Siskind's Immigration Bulletin – February 22nd, 2010

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

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### 1. Openers

#### Dear Readers:

The Winter Olympics in Vancouver are finally here and as has been the case with past Games, immigrants are well-represented on the US team. In tribute to the competition, we are running an ABCs of Immigration article on O-1 visas, one of the categories used by athletes to enter the United States.

We also include a guest article by Enrique Arrelano on Mexican immigration laws. Enrique is our Mexico representative in Visalaw International. VLI is a global alliance of immigration lawyers and Siskind Susser is the alliance's US representative.

Those of you monitoring immigration reform are still waiting and wondering when we'll see some action. This past week, House Speaker Nancy Pelosi echoed recent statements from the White House claiming to want to pass immigration reform this year. We still have not seen a bill introduced, though some are saying we'll see an outline as early as this month and draft legislation next month. I'm not holding my breath as it seems that there is no real coordination and no clear strategy coming from the Democrats. We'll have to wait and see.

I also participated in a program this week attended by more than 600 people regarding a new memorandum from USCIS on H-1B visas. USCIS last month released a memo that largely bars staffing and self-employment arrangements in the H-1B context, something that appears to have no support in immigration law. USCIS largely was on the defensive during the call, particularly as it relates to their failure to go through the legally required rulemaking process as well as a host of unintended consequences that have been unleashed. I asked a question regarding the impact of the memo on doctor immigration as many types of common physician employment arrangements would potentially be barred. USCIS says they will review the points raised in the two hour meeting. They would be wise to do so as litigation seems right around the corner.

In firm news, I will be hosting the second of three teleconferences this coming week on Haitian immigration options in the wake of the earthquake. If you would like to participate, please go to <a href="https://www.ilw.com">www.ilw.com</a>.

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

Regards,
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Greg Siskind

2. The ABC's of Immigration: O Visas

The O-1 visa is a temporary work visa available to those foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim." It is also available to those in motion pictures and television who can demonstrate a record of "extraordinary achievement." The INS interprets the statute very broadly to encompass most fields of creative endeavor. For example, chefs, carpenters and lecturers can all obtain O-1 visas. The person entering the US must be coming to work in their field of ability, but the position need not require the services of a person of extraordinary ability.

# How can I qualify for an O-1 visa based on extraordinary ability in science, education, business or athletics?

To obtain an O-1 visa to work in the sciences, education, business or athletics, applicants must demonstrate that they possess "a level of expertise indicating that the person is one of the small percentage who have risen to the top of the field of endeavor." There are two ways to demonstrating this expertise. One method is through receiving a major internationally recognized award such as a Nobel Prize. The more common way is by providing documentation in three of the following categories:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Membership in associations in the field which require outstanding achievements of their members
- Published material about the alien
- Participation as a judge of the work of others in the same or allied fields
- Evidence of original contributions of significance in the field
- Authorship of scholarly articles
- Evidence of employment in a critical or essential capacity for organizations with a distinguished reputation
- Evidence that the alien has or will command a high salary

Comparable evidence that does not fit within these categories may also be submitted.

## How can I qualify for an O-1 visa based on extraordinary ability in the arts?

Extraordinary ability in the arts means that the applicant has attained "distinction." Distinction is defined as "a high level of achievement in the field of arts evidence by

a degree of skill and recognition substantially above that ordinarily encountered." Distinction has also been defined as prominence in the field of endeavor. The applicant can demonstrate distinction by being the nominee or recipient of an important national or international prize such as an Academy Award, Emmy, or Grammy, or by submitting documentation in at least three of the following categories:

- Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity released, publications contracts, or endorsements; Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- Evidence that the alien has a record or major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the filed in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
- Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidence by contracts or other reliable evidence.

Comparable evidence may also be submitted.

# How can I qualify for an O-1 visa based on extraordinary achievement in television or motion pictures?

The same criteria are used to determine extraordinary achievement as are used in determining distinction in the arts. However, the evidence is weighed differently and the applicant does not have to meet as high a standard.

#### What is an O-2 visa?

An O-2 visa can be obtained for those accompanying the O-1 visa holder who will assist the O-1 alien in their performance. To qualify for an O-2 visa, the applicant must meet the following requirements:

- Be an integral part of the actual performance
- Have critical skills and experience that cannot be performed by others
- In television and motion pictures, have a long-standing working relationship with the O-1 alien.

