Siskind's Immigration Bulletin – September 7th, 2010

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10. Commentary: Ten Reasons Amending the Constitution to End Birthright Citizenship Is a Terrible Idea

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1. Openers

Dear Readers:

I hope you all had an enjoyable Labor Day weekend. While most of us are returning from three days out of the office, Congress is returning after nearly a month away from Washington. While earlier there was hope that they would address immigration reform this fall, hopes fraction in that area of all but been written off.

At this point we've reached a critical crossroads in the quest for fixing the US immigration system. Most responsible people understand that the best way to address our incredibly outdated immigration system is to focus on comprehensive solutions that address enforcement, unworkable visa laws and a strategy to deal with the millions of individuals living illegally in the United States. However, members of Congress are trapped by the toxic politics surrounding the issue of immigration and are unable or unwilling to look at solving the problem.

I've noted before in this column that I believe pursuing comprehensive immigration reform, while the best solution, has not been the best strategy if the goal is actually to make progress. Better strategy in my view is to pursue piecemeal immigration reform. That means going back to the way immigration legislating used to happen. Small bills were introduced, debated and passed and problems didn't necessarily take years to solve. In a given year, dozens of immigration bills might pass. Today, only a handful of measures actually get a final vote. And often, needed fixes have to be inserted in budget bills and other "must pass" pieces of legislation since stand alone immigration bills usually go nowhere.

More and more pro-immigration advocates are recognizing that this may be the better way to go. Comprehensive legislation by its nature is going to have plenty of measures that opponents will be able to point to in order to stop progress. Smaller bills are less likely to face that problem. Also, anti-immigrant groups have an easier time rallying supporters to fight single large pieces of legislation as opposed to dozens of smaller bills.

I suspect that neither comprehensive nor piecemeal immigration law making will happen this fall. We'll probably be waiting to see what happens after the election. If the Republicans win back the House of Representatives, as many are predicting, then they will have to make a choice whether they want to continue in the anti-immigration direction they been headed for the last few years or want to turn back to the center. And the first indicator of this will likely be who Republican leaders choose to serve and chair the House Immigration Subcommittee.

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In firm news, I was recently elected to the board of governors of the American Immigration Lawyers Association. In that capacity, I wrote a blog column on the idiotic and dangerous proposal to scrap the 14th Amendment guarantee a birthright citizenship. You can find the article here – http://ailaleadershipblog.org/2010/08/09/10-reasons-amending-the-constitution-to-end-birthright-citizenship-is-a-terrible-idea/.

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This 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

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2. ABCs of Immigration Law: K-1 Visa for Fiancé(e)s of U.S. Citizens

The K-1 visa has made the process of marrying a foreign national in the US easier than ever before. This visa is a surprisingly recent development, appearing only in 1970. Before then, there were only two options for a US citizen to marry a foreign national. The foreign national could try to get a visitor visa, often a very difficult proposition because the pending marriage made it impossible to prove nonimmigrant intent. The second option was for the marriage to occur in the foreign country and for the US citizen to file an immigrant visa petition for their spouse, who would then have to wait abroad for the application to be processed.

What is a K-1 visa?

The K-1 visa enables US Citizens to bring their foreign fiancé(e)s to the United States in order to get married and pursue permanent residency.

What is the first step I must take in order to bring my fiancé(e) to the US to get married with a K-1 Visa?

Provided you are a US Citizen, you begin by filing an I-129F, petition for fiancé(e) visa with the regional service center of US Citizenship and Immigration Services (USCIS) that covers the state where you live. Approval is required before the fiancé(e) may apply for the K-1 visa. Approval timelines vary among the service centers and range anywhere from one to eight months. After the I-129F has been approved, the fiancé(e) has 4 months from the time the I-129F was approved to obtain the K-1 Visa at the US Consulate in the foreign country. If required, a consular officer this time period can be extended. The visa application process is generally similar in all countries, although each Consulate will vary a bit in their requirements.

What is required in order to obtain a K-1 visa?

There are three basic requirements to receive a K-1 visa:

- The parties must have met in person within the past two years (in some cases this requirement can be waived)
- They must have a good faith intention to marry
- They must be legally able and willing to get married within 90 days of the alien's arrival in the US

What if I didn't meet my fiancé(e) within the past two years?

As originally adopted, the K-1 visa had no personal meeting requirement. It was added in 1986 as part of the Immigration Marriage Fraud Amendments. The requirement can be waived in some cases. To obtain a waiver, the application must show that complying with the requirement would result in extreme hardship to the US citizen, or that complying would violate traditional customs in the alien's home country. This second method of obtaining a waiver will be strictly scrutinized to ensure there is no attempt to avoid application of immigration laws. In the event an application is denied because of failure to satisfy the personal meeting requirement, the parties are free to meet and re-file the petition, and the new application will not suffer because of the denial of the first.

How can I document proof of a relationship with my fiancé(e)?

