terminate the applicant's conditional residency status.

Are there fees for applying?

Yes. A $525 application fee is due at the time of filing the initial petition. When the extension of conditional non-immigrant status is filed after five years, an additional $2000 fee is owed. These fees are in addition to normal application fees USCIS may charge to recover the full cost of providing adjudication and processing services.

What does the DREAM Act recipient need to show to qualify an extension of his or her conditional non-immigrant status?

1. The applicant has demonstrated good moral character for the time he or she has held conditional nonimmigrant status.
2. The applicant has not abandoned residency in the US. Absences of a total of 365 days or more are presumed to mean residency has been abandoned and the burden will shift to the applicant to prove otherwise. Absences from the US due to military service are not counted in the 365 days.
3. The applicant has completed one of the following two requirements:
    a. The applicant has received a degree from an institution of higher education (as defined by the Higher Education Act of 1965 which generally includes associate degree programs and higher) or has completed two years toward a bachelors degree or higher degree in the US
    b. The applicant has served for at least two years in the US military and if discharged, was discharged honorably.
4. The applicant provides a list of each secondary school he or she has attended in the US.
5. The applicant can pass the civics and English tests normally applicable to naturalization applicants (unless the applicant is unable to pass such tests due to a physical, mental or developmental disability)
6. The applicant has paid all Federal taxes owed.

If the applicant is unable to meet the college or military requirement, DHS is authorized to waive the requirement if the applicant can show compelling circumstances for the inability to complete the requirements and the applicant's removal from the US would result in extremely unusual hardship to the applicant or the applicant's spouse, parent, or child who is a citizen or permanent resident.

When can an application for permanent residency be filed?

The applicant may file an adjustment of status petition during the period beginning one year before and ending on either the date that is ten years after the date of the granting of conditional nonimmigrant status or another other expiration date of the person's conditional nonimmigrant status.

What status is the applicant in while the application for adjustment of status is pending?

During the period the adjustment application is pending, the person shall be deemed to be in conditional nonimmigrant status.

What must an applicant show to qualify to adjust status to permanent residency?

Applicants must again demonstrate the requirements for extending conditional non-immigrant status. Namely, the following:

What does the DREAM Act recipient need to show to qualify an extension of his or her conditional non-immigrant status?

1. The applicant has demonstrated good moral character for the time he or she has held conditional nonimmigrant status.
2. The applicant has not abandoned residency in the US. Absences of a total of 365 days or more are presumed to mean residency has been abandoned and the burden will shift to the applicant to prove otherwise. Absences from the US due to military service are not counted in the 365 days.
3. The applicant has completed one of the following two requirements:
    a. The applicant has received a degree from an institution of higher education (as defined by the Higher Education Act of 1965 which generally includes associate degree programs and higher) or has completed two years toward a bachelors degree or higher degree in the US
    b. The applicant has served for at least two years in the US military and if discharged, was discharged honorably.
4. The applicant provides a list of each secondary school he or she has attended in the US.
5. The applicant can pass the civics and English tests normally applicable to naturalization applicants (unless the applicant is unable to pass such tests due to a physical, mental or developmental disability)
6. The applicant has paid all Federal taxes owed.

Note that if a hardship waiver was granted at the time of filing the extension of conditional non-immigrant status, the applicant must show that the requirements have now been met.

Will time in conditional nonimmigrant status count toward the naturalization residency requirements?

No. Time will not count until the applicant adjusts to permanent residency. The normal residency requirement, however, will be reduced from five years to three years after that point.

Are there any limitations on the number of people who may qualify for the DREAM Act?

No. Normal quotas on adjustment of status and cancellation of removal do not apply.

Is information provided in a DREAM Act application treated confidentially?

Yes, with certain exceptions. Information in an application may not be used to initiate removal proceedings and information may not be shared with the public. Information may be shared with Federal, State and local law enforcement and intelligence agencies or court investigators in connection with a criminal case or a homeland security or national security matter. Information may also be shared with coroners' offices. And information concerning whether an applicant has engaged in fraud in a DREAM application may also be shared.

How many potential DREAM Act applicants are there?

Estimates vary, but most believe the number to be between 500,000 and 3 million.