Evidence must be submitted to establish the applicant's essential role, and that they have skills and experience not possessed by an immediately available US worker.

#### What is required for my O visa to be granted?

Before a person will be granted either an O-1 or O-2 visa, USCIS requires a consultation with a US-based organization.

For applicants in the television and motion picture industries, there must be a consultation with both the appropriate labor union and management organization. This opinion must state the applicant's achievements in the field, and must state whether the position offered requires a person of extraordinary achievement.

For all other O-1 and O-2 applicants, the petition must include an advisory opinion from a peer group, labor union, or person with expertise in the applicant's field. This opinion can either state simply that the group has no objection to issuing the visa, or can detail the applicant's achievements. If the achievements are detailed, the letter should also address the applicant's ability, the nature of the position offered, and whether the position requires a person of extraordinary ability.

Advisory opinions for O-2 applicants should outline the essential role to be played by the support personnel, as well as their relationship to the O-1 visa holder. It should also state whether there are available US workers.

If the consultation is with an organization other than a labor union, the INS will forward the application to the union it deems appropriate within five days of receiving the petition. The union must issue an opinion on the petition within 15 days, and then the INS has two weeks to rule on the application.

If an O-1 applicant in the extraordinary ability in the arts category has obtained a consultation within the past two years, they need not obtain a new one. Nor is a new consultation required when seeking an extension of any O visa.

#### How do I apply for an O visa?

An alien cannot apply for an O visa in his or her own name. They can, however, file through a US agent, employer, manager, performance venue, etc. This is often done when the alien beneficiary will be working for multiple employers (for example, they are performing in a concert tour). In this case, contracts from each employer must be submitted, as well as an itinerary. The petition should be filed at the regional service center with jurisdiction over the petitioner. If the petitioner is a foreign employer, the application should be filed at the regional service center with jurisdiction over the location of the first place the beneficiary will work.

The form for petitioning for an O visa is the I-129. This must be submitted along with the consultation opinion, evidence documenting the alien's extraordinary ability, and details of the proposed work in the US. The petition is to be approved for the duration of the event in which the alien will participate, for a maximum of three years.

## Do I need an employer sponsor for an O-1?

No. But you cannot be self-sponsored either. Agents, managers, concert venues, and others can sponsor the O-1 petition when there is no appropriate employer.

#### Can an O visa be extended?

An O visa may be extended in one-year increments for an indefinite period of time. Form I-129 is also used to file for an extension. The application for an extension does not need to include a consultation, and requires only a statement of why the extension is sought.

Finally, O visas are what are known as "dual intent visas", meaning that even though the applicant has filed a labor certification or petition for classification as a preference worker leading to permanent residence, the O visa cannot be denied.

#### 3. Ask Visalaw.com

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

If you have a question on immigration matters, write <u>Ask-visalaw@visalaw.com</u>. 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 came to the U.S. on an F-1 student visa. I was terminated from SEVIS because of an issue with my course load. My request for reinstatement was denied and I am appealing the decision. But if I stay in the U.S. beyond six months from the date I was terminated from SEVIS will I then have to worry about the consulate applying the 3 year bar if I have to reapply for a new visa at the consulate?

#### Answer:

Students who are admitted to the U.S. for the Duration of their Status (their I-94 says D/S instead of an actual expiration date) do not become "unlawfully present"

when they fall out of status unless USCIS makes a formal written determination that they are out of status.

There is a difference between being out of status and being "unlawfully present". A student is out of status then they violate the requirements of their status, which includes maintaining a full course load.

However, a student with an I-94 for "duration of status" will not be "unlawfully present" unless USCIS makes a formal determination that they are out of status. For example if USCIS sent the student notice of their SEVIS violation and notified the student that they are out of status then the student would be "unlawfully present" as of the sate of the letter.

To be subject to a 3 or 10 year bar, a foreign national must be "unlawfully present" for 180 days or one year respectively before leaving the U.S.

#### 2) Question:

My husband studied in the US on a J-1 visa and is subject to the 2-year home residency requirement. After finishing his degree he went back to his home country 2 years ago to fulfill the requirement. He has an immigrant visa interview in the U.S. consulate this month. However, during the 2-years that he resided in his home country he made two short trips to two other countries to attend a conference and for vacation. Will this time spent during those short trips counted out of the 2-year home country residence?