While there is no minimum, using as many of these items as possible will make it less likely that you will receive a Request for Evidence (RFE) from an USCIS Service Center.

- Copies of all airline-boarding passes, train passes, itineraries, hotel receipts, passport stamps (make sure you can read the dates on the stamps), and other documentary evidence that you have met your fiancé(e) within the last two years. You may want to highlight the relevant dates and locations on the copies (to make the adjudication easier) for the person reviewing your file.
- Color photos of you and your fiancé(e). Make sure you write your names, date, and location on the back of every photo. Place photos in a plastic bag or photo sheet and label the sheet. Note that you may not receive originals of photo's back. A good alternative is to make color photocopies of the photos and then put the relevant information underneath the pictures.
- Copies of phone bills, cell phone bills, emails (you can edit personal info with a marker), letters (edit personal info also), stamps on the letters (to document the date they were sent), and other written documentary proof. Provide a reasonable amount; two to four of each type. Pick a range of dates up to and including the present.

Who determines whether or not the petition is approved?

The application is filed at the USCIS Service Center with jurisdiction over the place where the US citizen lives. The alien's minor children should be included on the application, since they will be given derivative status and allowed to enter the US with their parent. The application must include proof of the petitioner's US

citizenship and proof that each party is legally able to marry (e.g. divorce decrees). It is also wise to submit evidence of marriage plans.

For how long is the petition valid?

Once approved, the petition remains valid for four months. In the event that the alien does not enter the US in that period, the petition can be revalidated by either a USCIS district officer or a State Department consular officer for another four-month period, so long as the parties are still free to marry and intend to marry.

How does the State Department determine whether or not my fiancé(e) will receive a K-1 visa?

In determining whether to issue the K-1 visa, the State Department approaches the applicant like they are applying for an immigrant visa. They must pass a medical exam and not be subject to any grounds of inadmissibility. For example, people who have had a J visa and are subject to the two-year home residency requirement are not eligible for a K-1 visa until serving the residency requirement or having it waived. Also, the State Department requires the following documents to be submitted:

- A valid passport
- Birth certificate
- Police certificates from each place the alien has lived since age sixteen
- Medical exam
- Evidence that they will not become a public charge
- Evidence of termination of previous marriages, if not submitted with the petition application

Remember that if any of these documents are in any other language, they must first be translated into English.

What happens after the State Department receives the required documents?

After it receives these documents, the Consulate will conduct a background investigation and then schedule an interview. If the interview is successful, the beneficiary will be issued a visa. The beneficiary is given a copy of their petition and additional entry paperwork in a sealed envelope to present at the port of entry. The alien will be admitted for 90 days, during which time they are authorized to accept employment in the US. Aliens admitted in K-1 status are not allowed to seek an extension of status, or to change to any other nonimmigrant classification. During the 90-day period of admission, the alien must marry the US citizen petitioner. After the marriage, the US citizen spouse may file an application for adjustment of status for the alien spouse. One note of caution - if one does not marry quickly and apply for adjustment of status, there may be a gap between the work authorization received at entry and the work authorization granted after applying for adjustment of status.

For how long is the K-1 visa valid?

The visa is given along with a sealed envelope of documents, which must be given to the USCIS officer when entering the US. The visa is good for 6 months. The fiancé(e) is allowed to enter the US once with the visa, with the purpose of getting married.

The fiancé(e) is not allowed to travel freely into and out of the US with the visa, it is good for one entry only. If there is a K2 visa involved, the K2 may enter up to a year after the K-1.

Once the fiancé(e) arrives in the US, how long do we have until we must marry?

Once in the United States, you have 90 days to get married.

What if the marriage does not occur?

If the marriage does not occur, the alien must leave the US within their 90-day period of authorized admission. If they fail to leave within this time, they become subject to deportation.

What steps must be taken after the marriage occurs?

Immediately after marriage, you must apply for an Adjustment of Status, Form I-485, to become a permanent resident. You will also apply for an Employment Authorization Document (EAD), and advance parole in case you want to travel outside the United States and re-enter before getting your green card. After that, you may wait a year or more to be interviewed for "Conditional" Permanent Resident status (green card). After two more years, you apply to have the "Conditional" status removed. Only after all these steps can you apply to become an American citizen (naturalization).

If the couple does not marry, can the immigrant remain in the U.S.?

It is EXTREMELY difficult for a person to remain in the US if the marriage does not take place. And the marriage must be to the K-1 petitioner and not to another US citizen. K-1 visa holders who fail to follow through with marrying the K-1 petitioner and getting permanent residency through that marriage should plan on leaving the US and reentering on a new visa if they seek to stay in the US.

How do I obtain a K-1 visa if I met my fiancé through the services of an international marriage broker?

In compliance with the the International Marriage Broker Regulation Act of 2005 (IMBRA), the name and contact information (including internet or street address) of the international marriage brokerage must be included in the I-129F form.