If the bill passes, when will applicants be allowed to apply?

DHS will have 180 days to issue interim regulations that will take effect at that point. Applicants must have filed an application no later than a year after the effective date of the USCIS regulation or within a year of graduating high school or earning a general education development certification (GED).

Will DREAM Act recipients be able to qualify for educational financial aid and in-state tuition?

Applicants will not be eligible for Pell Grants and other federal grants during their conditional residency period. They would be eligible for federal work-study and certain student loan programs.

What other restrictions on entitlements and benefits apply to DREAM Act applicants?

Conditional nonimmigrants are not eligible for certain benefits of the 2010 health care law. Also, government benefits normally unavailable to an applicant until he or she has been a permanent resident for five years shall be available at the time the DREAM Act applicant becomes eligible to adjust status.

---

3. Ask Visalaw.com

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

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

1) Question:

I am a U.S. citizen. I filed an I-130 petition for my 2 year old child. I am not married to my child's mother yet. Can my child's mother come to the U.S. as a derivative beneficiary to accompany my child?

Answer:

As the unmarried child of a U.S. citizen who is under 21, your child is your Immediate Relative. Beneficiaries under the Immediate Relative category cannot have derivative beneficiaries. Also, a parent cannot be a derivative beneficiary.

If you are already planning on marrying your child's mother, you can marry her and petition for her as your Immediate Relative spouse.

Warning: U.S. citizens and Permanent Residents should never marry a foreign national solely to obtain an immigration benefit for the foreign national. There are dire consequences for doing this.

If you do not wish to marry the mother of your child, you should speak with an immigration law attorney to determine if there are other options to bring her to the U.S.

2) Question:

I am a Physical Therapist and am licensed to practice in NY. Could I qualify for an H-1B petition for another state? Is it mandatory that I have a license for the state of intended employment?

Answer:

An H-1B beneficiary must be able to show that they are eligible to begin employment in the offered position on the start date requested on the petition. For those positions where a state license is required to work in that state, such as is required for physical therapists, the petitioner must show that the PT is licensed in the state in which they will be employed. Being licensed in a different state is not sufficient unless it can be shown that the state of employment would allow the beneficiary to work on the current license.

There is an exception to this rule where the State requires the beneficiary to provide a social security number before they will issue the license, and the beneficiary cannot get a social security number until they are in H-1b status. Where the petitioner can show that the only reason the license has not been issued by the state is because of

the lack of a social security number, USCIS should approve the H-1B petition for an initial period of one year.

---

4. Border and Enforcement News:

Feds at odds with Victorville, CA over regional center

The San Bernardino Sun (CA) reports that USCIS has terminated Victorville, California's status as a regional center, hampering its ability to solicit money from foreign investors for capital-improvement projects at Southern California Logistics Airport (SCLA). Under the federal foreign-investor visa program EB-5, foreign investors can put money into American infrastructure and capital-improvement projects that create jobs in exchange for green cards.

Although a Dr. Pepper/Snapple bottling plant, a Plastipak factory, and a wastewater-treatment plant have opened at SCLA over the past two years, USCIS concluded that the required number of jobs was not generated by these projects. The city is filing a motion to appeal the termination and demonstrate how upcoming projects like an electric generation plant and intermodal rail improvements will guarantee the proper number of jobs under the EB-5 program.

http://www.sbsun.com/ci_16612730?source=most_viewed
* * * * * *

California student released after intervention by Sen. Feinstein

The San Francisco Chronicle reports that Steve 'Shing Ma' Li,' a City College of San Francisco student who had been incarcerated for two months while awaiting deportation to Peru, was released from a detention center in Florence, AZ and allowed to return to San Francisco. Li's parents, who are currently awaiting deportation to China, moved to Peru from China in the 1980s when Li was only eleven. Consequently, Li has little personal connection to the South American country.