#### Answer:

The J-1 home residency requirement generally requires demonstrating two full years spent in the home country and time spent in other countries during that time should not be credited. However, there are times when consular officers will determine that an applicant has substantially complied with the requirement and approve the cases. That's a discretionary call on the part of the consular officer. Otherwise, the time spent outside the home country will be tacked on to the foreign residence requirement and issuance of the permanent residency can be delayed.

#### 3) Question:

I filled out an affidavit of support for my son-in-law last year. Can I fill one out for another relative this year?

#### Answer:

Yes, you can submit affidavits of support for multiple people as long as you have a high enough income.

When you calculate your household size in the form, you will have to include your son-in-law as part of your calculation. So your household size for the affidavit of support would be you and your husband (if you are married), your dependants, your son-in-law, and the person for whom you are filing the affidavit of support.

This means that you have to be able to show a higher income to meet the guideline requirements.

#### 4) Question:

I have a little over 5 years of work experience in my field and I have a Bachelors degree. Of the 5 years, 2 years of experience is from my current employer. Am I eligible to have my company file a PERM filing for me in the EB-2 category?

#### Answer:

You probably do not have 5 years counting toward an EB-2 PERM Labor Certification. As a general rule, the 5 years must be from a different company. Since you did not have 5 years experience when you started in the position, you cannot claim that the position requires at least 5 years experience.

However, experience with the company can sometimes be counted when it can be shown that the experience gained has been in other positions which are not substantially similar to the position that is being offered in the PERM application or where it can be shown that it is no longer feasible for the company to train an employee for the position.

4. Guest Article by Enrique Arellano, our Mexican Visalaw International alliance member:

On January 29, 2010, Mexico's National Migration Institute published its Manual of Criteria and Migration Procedures ("Manual de Criterios y Trámites Migratorios del Instituto Nacional de Migración" or "Manual"). The Manual will be enforced as of May 1, 2010 throughout the 32 delegations of the National Migration Institute across the country.

The intention of the National Migration Institute is to clarify, streamline and simplify processing requirements for each immigration category. Applications currently being processed and those filed before May 1, 2010 will be analyzed and processed based on current policies, practices and procedures.

Some of the most relevant aspects of the Manual are the following:

- All migratory forms for tourists, business visitors and technical visitors with lucrative activities, who intend to stay in Mexico for up to 180 days, will be replaced by a single "FMM" form ("Forma Migratoria Múltiple"). The FMM will serve as evidence of the foreign national's immigration status while in Mexico;
- The business visitor criteria are clearly defined; This new FMM form has an option for choosing the purpose of the visit as business (negocios), which once the foreign national enters Mexico, the immigration officer will grant a 180 days stay.
- There are 3 different options that the immigration officer might mark and that will grant the foreign national 180 days:
  - a) Business (Visitante Persona de Negocios),
  - b) Visitor with Lucrative Activities (Visitante con Actividades Lucrativas) and
- **c)** Visitor with Non Lucrative Activities (Visitante con Actividades No Lucrativas).

Any of the previous allow the foreign national to visit Mexico for business, either for working purposes or only for meetings

- In case the purpose of the business visit extends more than 180 days, the foreign national will have to file for a change of Immigration status to obtain the correspondent FM3.
- The ABTC (Asia-Pacific Economic Cooperation business travel card) criteria are clearly defined;
- In the following weeks, the National Migration Institute will publish the formats of the new migration cards that will replace the FM2 and FM3 booklets. Changes of activity, domicile, marital status, etc. will no longer have to be annotated on the migratory document, thereby allowing the foreign national the ability to travel in and out of the country while a change of status/conditions application is in process without having to request an exit and re-entry permit;
- Consular Posts will no longer issue FM2 or FM3 booklets. Instead, the Consular Post will place a visa sticker on the foreign national's passport, upon receipt of the petition's approval from the National Migration institute. The sticker will allow entry into Mexico within 365 days of issuance. Upon entry, the foreign national must obtain the new FM2 or FM3 migration card within 30 days.

# 5. Border and Enforcement News:

## Border fence plagued by glitches, long delays

The Associated Press is reporting that a number of technical difficulties have delayed the construction of a 2,000 mile "virtual fence" of cameras, ground sensors and radar along the Mexican-American border and have put the project in jeopardy.