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3. Ask Visalaw.com

1) Question:

I got an emergency Advance Parole document due to my family member's illness. Will USCIS suspend the processing of my green card while I am out of US and resume after I come back?

Answer:

No. USCIS will continue to process your application while you are abroad. If your green card application is approved while you are abroad CBP will admit you as a Permanent Resident when you apply for readmission using the Advance Parole document. You should make sure that someone you trust is checking your mail while you are away in case USCIS sends you a Request for Additional Evidence or some other notice requiring your action.

2) Question:

A friend of mine had claimed she was a US citizen back around 2001 to gain entry into the US. Do the laws concerning inadmissibility still apply to her? What if her fiancé wants to bring her to the U.S.?

Answer:

Unfortunately she is still inadmissible. As of September 30, 1996, falsely claiming to be a U.S. citizen to obtain any benefit under the immigration laws, or any other federal or state law, results in a permanent bar of inadmissibility. There is no waiver for this inadmissibility.

Congress only created one exception where the foreign national's parents were or are both U.S. citizens; the foreign national became a permanent resident before their 16th birthday; and the foreign national reasonably beleived that they were a U.S. citizen at the time they made the claim that they were a U.S. citizen.

3) Question:

The priority date for my employment based petition is finally current. But USCIS just transferred my application to the Vermont Service Center. Can the Vermont Service Center approve my application for adjustment and should I be worried that it has been transferred?

Answer:

There is no need to be concerned. It is not uncommon for USCIS to transfer applications to a different Service Center to allow them to process applications quicker. Most likely, the Vermont Service Center had fewer employment-based applications for adjustment or had more trained adjudicators, compared to the other Service Center, and so USCIS moved some cases to the Vermont Service Center to more evenly distribute the case load. The USCIS currently has a goal of adjudicating all current employment-based applications for adjustment within four months. This is one of the ways they are trying to meet that goal.

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4. Border and Enforcement News:

Napolitano: 'Now with enough border resources, time to reform'

The Washington Times reports that Homeland Security Chief Janet Napolitano has said that the current administration has 'enough' resources to secure the border in light of $600 million worth of allocated funds and should begin focusing on comprehensive immigration reform. She predicts that the additional border security

will create a decline in border crossings while increasing the seizure of illegal drugs, guns, and money.

Although Napolitano believes that the additional funds should appease critics that accuse the White House of not doing enough to secure the border, some GOP senators argue that the funds are insufficient. Senators John McCain and Jim Kyl of Arizona have created a 10-point plan that includes increased funding for Operation Streamline, a program that reimburses Arizona's border law enforcement for costs related to immigration and drug smuggling along the border.

http://www.washingtontimes.com/news/2010/aug/13/napolitano-border-spending-bill-signed-time-reform/
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Employer audits rise, individual arrests decrease under Obama

Fox News reports that while audits of employers have risen slightly when compared to the Bush administration, arrests of illegally present worker are down considerably since 2008. Under Obama, employer audits are up 50 percent and fines have tripled to $3 million, but the number of arrests and deportations of illegally present workers has plunged by more than 80 percent. So far in 2010, Immigration and Customs Enforcement (ICE) has arrested 900 workers, compared to 6,000 in 2008.

Marshall Fitz, the director of immigration policy at the Center for American Progress, has praised the administration's policy to focus on criminal employers rather than target workers with high profile raids. While the Bush administration claimed its high profile raids acted as a deterrent to both employer and employee, the Obama administration has decided not to focus their enforcement efforts against noncriminal workers.

http://www.foxnews.com/politics/2010/08/23/company-audits-illegal-worker-arrests-way/
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DHS reneges on biometric exit program

The Washington Times reports that The Department of Homeland Security (DHS) is not expected to implement a biometric exit system, a congressionally mandated program that would track the departure of foreign visitors to the U.S. through electronic fingerprint scans. Instead, Homeland Security Secretary Janet Napolitano is advocating a biographical solution that would gather the names of departing foreigners.

In 2009, the United States Visitor and Immigrant Status Indicator Technology (US-VISIT), a DHS system that collects electronic fingerprints from foreign visitors as they enter the country, employed a pilot biometric exit program in the Detroit and Atlanta airports. ICE claims to have arrested 568 overstayers last year as a result of information provided by US-VISIT. Those who remain after their visas expire represent nearly 40 percent of the estimated 11 million illegally present immigrants in the U.S.

http://www.washingtontimes.com/news/2010/aug/24/us-visa-violators-unlikely-to-be-fingered/

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U.S. moving to ease deportation policy

The Miami Herald reports that ICE released a memo on August 20th instructing its legal office to halt deportation proceeding for noncriminal foreign nationals who may be eligible for a green card. ICE deputy secretary Richard Rocha emphasized his agency's policy of prioritizing the removal of foreign nationals who have criminal convictions and cited the record number of 150,000 convicted criminals removed from the U.S. in 2010. The Florida Immigrant Advocacy Center (FIAC) has lauded this new policy of expediting the cases of law-abiding immigrants as a more efficient use of ICE resources and taxpayer dollars.