Sen. Dianne Feinstein (D-CA) introduced a private bill to stall the deportation process while the Senate has a chance to vote on the DREAM Act. Li's removal has been stayed for 75 days after the end of Congress. Under the DREAM Act, Li and other undocumented immigrants who entered the United States before age fifteen and were attending college would be granted citizenship.

http://www.sfgate.com/cgi-bin/article.cgi?f=%2Fc%2Fa%2F2010%2F11%2F19%2FBADO1GF17V.DTL
* * * * * *

ACLU accuses ICE of illegally detaining bus

The Associated Press reports that two U.S. citizens who were detained after their chartered bus was boarded by immigration agents at a Nebraska McDonald's are accusing ICE of racial profiling and are planning a lawsuit. The complaint, filed on behalf of Arquimides Bautista and Rosallba Artimas by the ACLU, said a Spanish-

speaking ICE agent inferred that the passengers were illegally present immigrants based on their appearances, exhibiting 'racial profiling and ethnic stereotyping at its very worst.'

The passengers were traveling from Denver to Omaha for an Amway convention when they were detained. 36 of the 42 passengers were identified as illegally present immigrants, including three with criminal records and one who had been previously deported. Bautista and Artimas were in custody for two hours and their complaint alleges false arrest, false imprisonment, and battery.

http://www.aurorasentinel.com/hp_recent_headlines/article_6d7ed46e-f199-11df-843a-001cc4c03286.html
* * * * * *

Incoming FL governor would back Arizona-like immigration enforcement

USA Today reports that Florida's incoming Republican governor, Rick Scott, supports the concept popularized by Arizona's SB 1070 of stopping individuals to determine their immigration status. Speaking in Washington D.C., Scott said that asking about one's citizenship should be viewed no differently than being stopped and asked to present an ID.

http://content.usatoday.com/communities/ondeadline/post/2010/12/incoming-fla-governor-would-back-ariz-likeimmigration-enforcement/1
* * * * * *

Jeb Bush announces opposition to Arizona's immigration law

The Huffington Post reports that Jeb Bush, former governor of Florida and younger brother to George W. Bush, declared his opposition to Arizona's controversial SB 1070 in a speech at a National League of Cities convention in Denver. Bush, whose wife is Mexican, said that his children represent potential suspects under the intentions of the law. He argued that the cost of enforcing such a law would be unfeasible and the United States should instead focus on protecting its border and improving the integration process for immigrants. Bush also pointed to his stance on the law as proof that he was not planning a presidential campaign for 2012.

http://www.huffingtonpost.com/2010/12/06/jeb-bush-arizona-immigration-law_n_792664.html
* * * * * *

---

5. News from the Courts:

CA Students eligible for in-state tuition regardless of immigration status

The Associated Press reports that the California Supreme Court ruled that students who graduate from a California high school and attend at least three years of high school in the state are eligible for in-state tuition rates at California public colleges and universities, regardless of their immigration status. The lawsuit *Martinez v. Regents of the University of California* argued that federal immigration law prohibited states from granting illegally present immigrants special privileges not available to U.S. citizens, such as those who reside outside of the state and must pay full cost for

higher education in California. However, the court found that federal law did not bar California from offering tuition equality to its students.

http://www.hutchnews.com/Localregional/BC-US--Illegal-Immigrant-Tuition-5th-Ld-Wr-20101115-21-18-45

* * * * * *

Supreme Court hears challenge to Arizona employer sanctions law

The ACLU reports that the U.S. Supreme Court heard oral arguments in *Chamber of Commerce v. Whiting,* a lawsuit challenging the Legal Arizona Workers Act of 2007. Arizona's law sought to impose penalties on businesses that employed illegally present immigrants. In addition, the law mandated employers to check a new employee's work authorization status using the E-Verify database, a program the federal government explicitly designated as voluntary. The Supreme Court's decision is highly anticipated because it will be the court's first ruling on whether cities and states can enforce their own immigration laws or whether the issue is solely governed by federal authority. According to the National Conferences of State Legislatures, 44 states currently have pending measures on immigration

Carter G. Phillips opened on behalf of the petitioners, arguing that the congressional regulation of immigrant employment via the 1986 Immigration Reform and Control Act (IRCA) 'provided for an exhaustive and exclusively federal method of bringing to the attention of federal authorities, problems and worker authorization.' As such, state laws such as Arizona's would be explicitly prohibited. Acting Solicitor General Neal Kumar Katyal further argued that through IRCA, 'Congress broadly swept away state and local laws, preempting any sanction upon those who employ unauthorized aliens.'