After spending \$672 million of the \$6.7 billion government project to secure nearly the entire Mexican border with this high tech "fence", many in Washington are calling for a reassessment of the whole idea. President Barack Obama has already proposed cutting \$189 million from the venture.

The system was supposed to let a small number of dispatchers watch the border on computer monitors, zoom in with cameras to see people crossing, and decide if and when to send Border Patrol agents. The virtual fence was supposed to be completed by 2011. However, that target was moved to 2014, largely due to technical problems.

Department of Homeland Security Secretary Janet Napolitano said that the delays are unacceptable and that the government should consider more efficient and economical options. Proposals to scale back the project are surfacing. The new proposals advocate virtual fences along only a few segments of the nation's 2,000-mile southern boundary, while not further expanding the fence.

http://money.lehighvalleylive.com/APDEFAULT/external/Article\_2010-02-03-US-Virtual-Border-Fence/id-pe9755e78585547fe8305b4f0eb55b511

#### 6. News from the Courts:

#### Judge Won't Dismiss Suit Over US Citizen Detention

The Associated Press reports that a federal judge has rejected a government request to dismiss a lawsuit by a U.S. citizen who was locked up for seven months at an immigration center. Rennison Castillo, an army veteran, says officials failed to check his military record and Social Security number, after he requested they do so in a 2005 incident. It wasn't until immigration attorneys stepped in that his citizenship was confirmed and he was freed.

A U.S. District Judge allowed the case to proceed in December when he rejected the dismissal effort in the case against U.S. Immigration and Customs Enforcement and several of its agents. Discovery in the case will proceed, even though the government filed a motion on Jan. 11 appealing the ruling.

Castillo was born in Belize, immigrated to the U.S when he was 7, and became a naturalized citizen in 1998 while serving in the Army. Castillo was held by immigration authorities in 2005 as they questioned prisoners at a Pierce County jail, where Castillo had served most of an eight-month sentence for a minor crime, the lawsuit states. Castillo is seeking unspecified monetary damages and an apology.

http://www.washingtonpost.com/wp-dyn/content/article/2010/02/02/AR2010020201993.html

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# Federal Judge Questions Immigration Prosecutions

Steven Kreytak of *The Austin American Statesman* reports that a federal judge in Austin questioned U.S. prosecutors for seeking criminal convictions in court against some illegal immigrants. The judge wrote that the practice 'presents a cost to the American taxpayer ... that is neither meritorious nor reasonable.'

The order by U.S. District Judge Sam Sparks comes as his docket, like many in Texas, contains many defendants charged with immigration crimes. Most of those prosecuted in Austin have been identified by immigration officers at the Travis County Jail and charged with illegal entry after deportation. Many of those defendants have no significant criminal history and until two years ago, when enforcement policy changed, would have been deported and not prosecuted.

Responding to a case involving three immigrants, in addition to noting the lack of prior criminal convictions, Judge Sparks wrote that it has cost more than \$13,350 to jail the three men and noted that charging them criminally means additional costs and work for prosecutors, defense lawyers, court personnel and others.

Austin immigration lawyer Daniel Kowalski called Sparks' order unique. 'I am not aware of any federal district judge ... making any similar statement on the record' about the government's immigration enforcement. Kowalski, who edits the online Bender's Immigration Bulletin, said the government made it clear several years ago that the goal of increasing the prosecution of even minor immigration crimes is to deter illegal immigration.

As a result of a Bush administration era policy, federal prosecution of immigration violators jumped almost 9 percent during the 2009 fiscal year, according to researchers at Syracuse University who analyze Justice Department data.

http://www.statesman.com/news/local/federal-judge-questions-immigration-prosecutions-216667.html

#### 7. New Bytes:

# U.S. officials warn Haitians against scam artists

The St. Petersburg Times in Florida reports that in response to alleged scams targeting Haitians, the U.S. Citizenship and Immigration Services has offered forums throughout Florida and the country to answer questions about the temporary protected status (TPS) being extended to Haitian citizens.

The scammers have charging potential TPS applicants for forms, to schedule appointments with immigration personnel and other services that are free. To apply for Temporary Protected Status in the U.S, Haitian citizens must have been in the United States before January 12, 2010--the date of the deathly earthquake in Haiti. The deadline to apply for Temporary Protected Status (TPS) is July 20. The only fees are the \$50 application fee, an \$80 fee for those over 14 years old to have fingerprinting and photographs (biometrics), and a \$340 work authorization fee. Applicants should not pay more than \$470 total for the whole process.