The memo potentially affects tens of thousands immigrants who are married or related to a U.S. citizen or legal resident who has filed a petition from them. The official memo is available online at:
http://graphics8.nytimes.com/packages/pdf/us/27immig_memo.pdf

http://www.miamiherald.com/2010/08/27/1794349/us-moving-to-ease-deportation.html
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5. News from the Courts:

Federal judge dismisses one of seven AZ lawsuits

The Associated Press reports that U.S. District Judge Susan Bolton dismissed one of the seven lawsuits seeking to overturn Arizona's new immigration law. The lawsuit was filed by Washington-based researcher Roberto Frisancho, who alleged that as an American born Hispanic he would likely be targeted as an illegally present immigrant on his upcoming trip to Arizona. Judge Bolton said that because the alleged injury was not concrete and based on speculation, the lawsuit would be dismissed.

http://www.kswt.com/Global/story.asp?S=13040378
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Federal court faceoff on immigration issue

WTVF News (Nashville, TN) reports that several lawsuits will be filed challenging the arrests of Hispanics in Tennessee. These lawsuits follow a recent verdict by a federal jury in Jackson, TN that awarded $75,000 to a legal resident for the unreasonable search of her car during a traffic stop. In 2008, in a highly publicized incident, Juana Villegas was stopped by police and shackled to a hospital bed while in labor. In light of the verdict, her attorney Elliot Ozment said he expects at least five more similar lawsuits to be filed in the near future.

http://www.newschannel5.com/Global/story.asp?S=13052246
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6. News Bytes:

Utah lawmaker rolls out bill on illegal immigration

The Salt Lake Tribune reports that Utah State Representative Stephen Sandstrom revealed a 12-page bill that would require officers to check the immigration status of anyone detained for a crime or traffic violation if there is 'reasonable suspicion' that they are in the country illegally. He expects the 10th Circuit Court of Appeals in Denver to look more favorably upon the law than the 9th Circuit Court in San Francisco which which will oversee Arizona's federal court appeal.

Opponents of the law have said that the measure will do nothing but inflame 'hatred and fear among Utahans' and create a hostile environment comparable to Arizona. Tony Yapias of Proyecto Latino de Utah and other protestors have unsucessfuly appealed to the Church of Jesus Christ of Latter-day Saints to take a stance against the law because it runs counter to the teachings of the faith. The church, however, has not weighed in on the issue and instead says it is up to political leaders to decide immigration policy.

http://www.sltrib.com/sltrib/home/50101378-76/sandstrom-immigration-bill-state.html.csp

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India threatens WTO dispute over visa regulations

The Washington Times reports that President Obama has signed a bill that raises H-1B and L-1 visa fees on companies that hire a majority of foreign workers and $10 billion in additional taxes on multinational companies with headquarters in the U.S. $600 million from the increase in visa fees will be used to put more agents and equipment along the Mexican border and the multinational tax will finance an extension of last year's stimulus bill.

Agence France Presse reports that India has threatened to take the United States to the World Trade Organization (WTO) over its measure to hike visa fees. India has called the U.S. policy 'protectionist' and fears higher fees will harm the country's larger outsourcing sector. The National Association of Software and Services Companies (NASSCOM), which represents India's top software companies, estimates annual U.S. visa costs to rise by at least $200-250 million annually. India's trade minister, Shri Anand Sharma, sent a letter to the White House protesting the 'highly discriminatory law' as contrary to the rules of the WTO and the General Agreement in Trade in Services (GATS).

R. Bruce Josten, vice president of government affairs for the U.S. Chamber of Commerce agreed that the legislation could risk adverse impacts on U.S.-based companies and retaliation by affected governments in the WTO or against U.S. companies operating in foreign markets. Senator Charles Schumer (D-NY), who sponsored the legislation, argued that imposing taxes and fees on foreign workers and companies was the best way to raise money and address unemployment and immigration issues.

http://www.washingtontimes.com/news/2010/aug/12/border-security-measure-sent-to-obama/

http://www.google.com/hostednews/afp/article/ALeqM5g_ywJRMrVzfYU3fOHA9Y9Lmxu2jg
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U.S. may sue Arizona's Sheriff Arpaio for not cooperating in investigation

The Washington Post reports that the Department of Justice has threatened to sue Arizona's Maricopa County Sheriff Joe Arpaio if he refuses to cooperate with its civil rights investigation into possible discriminatory practices.. Arpaio also faces an investigation by a federal grand jury in Phoenix into whether he has used his position to intimidate political opponents and whether he his office has misappropriated government funds. The civil rights investigation began in March 2009 and the grand jury investigation has been underway since January 2010.