Representing Arizona, Mary R. O'Grady countered that while Congress prohibited the states from imposing civil or criminal sanctions, it allowed state or local law to impose sanctions through an exception for 'licensing and similar laws.' She argued that Arizona was doing so by establishing a scheme that provides for the suspension and revocation of state licenses for employing illegally present immigrants. In his opening, Phillips had anticipated this defense and noted the unlikelihood that Congress had intended this minor exception to allow for an entirely alternate enforcement mechanism by the states. While Justice Scalia pointed out that Congress similarly did not intend for the decades of lax enforcement and unrestrained immigration that motivated Arizona to pass its law, Phillips argued that preemption standards were nevertheless put in place when the statue was enacted in 1986 and that Congress said specifically that immigration laws should be enforced uniformly.

In addition, the Justices consistently pointed to a major difference that existed between federal law and Arizona's law. Under federal statute, if an employer looks at an employee's Social Security card and driver's license he is 'home free' and cannot be prosecuted for violating immigration law. Under Arizona's measure, however, an employer must additionally use E-Verify and can thus still be prosecuted for a violation even though he complied with federal law (which classifies E-Verify as voluntary).

Analysts believe the absence of Justice Kagan's recusal from the proceedings due to her prior role in the case as Solicitor General could affect the case's outcome. A tie

vote would mean that the lower court ruling in favor of the State of Arizona would stand.

More information about the case is available online at: www.aclu.org/immigrants-rights/chamber-commerce-v-whiting

http://abcnews.go.com/Politics/supreme-court-hears-arizona-immigration-law-sanctions-employers/story?id=12327122
* * * * * *

---

6. News Bytes:

Rhode Island governor-elect firm about repealing executive order

The Associated Press reports that Rhode Island governor-elect Lincoln Chafee has vowed to rescind an executive order signed by Republican Governor Don Carcieri that instructed state police to check the immigration status of suspects in the course of investigations. In addition, the order mandated the state and state contractors to use the federal database E-Verify to confirm the immigrations status of all new employees.

http://www.boston.com/news/local/rhode_island/articles/2010/11/16/ri_governor_elect_to_review_immigration_order/
* * * * * *

Tennessee lawmaker sorry for remarks on immigrants

The Associated Press reports that Republican Rep. Curry Todd apologized for a remark he made in a recent committee meeting that illegally present immigrants can 'go out there like rats and multiply.' Todd made the comment during a discussion of a federal law that requires the state to extend prenatal care to women regardless of citizenship because all children born in the United States are citizens under the Fourteenth Amendment.

http://www.chron.com/disp/story.mpl/ap/nation/7297120.html
* * * * * *

Whitman agrees to provide former housekeeper with unpaid wages

The Associated Press reports that former California gubernatorial candidate Meg Whitman agreed to provide her former housekeeper with $5,500 in unpaid wages. During the campaign, it was revealed that her former housekeeper, Nicky Diaz Santillan, was an illegally present immigrant. The revelations became a major distraction for Whitman as she battled Democratic challenger Jerry Brown.

Whitman and her husband agreed to the settlement after a meeting at the California Division of Labor Standards Enforcement, but refused to admit any wrongdoing. The Whitman's attorney said his clients do not admit owing the wages and that the settlement was a compromise reached for economic reasons.

http://www.latimes.com/news/nationworld/nation/wire/sns-ap-us-california-governor-housekeeper,0,7643803.story

* * * * * *

Miami student leader reveals he is an undocumented migrant

The Miami Herald reports that Jose Salcedo, a 19-year-old student at Miami Dade College and president of its Student Government Association, revealed he was illegally present immigrant at a student rally on the college's InterAmerican campus. Salcedo entered the United States from Colombia with his mother at age 9. Salecdo said he decided to reveal his immigration status to emphasize the importance of the DREAM Act to students like him.

http://www.miamiherald.com/2010/11/17/1931298/at-dream-act-rally-a-surprise.html#ixzz15eiDckYe
* * * * * *