There are organizations that will help with the forms for free, including Gulf Coast Jewish Family Services, at gcjfs.org. Gulf Coast Legal Services (gulfcoastlegal.org) also provides free assistance with the temporary protected status process.

http://www.tampabay.com/features/consumer/immigration-officials-warn-people-to-avoid-haiti-earthquake-scam/1070229

## Feds execute major smuggling sweep in Houston

The New York Times is reporting that immigration officials raided 14 bus companies in the Houston, TX area that were operating an underground system that transported unauthorized immigrants all over the country. Some of these companies allegedly exploited the migrants and their families by holding passengers captive until their relatives paid exorbitant fares.

These bus companies worked exclusively on smuggling operations; these were not legitimate transportation companies. The companies used minivans to shuttle hundreds of undocumented immigrants from Mexico to cities across the United States. The routes usually included back roads and traveling at night to avoid the authorities. The owners of the bus companies paid smugglers commissions of up to \$300 for each passenger brought for transportation. The companies also charged far more than legitimate carriers would for the trips, asking immigrants to pay as much as \$650 for a ride.

Officials said that the bus company raids in Houston signified a shift in Immigration and Customs Enforcement strategy. In the past, immigration agents have

intercepted individual drivers and arrested the illegal immigrants they carried. This time a critical link in the smuggling network—the owners and operators of the bus companies—were the ones held accountable.

http://www.nytimes.com/2010/02/05/us/05bus.html

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#### DHS: Illegal alien population has declined

The Washington Times reports that from 2007 to 2009, the number of unauthorized immigrants in the United States dropped by nearly 1 million, according to new Homeland Security Department figures. Homeland Security demographers estimate the population of unauthorized immigrants in the U.S was 10.8 million in January 2009, down from a peak of 11.8 million in 2007. This size of drop is unprecedented in modern history. Homeland Security officers point to immigration law enforcement and to the economic recession as major factors contributing to the decrease of would-be immigrants.

The report renews a polarizing question on how to address the presence of undocumented immigrants in the country. Those in favor of tougher immigration control say the report offers proof that illegal immigration is linked to job opportunities. The solution, therefore, lies in taking away the jobs so that illegal immigrants will leave the U.S. On the other hand, there are those who are in favor of legalizing undocumented immigrants, because—they argue—most undocumented migrants are contributing members of American society and have established their lives in the United States. According to the DHS report, 63 percent of the illegal immigrants in the country arrived before 2000.

Among undocumented migrant groups, the Chinese population dropped by the largest percentage - nearly 50 percent. It is estimated that Mexicans, the largest unauthorized immigrant population, decreased by nearly 400,000 people. Although a decline in the undocumented migrant population occurred in most parts of the country, Georgia, Arizona, Florida, New Jersey and New York witnessed double-digit drops.

http://www.washingtontimes.com/news/2010/feb/10/1-million-fewer-illegals-in-us-new-study-says/

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## 8. Washington Watch:

# Democrats press measure expediting Haitian immigration

The Hill in Washington, DC is reporting that lawmakers are targeting migration processes, as recovery efforts continue following the devastating earthquake in Haiti. Senators Menendez and Gillibrand and Representative Yvette Clark, all hailing from the New York City area, which has one of the largest Haitian immigrant populations in the country, are pushing legislation that would hasten visas for some Haitians.

The bills would allow approximately 55,000 Haitians with families in the United States who already have approved immigration status entry into the U.S. to speed their process of migration. The bill comes at a time of uncertainty as many Haitians

are attempting to leave the poor island nation due to widespread property destruction and massive fatalities.

http://thehill.com/blogs/blog-briefing-room/news/79787-dem-lawmakers-pushing-measure-to-speed-immigration-for-haitians-with-familiesin-us

#### Labor Dept. approves new rules for farm labor

The Associated Press reports that the Labor Department is reversing Bush administration rules that made it easier for farmers to hire temporary foreign workers to help pick their crops. However, the new regulations will increase wages and offer greater protections for foreign farm workers. The rules will also require growers to make a greater effort to fill those jobs with domestic workers.