Arpaio faces criticism for his highly publicized 'crime sweeps' conducted in mostly Hispanic neighborhoods. He is also accused of performing 'unconstitutional searches and seizures,' forcing Hispanic inmates to fill out a 'citizenship check' form, and requiring his bilingual jail guards to speak to inmates only in English.

The sheriff's office has denied requests to turn over documents or meet with investigators and contends that the investigations are politically motivated, citing statements by Attorney General Eric Holder that the inquiries are expected to 'produce results.'

http://www.washingtonpost.com/wpdyn/content/article/2010/08/17/AR2010081703637.html?hpid=moreheadlines
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California city to require e-verify use

The Press-Enterprise reports that city council of Murrieta, California unanimously approved an ordinance mandating all city business to use E-Verify, a federal program that determines a potential employee's work status. The city council initially considered a resolution that urged employers to use E-Verify but did not require its use. Although a similar mandate in Arizona was challenged in court, Murrieta city attorneys recommended passing the resolution while waiting for a final court ruling.

The Inland Empire Rapid Response Network, a California immigrants' rights group, criticized the mandate in a statement claiming that conservative groups pushing for E-Verify laws are directing their anger towards local immigrant families when they should actually be pressuring federal officials who are not enforcing immigration law.

http://www.pe.com/localnews/stories/PE_News_Local_D_sverify18.64cadffd.html
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Cherokee Nation opposes Arizona SB 1070

The Tahlequah Daily Press (Tahlequah, OK) reports that the Cherokee Nation Tribal Council formally announced its opposition to Arizona Senate Bill 1070. Tribal Councilor Julia Coates believes that many Native Americans living outside of reservations in Arizona who do not speak English and are without birth certificates will be targeted by law enforcement as illegally present immigrants. The Tribal

Council also wanted to voice its opinion against the law because some members of the Oklahoma legislature are currently advocating for a similar resolution in their state.

http://tahlequahdailypress.com/local/x743764163/Tribal-council-unites-against-immigration-law-in-Arizona
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Feds to restrict financial aid to elderly immigrants

The Los Angeles Times reports that 3,800 recipients of Supplemental Security Income may lose their eligibility on September 30th unless they have a pending naturalization application. The federal program provides monthly checks to low-income elderly, blind, and disabled people, including asylees and humanitarian immigrants admitted to the U.S. because they are victims of war, persecution, sex trafficking, and other disasters in their home countries.

Refugee advocates have pointed out that some of these legal immigrants have trouble passing a citizenship exam or have not received their green cards because of delays in the application process. These advocates have urged Congress to pass another year's extension until a permanent solution to the problem is found.

http://articles.latimes.com/2010/aug/22/local/la-me-refugee-assistance-20100823
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7. Washington Watch:

Napolitano: 'Any talk of amending the constitution is just wrong'

The Hill reports that Homeland Security Chief Janet Napolitano rebuffed Republican calls to change the 14th amendment to eliminate birthright citizenship for children of illegally present immigrants. Detractors argue that the current law provides incentive for immigrants to illegally enter the U.S. for the sole purpose of having children who will automatically become citizens. Napolitano, who is the former governor of Arizona, also criticized Republicans for not cooperating with the Obama administration to implement comprehensive immigration reform that would include a pathway to citizenship.

http://thehill.com/homenews/administration/114199-napolitano-any-talk-of-amending-the-constitution-is-just-wrong
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GOP chair withholds support for AZ SB1070

The Hill reports that Republican National Committee chairman Michael Steele refused to endorse Arizona's new immigration law during an interview with Univision, the largest Spanish language television network in the U.S. He claimed that the actions of one state are not 'a reflection of an entire political party.' He advocated a 'commonsense solution' to the debate surrounding immigration reform.