Governor pardons six immigrants facing deportation over old crimes

The New York Times reports that New York Governor David Paterson pardoned six immigrants who were facing deportation because of past criminal convictions. The governor emphasized that the shortcomings of federal immigration laws often resulted 'in the deportation of individuals who have paid the price for their crimes and are now making positive contributions to society.' Those pardoned included Mario Benitez, a Dominican immigrant who plead guilty to selling a controlled substance in 1988 and currently serves as a financial administrator at the City University of New York.

http://www.nytimes.com/2010/12/07/nyregion/07pardon.html?partner=rss&emc=rss
* * * * * *

Attorney General-elect says RI to adopt federal immigration program

The Associated Press reports that Rhode Island Attorney General-elect Peter Kilmartin plans to implement the federal 'Secure Communities' program when he takes office. Under the program, people arrested in Rhode Island would automatically have their fingerprints checked against a federal database to determine if they are an illegally present immigrant.

http://newsblog.projo.com/2010/12/ag-elect-says-ri-to-adopt-fede.html
* * * * * *

GOP blocks fiery immigration resolution

The Salt Lake Tribune reports that Don Larsen, a member of Utah's Republican Central Committee, proposed a resolution that compared the immigration issue to Nazi Germany. Chairman Dave Hansen indefinitely postponed the resolution, which stated that the failure to close American borders was undoing the sacrifices of World War II veterans who fought Nazis 'to prevent the occupation of our country by foreign invaders.' In 2007, Larsen created another controvery at his county's convention when he claimed Democrats and the immigration issue were part of a satanic plot to destroy the United States.

http://www.sltrib.com/sltrib/home/50818533-76/larsen-resolution-committee-county.html.csp
* * * * * *

California town passes E-Verify requirement

The Press Enterprise reports that the city council of Murrieta, CA unanimously passed a resolution mandating the use of E-Verify for businesses in the city. Penalties for noncompliance range from small fines to the loss of a business license for repeat offenses. Under federal law, E-Verify is a voluntary program and the Supreme Court is currently considering a lawsuit against a 2007 Arizona law that similarly mandated use of the program.

http://www.pe.com/localnews/stories/PE_News_Local_D_sverify08.3f10f49.html
* * * * * *

---

7. Washington Watch:

Lawmakers expect DHS to cancel troubled border security program

NextGov reports that GOP members on the House Homeland Security Committee expect Homeland Security Secretary Janet Napolitano to cancel the $1.1 billion Secure Border Initiative Network (SBInet) contract with Boeing Co. As the presumed committee chairman, Rep. Peter King (R-NY) says he intends to pressure the Obama administration to implement an aggressive timetable for securing the border. Republicans are concerned that the government could lose investments in research and development if Boeing is pulled of the project.

SBInet's original designs included a virtual fence and other technological programs including high-tech cameras and vibrations sensors that would curb human and drug trafficking along the Southwest border. However, after an investment of over $1 billion the fence only covers only 53 miles of the 2,000 mile border with Mexico and the high-tech surveillance equipment operates with little reliability.

http://www.nextgov.com/nextgov/ng_20101112_2680.php?oref=topstory
* * * * * *

House OKs proxy marriage bill for service members

The Navy Times reports that the House of Representatives passed HR 6397, a bill creating an exception to recognize marriages for military members who married while deployed. The legislation does not eliminate the requirement for consummation of marriage for immigration purposes, but offers a narrow exception when physical separation due to active-duty military service abroad prevents consummation.

The bill was drafted by Rep. Jim Duncan (R-TN) and is called the Marine Sgt. Michael H. Ferschke Jr. Memorial Act, named for a sergeant who discovered that his Japanese girlfriend was pregnant just after he was deployed to Iraq. The couple married in a ceremony conducted over the phone but Ferschke was killed in action shortly thereafter. Although the Defense Department recognized the marriage and

paid death benefits to the widow, her petition to immigrate to the United States and raise her child in Tennessee was denied. Next, the bill must pass through the Senate and it is not clear whether the bill will be taken up before the lame duck session ends at the end of this month.

http://www.navytimes.com/news/2010/11/military-proxy-marriages-immigration-111610w/
* * * * * *