Farm owners have opposed changes to the H-2A guest worker program. They say the new rules make it more burdensome and expensive to hire foreign workers for jobs that most Americans are not willing to do. On the other hand, labor and immigrant rights groups claimed the Bush regulations slashed farm wages and made it harder for domestic workers to claim those jobs. Farm workers on H-2A visas fill only about 2% to 3% of U.S. seasonal farm jobs, mostly in the fruit, vegetable, nursery and Christmas tree sectors, he said. Growers estimate that the vast majority of field workers are foreign-born, although only a fraction of those—86,000 in the last fiscal year—received visas under the program affected by the new rule.

Under the new rule, effective March 15, employers seeking H-2A visas for agricultural workers will be required to provide documented proof that they looked for qualified U.S. people to fill jobs, instead of simply attesting to the effort. The Labor Department also is creating a national electronic job registry to help growers find workers from the U.S. The department is also set to soon issue new guidelines for determining minimum wages at employers seeking to participate in the visa program.

http://www.nytimes.com/aponline/2010/02/11/us/politics/AP-US-Guest-Workers.html
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## Leahy irked by farm bill Plans to push legislation on foreign dairy workers

In related news, *The Brattleboro Reformer* in Vermont is reporting that the U.S. Labor Department failed to address the status of migrant dairy farm workers who are illegally working in Vermont in the new H-2A rule. The new rules about the H-2A program allow farmers to hire foreign laborers for seasonal work. However, dairy workers, who spend all year on the farm, have never been included in the H-2A program.

Although Senator Leahy urged the Labor Department to include the dairy workers last year while the new rule was under consideration, the Labor Department said it did not have the legal authority to include the entire dairy industry in the H-2A visa program.

Leahy wants the migrant dairy workers to be allowed in the country for a year, and then be eligible for additional one year periods as approved by the U.S. Citizenship and Immigration Services. Also, under Leahy's proposed bill, workers would be able to petition to become U.S. citizens after three years.

U.S. Secretary of Labor Hilda Solis said the new rule protects both migrant workers and American farm workers. However, Vermonters worry that the exclusion of dairy farm workers in the new H-2A visa program will make dairy farmers more vulnerable to Immigration and Customs Enforcement and eventually make the industry collapse.

http://www.reformer.com/localnews/ci\_14386851

#### 9. Notes from Visalaw.com Blogs

#### Greg Siskind's Blog on ILW.com

- PELOSI: WE'LL HAVE THE VOTES FOR IMMIGRATION REFORM
- ARPAIO: I HAVE THE INHERENT RIGHT TO ENFORCE IMMIGRATION LAWS
- ILLEGALLY PRESENT IMMIGRANT POPULATION DROPS SHARPLY
- MARCH VISA BULLETIN IS OUT
- ABA ENDORSES PLAN FOR CREATING NEW INDEPENDENT IMMIGRATION COURT
- REPORT: CANDIDATES IGNORE IMMIGRANT VOTERS AT THEIR PERIL
- NEW STUDY SHOWS IMMIGRANTS ACTUALLY PUSH UP WAGES FOR NATIVE WORKERS
- ARPAIO FACES SANCTIONS IN PROFILING SUIT
- ANTI-IMMIGRANT TANCREDO KICKS OFF TEA PARTY CONVENTION
- JUDGE: STOP WASTING TAXPAYER MONEY PROSECUTING IMMIGRATION OFFENSES
- PRO-IMMIGRANT GROUPS TARGET ANTI-IMMIGRANT DEMOCRAT
- LABOR APPEARS READY TO COMPROMISE ON COMMISSION PROPOSAL
- OBAMA'S AUNT PLANNING TO FIGHT DEPORTATION
- APPEALS COURT STRIKES DOWN PORTIONS OF OKLAHOMA IMMIGRATION LAW
- WHITMAN CAMPAIGN DISTANCES ITSELF FROM "PROUD RACIST"
- NEW REPORT DETAILS OVERWHELMED IMMIGRATION COURT SYSTEM
- PROUD RACIST