http://thehill.com/blogs/blog-briefing-room/news/115555-steele-says-sb-1070-not-a-reflection-of-an-entire-political-party
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8. Updates from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- IMMIGRATION HUMOR: THE ARIZONA PASSPORT SHIRT
- ILLEGALLY PRESENT IMMIGRANTS PROPPING UP SOCIAL SECURITY
- THE TRAINWRECK
- FIORINA SUPPORTS DREAM EVEN THOUGH SHE OPPOSES "AMNESTY"
- ARPAIO SUED BY JUSTICE DEPARTMENT
- PEW STUDY: ILLEGAL IMMIGRATON DOWN SHARPLY
- FED: IMMIGRANTS NET PLUS FOR ECONOMY, WORKERS
- THE DEFINITION OF LONELY
- H-1B EXHAUSTION TARGET: MID-MARCH 2011
- FROM THE DEPARTMENT OF NO DUH
- "COERCIVE, UNCONSTITUTIONAL AND TAINTED BY RACIAL PROFILING"
- GONE FISHIN'
- THE AGE CONUNDRUM
- H-1B REQUESTS FOR EVIDENCE HAVE DOUBLED IN THE LAST YEAR
- WOMAN ACCUSED OF RELEASING UTAH "ILLEGALS" LIST RESIGNS
- NEW BLOG: NEWS FROM THE IMMIGRATION COURTS
- EXTREME IMMIGRATION POSITION LIKELY COST MCCULLOM FLORIDA GOVERNOR JOB
- THE IMMIGRATION HALL OF SHAME
- H-1B QUOTA EXHAUSTION TARGET STILL MARCH 2011
- LAW ENFORCEMENT ASSOCIATION: PHOENIX LYING ABOUT KIDNAPPING NUMBERS TO GET MORE FEDERAL DOLLARS
- USCIS REPORTEDLY HOLDING UP PIERS MORGAN TAKING OVER FOR LARRY KING
- ICE ARRESTS 158 IN UTAH ENFORCEMENT ACTION
- H-1B QUOTA EXHAUSTION TARGET - MARCH 2011
- THE ECONOMIC CASE FOR IMMIGRATION REFORM
- IMMIGRANT OF THE DAY: SOMY ALI - ACTRESS/RESCUER
- FALLOUT CONTINUES OVER ANTI-INDIA H-1B LAW
- 63 ARRESTED IN ARIZONA ICE RAID
- US MAY BE SETTING OFF TRADE WAR WITH NEW BORDER POLICY
- IMMIGRATION HUMOR: COLBERT EXPLAINS THE 14TH AMENDMENT CONTROVERSY
- HUCKABEE SPEAKS OUT IN SUPPORT OF 14TH AMENDMENT
- SCHUMER ATTACKS STAFFING COMPANIES USE OF H-1B
- SENATE PASSES BORDER BILL AND SENDS TO PRESIDENT
- POLL: MOST BORDER RESIDENTS FEEL SAFE
- TANCREDO SEEKING TO SPOIL COLORADO SENATE RACE
- NEW PEW STUDY SHOWS 25% OF CHILDREN BORN TO IMMIGRANTS

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

- ARIZONA COMMUNITY COLLEGES TARGETED FOR DISCRIMINATION CLAIM
- KNOX COUNTY, TN CONSIDERING EMPLOYER SANCTIONS BAN
- AMERICAN APPAREL STOCKHOLDERS SUE OVER ICE AUDIT
- ANOTHER CALIFORNIA TOWN TO MANDATE E-VERIFY USE
- WILDOMAR, CA PASSES E-VERIFY MANDATE

Visalaw Healthcare Immigration Blog

- WHEN THE DOCTOR DOESN'T LOOK LIKE YOU

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9. State Department Visa Bulletin: September 2010

Number 24
Volume IX
Washington, D.C.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **September**. 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 August 9th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

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

2. The fiscal year 2010 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2010 limit for employment-based preference immigrants calculated under INA 201 is 150,657. 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., 26,366 for FY-2010. The dependent area limit is set at 2%, or 7,533.

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	01JAN06	01JAN06	01JAN06	01JAN06	01DEC92	01JAN97
2A	01JAN10	01JAN10	01JAN09	01JAN10	01JAN09	01JAN10
2B	01JAN05	01JAN05	01JAN05	01JAN05	15JUN92	01AUG02
3rd	01MAR02	01MAR02	01MAR02	01MAR02	01MAR92	01JAN95
4th	15OCT01	15OCT01	15OCT01	15OCT01	01JAN94	01JAN91

*NOTE: For September, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates earlier than 01JAN09. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT the DOMINICAN REPUBLIC and MEXICO** with priority dates beginning 01JAN09 and earlier than 01JAN10. (All 2A numbers provided for the DOMINICAN REPUBLIC AND MEXICO are exempt from the per-country limit; there are no 2A numbers for the DOMINICAN REPUBLIC AND 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	08MAY06	C	08MAY06	C	C
3rd	15DEC04	22OCT03	15DEC04	01JAN02	U	15DEC04
Other Workers	22MAR03	22MAR03	22MAR03	01JAN02	U	22MAR03
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-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 **September**, 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	CURRENT	Except: Ethiopia: 26,350
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
OCEANIA	CURRENT	
SOUTH AMERICA, and the	CURRENT	

CARIBBEAN		

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

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

For **October**, 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	9,000	Except: Egypt 5,550 Ethiopia 7,450 Nigeria 7,450
ASIA	9,000	
EUROPE	9,600	
NORTH AMERICA (BAHAMAS)	1	
OCEANIA	350	
SOUTH AMERICA, and the CARIBBEAN	450	

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

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10. Commentary: Ten Reasons Amending the Constitution to End Birthright Citizenship Is a Terrible Idea

By Greg Siskind

guest blogger, AILA Board of Governors

[Note: This article appeared on August 9th on the Leadership Blog of the American Immigration Lawyers Association and can be found at http://ailaleadershipblog.org/2010/08/09/10-reasons-amending-the-constitution-to-end-birthright-citizenship-is-a-terrible-idea/ .