Alabama senator stalls Ferschke bill

The Knoxville News Sentinel reports that Senator Jeff Sessions (R-AL) blocked a bill that would allow Ferschke's widow, Hotaru Ferschke, to move to Tennessee with her infant son. Sessions raised concern that the bill is too broad and would apply to any service member's proxy marriage, even when residency and citizenship are available through existing law. Hotaru traveled to Mobile, AL to meet with Sessions and discuss the legislation.

http://www.knoxnews.com/news/2010/nov/22/alabama-senator-stalls-ferschke-bill
* * * * * *

Texas Rep. elected leader of Democratic Hispanic Caucus

The Associated Press reports that Representative Charlie Gonzalez (D-TX) has been elected to lead the Congressional Hispanic Caucus in the next Congress. Gonzalez was elected unanimously by the 22 members of the all-Democratic caucus. Five new Hispanic Republicans were voted to the House and one to the Senate in the November elections and in 2003, Hispanic Republicans formed their own group.

http://www.sfgate.com/cgi-bin/article.cgi?f=%2Fn%2Fa%2F2010%2F11%2F18%2Fnational%2Fw134448S32.DTL
* * * * * *

Steve King: 'birthright citizenship' bill could be soon

CBS News reports that Representative Steve King (R-IA) plans to introduce a bill in the next Congress to challenge the practice of giving U.S. citizenship to the children of illegally present immigrants. King will likely head the immigration subcommittee and expects hearings in the months after this legislation is introduced. Defenders say 'birthright citizenship' is protected by the Fourteenth Amendment, but King argues that the amendment was put in place in 1868 for the specific purpose of ensuring citizenship for the children of newly freed slaves and should not extend to the children of illegally present immigrants. King says if the law is struck down in the courts, he would push for a constitutional amendment to address the issue.

http://www.cbsnews.com/8301-503544_162-20023606-503544.html
* * * * * *

---

8. Updates from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- HUTCHISON VOTING NO ON DREAM ACT BASED ON FALSE UNDERSTANDING OF THE BILL
- GALLUP: MOST AMERICANS SUPPORT DREAM ACT
- JANUARY 2011 VISA BULLETIN RUNDOWN
- ROHRABACHER PLAYS RACE CARD IN ARGUING AGAINST DREAM ACT
- DREAMERS' PARENTS FACING 25 YEAR WAIT ON GETTING A GREEN CARD
- NEW VERSION OF DREAM ACT WOULD RAISE ADDITIONAL $5 BILLION
- FAQ ON HOUSE-PASSED DREAM ACT
- SENATE TO CONSIDER HOUSE-PASSED DREAM BILL NEXT WEEK
- DREAM PASSES HOUSE 216-198
- REID: WE'RE DELAYING OUR VOTE UNTIL HOUSE VOTES ON DREAM
- DREAM ACT VOTING SCHEDULES
- HOUSE DREAM ACT INCLUDES NEW FEE
- SALMA HAYEK TELLS OF FORMER ILLEGAL IMMIGRANT STATUS
- MILITARY HEAD FAVORS DREAM ACT
- PRO-IMMIGRATION GOP CANDIDATES STARTING TO EMERGE
- SUPREME COURT TO HEAR CHALLENGE TO 2007 ARIZONA LAW ON WEDNESDAY
- REID FILES CLOTURE MOTION ON DREAM
- NAFSA URGES PASSAGE OF DREAM ACT
- DAVID FRUM: WATER DOWN DREAM A LITTLE MORE
- VILLAGE VOICE: DON'T TRUST FAIR'S NUMBERS
- MURKOWSKI NOW A LIKELY YES VOTE ON DREAM
- CBO: DREAM ACT WOULD CUT DEFICIT BY $3 BILLION
- NEW VERSION OF DREAM ACT INTRODUCED
- BENNETT LEANING YES ON DREAM; PRIOR NO
- REID TO HAVE TEST VOTE ON DREAM THIS WEEK
- WARNING TO DEMS: LATINOS COULD FORM NEW POLITICAL PARTY
- HISPANIC CAUCUS SPLIT ON DREAM VS. AGJOBS
- STEVE KING LAYS OUT PLAN TO ABOLISH BIRTHRIGHT CITIZENSHIP
- DHS REVERSAL ON OPTING OUT OF SECURE COMMUNITIES