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

- GEORGIA COUNTY QUESTIONS HOW ILLEGALLY PRESENT WORKERS HELPED BUILD COURTHOUSE
- KENTUCKY HOUSE PASSES CONTRACTOR RULE
- KOCH FOOD FINED \$500,000+ FOR I-9 VIOLATION
- TENNESSEE ENFORCEMENT OF EMPLOYER SANCTIONS RULE HAS BEEN MINIMAL
- UTAH SANCTIONS BILL COULD BE IMPACTED BY OKLAHOMA CASE
- IDAHO LAWMAKERS INTRODUCE MORE SANCTIONS BILLS
- OKLAHOMA LAWMAKERS CONSIDERING E-VERIFY MANDATE IN WAKE OF COURT DECISION
- BURLINGTON, VT APPROVES E-VERIFY RULE
- APPEALS COURT STRIKES DOWN PORTIONS OF OKLAHOMA IMMIGRATION LAW
- IDAHO LAWMAKERS CONSIDER EMPLOYER SANCTIONS BILLS
- DHS REQUESTING \$103 MILLION TO EXPAND E-VERIFY

- BALTIMORE COUNTY COUNCIL PASSES E-VERIFY MANDATE
- IDAHO LAWMAKER PUSHES FOR EMPLOYER COMPLIANCE LEGISLATION

# Visalaw Healthcare Immigration Blog

- HALF OF NURSES PLAN CAREER CHANGE
- RECESSION SLOWS NURSING SCHOOL ADMISSIONS
- LAS VEGAS HOSPITAL FACES DILEMMA OVER EXPENSE OF ILLEGALLY PRESENT IMMIGRANTS

#### Visalaw Investor Immigration Blog

- LAKE BUENA VISTA REGIONAL CENTER APPROVED FOR LOWER INVESTMENTS
- GREEN CARDS FOR GREEN CARS
- E-2 INVESTOR VISA BECOMING POPULAR CHOICE FOR MEXICANS

#### Visalaw Fashion, Sports, & Entertainment Blog

- CANADIAN ENTERTAINERS FIND ENTERING US NO CAKEWALK
- IMMIGRANT SPOTLIGHT: TOMMY HAAS TENNIS PLAYER
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- USCIS BACKS DOWN ON VISA STANDOFF AFTER WALL STREET JOURNAL STORY RUNS

## Visalaw International Blog

- CANADA: RCMP INVESTIGATING WIDESPREAD CITIZENSHIP FRAUD
- Publication EU Immigration Law

# The Immigration Law Firm Management Blog

LENOVO MORPHS NOTEBOOK AND TABLET

10. State Department Visa Bulletin:

## **VISA BULLETIN FOR MARCH 2010**

#### 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 **5th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off

date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

- 2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.
- 3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

#### FAMILY-SPONSORED PREFERENCES

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

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

- A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;
- B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

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

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

## **EMPLOYMENT-BASED PREFERENCES**

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

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

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

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

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

- 4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.
- 5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Fam- ily	All Charge- ability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPP- INES
1st	22JUN04	22JUN04	22JUN04	010CT92	01MAR94
2A	01APR06	01APR06	01APR06	01JUL04	01APR06
2B	01FEB02	01FEB02	01FEB02	15JUN92	22AUG98
3rd	22MAY01	22MAY01	22MAY01	08OCT92	01MAR92
4th	15JAN00	15JAN00	15JAN00	08DEC95	01SEP87

\*NOTE: For March, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JUL04. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JUL04 and earlier than 01APR06. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge- ability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIP- PINES
Employ- ment -					

Based					
1st	С	С	С	С	С
2nd	С	08JUL05	01FEB05	С	С
3rd	15DEC02	15DEC02	01JUL01	01JUL02	15DEC02
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	01JUN01
4th	С	С	С	С	С
Certain Religious Workers	С	С	С	С	С
5th	С	С	С	С	С
Targeted Employ- ment Areas/ Regional Centers	С	С	С	С	С
5th Pilot Programs	С	С	С	С	С

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

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

# B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2010 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **March**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	29,600	Except: Egypt: 18,000 Ethiopia: 16,950 Nigeria: 14,350
ASIA	12,000	
EUROPE	24,700	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	880	
SOUTH AMERICA, and the CARIBBEAN	985	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2010 program ends as of September 30, 2010. DV visas may not be issued to DV-2010 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2010principals are only entitled to derivative DV status until September 30, 2010. DV visa availability through the very end of FY-2010 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For **April**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region Areas Except Those Listed Separately	Region	Those Listed
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AFRICA	31,700	Except: Egypt: 20,800 Ethiopia: 19,300 Nigeria: 14,600
ASIA	13,600	
EUROPE	26,300	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	1,000	
SOUTH AMERICA, and the CARIBBEAN	1,000	

## D. 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