One of the greatest accomplishments of the Republican Party was actually one of its earliest. After winning the Civil War and freeing the slaves, the Grand Old Party worked to pass the 14th Amendment to the Constitution, the bedrock of civil rights protections in the U.S. that has served as a model to democracies around the world. The accomplishment was so significant that the GOP touts it in its list of greatest accomplishments (http://www.gop.com/index.php/learn/accomplishment/).

So it is, of course, shocking that in the days following the defeat of the Arizona law by a judge in that state, a number of Republican Senators have come forth calling for the repeal of the 14th Amendment's provisions on birthright citizenship.

The 14th Amendment guarantees that all children born in the U.S. (with narrow exceptions for children born to diplomats) are U.S. citizens. While some have argued that the 14th Amendment doesn't clearly protect birthright citizenship, this has been established law for more than a century. The Supreme Court removed any doubt of this in the 1898 United States v. Wong Kim Ark case where, by a 6-2 majority, the Supreme Court held that:

The fourteenth amendment reaffirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single exception of children of members of the Indian tribes owing direct allegiance to their several tribes… To hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treats as citizens of the United States.

Nearly three decades ago, the Supreme Court relied on Wing Kim Ark in the case of Plyler v. Doe to make clear that the 14th Amendment applies to ALL persons born in the U.S., whether their parents are legally present or not.

Extremists have been complaining about so-called "anchor babies" for some time. To listen to them, one would assume that millions of these children are growing up in America today or will one day choose to exercise their citizenship rights and enter the U.S. Few except politicians on the fringe were willing to support the extremists. But in the last several days, a number of lawmakers have lost their inhibitions and are openly calling for a Constitutional Amendment.

Once the shock of the suggestion wears off, it does pay to at least think about some of the basic reasons why we need to steer clear of an Amendment. Here are a number of reasons why.

1. This is a "solution in search of a problem."

To hear Lindsey Graham's and his allies' description of "drop and leave," Americans understandably might assume that there are millions of people coming to the U.S. to have children. Is there really any truth to this allegation?

The anti-14th Amendment folks simultaneously talk about two groups of individuals when discussing amending the Constitution. One is the group of mothers that is illegally present in the U.S. having children and the second are mothers who come on so-called "birth tourism" packages legally to the U.S. so they can claim citizenship for their kids.

On the first issue, there is little evidence that a significant number of mothers illegally enter the U.S. for the purpose of having children. The burden of proof should be on proponents of tinkering with one of the cornerstones of American democracy.

Before changing the Constitution, we should have clear evidence that there is a problem rather than the anecdotes of politicians pushing an anti-immigrant agenda.

It is true that many mothers here illegally do have children, but their purpose for being in the U.S. is generally to work or to be with a family member who is the breadwinner. This is probably the group that Graham is targeting and he should be honest in saying that the goal is to punish people who are here illegally and to disenfranchise their children as opposed to stopping a mythical “drop and leave” crisis.

As for maternity tourism, there is actual real evidence to point to that shows that this problem is miniscule. According to the Center for Health Care Statistics, fewer than 7,500 births out of an annual 4,000,000 births are to mothers who report residing outside the country. And some of those mothers are U.S. citizens residing abroad as part of the community of 6,000,000 Americans who live overseas.

And perhaps the reason so few mothers come to the U.S. just to have a child is because the immigration benefits are not what these Republicans would have people believe. Children born in the United States cannot sponsor their parents for immigration benefits until after they turn 21 years of age.

Nevertheless, to the extent that there is a “maternity tourism” industry, the better approach to dealing with this is to enforce our existing laws that bar the use of visitor visas for such a purpose. Targeting companies and individuals engaged in this type of visa fraud would go a long way to curtailing this sort of activity.

2. Ending birthright citizenship would not end illegal immigration.

There is no evidence that immigrants come to the United States to have children. They come for jobs. Taking away birthright citizenship would not change this. What would happen is the number of illegally present immigrants would increase dramatically as many children of illegal immigrants are added to the ranks of the illegally present and who knows how many others would be added to the list of the undocumented because they are unable to prove citizenship even if they are entitled to it.

3. Implementing a Drastic Change to the 14th Amendment Would Be Enormously Difficult to Administer and Hugely Expensive.

Because U.S. citizenship laws are so complex and all Americans would no longer have the most basic proof of citizenship – the birth certificate – available, most would have to go through a legal process that would be expensive for the government and the individual. The government would need to hire thousands of lawyers and other examiners, and individuals would also need thousands of new lawyers to help with this process once we get through years of litigation to determine how we actually define citizenship and what is a fair way to prove it.