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

- CHIPOTLE ALLEGEDLY FIRING WORKERS IN MN AFTER I-9 AUDIT
- MURIETTA, CA MANDATES E-VERIFY
- USCIS RELEASES STAKEHOLDER FEEDBACK ON I-9 FORMS
- ICE SOON TO OPEN I-9 FORENSIC CENTER FOR LARGE EMPLOYERS

The Visalaw Healthcare Immigration Blog

- DRA, ARC J-1 WAIVER PROGRAMS ENDANGERED BY DEFICIT COMMISSION RECOMMENDATION

Visalaw Fashion, Sports, & Entertainment

- NFL'S SCOTT FUJITA URGES IMMIGRATION REFORM

The Visalaw H-1B Blog By H-1B Book Author Karen Weinstock

- PERI SOFTWARE SOLUTIONS DEBARRED FROM H-1B, TO PAY $638K IN BACK WAGES
- USCIS UPDATES H-1B CAP COUNT FOR DECEMBER 3, 2010 -- AT 51,200
- NEW H-1B FILING FEES ARE IN EFFECT
- USCIS UPDATES H-1B CAP COUNT FOR NOVEMBER 24, 2010 -- AT 50,400
- USCIS UPDATES H-1B CAP COUNT FOR NOVEMBER 19, 2010 -- AT 48,977

Karen Weinstock's Visalaw Georgia Immigration Blog

- GEORGIA FARM BUREAU AGAINST STATE IMMIGRATION LAWS
- FOREIGN COLLEGE STUDENT SPENDING RISES IN GEORGIA
- PROPOSED CRIMINAL CONSEQUENCES FOR HIRING DAY LABORERS?
- HUMAN RIGHTS GROUP PROTESTS STEWART DETENTION CENTER
- COLOTL GETS 3 DAYS IN JAIL
- 287(G) FAILURES IN GEORGIA

---

9. State Department Visa Bulletin: January 2011

Number 28
Volume IX
Washington, D.C.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **January**. 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 December **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: 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	08JAN93	01JUN94
2A	01JAN08	01JAN08	01JAN08	01JAN08	01APR05	01JAN08
2B	15APR03	15APR03	01MAR02	15APR03	22JUN92	15MAY99
3rd	01JAN01	01JAN01	01JAN01	01JAN01	22OCT92	22OCT91
4th	01JAN02	01JAN02	01JAN02	01JAN02	22DEC95	01JAN88

*NOTE: For January, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01APR05. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01APR05 and earlier than 01JAN08. (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	22JUN06	C	08MAY06	C	C
3rd	22MAR05	15DEC03	22MAR05	01FEB02	15APR03	22MAR05
Other Workers	22APR03	22APR03	22APR03	01FEB02	15APR03	22APR03
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 **January**, 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	20,900	Except: Egypt 16,000 Ethiopia 13,200 Nigeria 12,100

ASIA	13,300	
EUROPE	15,400	
NORTH AMERICA (BAHAMAS)	6	
OCEANIA	775	
SOUTH AMERICA, and the CARIBBEAN	900	

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 FEBRUARY

For **February**, 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	26,100	Except: Egypt 20,200 Ethiopia 15,000 Nigeria 12,100
ASIA	14,850	
EUROPE	17,600	
NORTH AMERICA (BAHAMAS)	7	
OCEANIA	810	
SOUTH AMERICA, and the CARIBBEAN	900	

D. RETROGRESSION OF FAMILY CUT-OFF DATES

As reported in the December Visa Bulletin (number 27), the cut-off dates for most Family preference categories advanced at a very rapid pace during the past two years. Those movements have resulted in a dramatic increase in the level of applicant demand received in recent months. This has required the retrogression of many Family preference cut-off dates for January in an effort to hold number use

within the various numerical limits. Further retrogressions cannot be ruled out should demand continue at the current levels.

E. OBTAINING THE MONTHLY VISA BULLETIN

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

http://travel.state.gov

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

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

listserv@calist.state.gov

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

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

listserv@calist.state.gov

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

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

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

VISABULLETIN@STATE.GOV

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

Department of State Publication 9514
CA/VO: December 8, 2010