4. Where exactly do you draw the line?

One of the biggest potential problems with looking at something of this sort is figuring out which population to target. Just the children of illegally present

immigrants? What about when one of the parents is a citizen and one is an illegally present immigrant? What about when the parents are unmarried. Does it matter if the father is the citizen as opposed to the mother? If not, in situations where the mother is not legally present and she is not married to the U.S. citizen father, the mother would need to first prove the paternity of the child, something that could be difficult or impossible particularly for individuals without the means to sue for paternity. Should it make a difference if the legally present parent is a lawful permanent resident and not a citizen? How about a legally present non-immigrant?

If the target is broader and we're going after anyone whose parents are not permanent residents or citizens, does it matter what type of non-immigrant status the person holds? Should a tourist be treated differently than a student or a non-immigrant work visa holder? What about people working on non-immigrant visas but waiting on long lines for permanent residency such as Indian and Chinese advanced degree holders?

5. The citizenship of millions of Americans would suddenly come into doubt.

If birth in the United States is no longer proof of citizenship, a great number of people would have great difficulty proving they are entitled to citizenship. People would face extraordinary administrative obstacles and be forced to hire lawyers to prove entitlement to citizenship. Waits for passports would be extremely lengthy since for all people it would be the main way to prove they are American. Right now there is no registry of U.S. citizens and people generally rely on proving their birth in the U.S. to demonstrate citizenship. One survey by the Brennan Center at New York University found that more than 13 million people would not be easily able to prove their citizenship.

Many other questions would also naturally arise. What about the grandchildren of illegal immigrants? As noted above, figuring out what to do when one of the parents is legal and the other not raises a number of questions over how citizenship is transmitted in the absence of birthright acquisition. If citizenship is not defined by being born in the U.S., then how does one acquire citizenship? For most African Americans, citizenship was likely originally acquired in their families because of the 14th Amendment itself. Are only individuals who immigrated going to qualify? What about Native Americans?

A Pandora's Box if there ever was one.

6. The American system of assimilating immigrants that has worked successfully for generations would be put under serious threat by creating a permanent two-tiered society with a permanent new underclass.

Taking away citizenship from the children of immigrants would mean more than just not being able to cast votes in elections. It means no driver's licenses, no in-state tuition, no ability to work legally and so on. Instead, we would have a class of individuals with no real connection to any country other than the U.S., but no ability to become productive participants in our society. This new stateless class would be forced to live in the shadows. For some, they won't be deportable because their parents' countries are not legally obligated to take them. This new stateless group of individuals would be stuck in a limbo of not being able to participate in American

society but having no other country to which to go as an alternative. Such individuals would be vulnerable to exploitation and criminal activity.

7. It's a slap in the face to African Americans

After the Civil War, there were many, including President Andrew Johnson, who were prepared to continue to deny citizenship to slaves and their newly freed children because they were not "ready" to take on the responsibilities of citizenship. The Fourteenth Amendment guaranteed that no class of individuals would ever have to show they were up to snuff when it came to deserving citizenship, and it is the Fourteenth Amendment that has been the basis of major civil rights progress in the area of voter rights, equal access to justice, protection against workplace discrimination, etc.

The idea of scrapping birthright citizenship has been the cornerstone of nativist and racist organizations for some time and the fact that supposedly mainstream Republicans have suddenly started discussing this topic in polite company doesn't make it less offensive. The sacrifice of countless individuals who gave their lives to win these rights is not honored by even having this discussion.

8. Birthright citizenship is in the Constitution precisely to avoid "the tyranny of the masses."

The 14th Amendment is in place precisely to protect individuals from politicians with their own interests in mind as well as the sentiments of the time. The Constitution has only been amended 17 times since the Bill of Rights and never to take away civil rights from any class of people. The framers of the 14th Amendment made birthright citizenship an "inalienable" right and tampering with this really places into question whether our American system of rights and freedoms has been a failure.

9. Where do they stop?

The 14th Amendment has been in place since just after the Civil War and no Congress has ever opened the door to cutting out groups from its protection. Today the discussion involves the children of those illegally in the U.S. Some proposals seek to bar the children of anyone but lawful permanent residents and U.S. citizens. But what is to say that we don't then move to stripping out other children of those who do not "deserve" to have their children awarded U.S. citizenship. Perhaps deny birthright citizenship to the children of those with criminal records? How about the children of same sex couples? What about where the parents express "anti-American" views? The folks pushing to repeal the 14th Amendment birthright citizenship rules are doing so to punish the behavior of the parents. Once we open the door, is it really that hard to envision pushing to add more and more groups?

10. Do we really want to start deporting babies?

That's essentially what this proposal means. Is this really something our society has the stomach to do and is this really what Americans want to spend our tax dollars pursuing?

Even having a serious debate about this subject has the potential to tear society apart and the grownups in the GOP need to seize control and make it clear that the party does not endorse the idea. Aside from being the morally right thing to do, it's also smart politics. At this point, the GOP is on the verge of so offending Hispanic voters in order to appease a tiny segment of the public that they risk losing the trust of Hispanics for generations.