Siskind's Immigration Bulletin – September 24th, 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 http://www.visalaw.com/intake.html

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9. State Department Visa Bulletin: October 2010

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1. Openers

Dear Readers:

I write this as a very frustrating week comes to an end. As most of you know, an attempt to attach the DREAM Act (which seeks to legalize young immigrants who serve in the military or go college) to the Department of Defense budget bill failed to win enough votes to overcome a filibuster by Republicans.

The measure was defeated by a vote of 56-43 (60 votes being needed). All but two Democrats voted for the measure and Republicans were united against it. In the past, filibustering the bill that is needed to fund the paychecks of our soldiers would have been unthinkable. But the partisan nature of the current Congress is unprecedented.

A lot of finger pointing in the pro-immigration community has already occurred. Some say the President and the Democrats were only trying to get a vote to show Latino voters they were not forgotten and that real efforts to twist arms and round up votes were never seriously undertaken. The fact that Senate Majority Leader Harry Reid is in a tight race for reelection and needs a heavy Latino turnout obviously factors in to this thinking (though actually WINNING the vote would have done a lot more for his chances).

Personally, I think the legislation was doomed since the beginning of this Congress back in 2009. Democrats unrealistically believed that having 60 votes in the Senate was enough to make them invincible to GOP filibusters - as if Democrats have ever been united as a party. The party that prides itself on having a big tent and welcoming people with a broad variety of opinions – Blue Dog conservatives, moderates and left-wing progressives – was never likely to support anything unanimously. But the Republicans have been far more effective in imposing such discipline.

The need to get 60 votes to pass legislation has effectively brought Congress to a halt as the filibuster tool has been used far more than any time in history.

It didn't have to be this way. The filibuster is not in the Constitution. It is simply a Senate rule and the rule itself can be overturned by a simple majority vote. The Democrats – hardly models of courage – have worried that if they kill the filibuster, they'll lose an important tool to stop Republicans when they find themselves in the minority again. They also worry that the public will view them negatively if they scrap it. Of course, the failure to actually be able to govern effectively makes both of these consequences inevitable regardless of whether they keep the filibuster or not as we can see from the latest polls.

Until we end the filibuster or until the GOP decides that Latino votes matter, don't expect much to change.

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In firm news, we are saying goodbye this week to Christi Hufford, an attorney in our Memphis office, who is moving back to her hometown of Dallas, Texas. We have enjoyed working with Christi and will miss her. Good luck, Christi!

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We remind readers that Siskind Susser is a firm with a national clientele and we can handle most types of immigration matters no matter where you are located. If you would like to schedule a telephone or in person consultation with one of our lawyers, please call our office at 901-682-6455 or go to our web site at www.visalaw.com.

Regards,

Greg Siskind

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2. ABCs of Immigration Law: M Visas for Vocational Students

What is an M Visa?

The M visa is available to international students who are coming to the US to pursue a full-time course of study at an established vocational school or other nonacademic school that has been approved by the USCIS. Typical institutions that accept M students include community and junior colleges that provide vocational and technical training, vocational high schools, and other schools that provide nonacademic training, other than English language instruction. The school must demonstrate that its international student program will fulfill educational objectives and will not be used as a means of making the students work. Students are designated M-1 and their spouses and children are M-2.

What is required to qualify for an M Visa?

The most basic requirement for a course of study to qualify for an M-1 visa is that it must lead to a specific educational or vocational objective. The student must engage in a full course of study, the definition of which depends on the type of institution.

> At community and junior colleges, a full course of study is defined as at least 12 semester hours of instruction per academic term, except in cases where the student requires fewer hours to complete the course of study;
>
> At other postsecondary schools, a full course of study consists of 12 hours of study per week;
>
> In vocational and nonacademic programs, a full course of study must consist of at least 18 hours of study per week if classroom instruction is the dominant part of the course, or 22 hours of study per week if the dominant part of the course is in the laboratory or workshop; and
>
> In vocational and nonacademic high schools, a full course of study is the minimum hours the school sets for progress toward graduation.

What should I know about finding a program?

Before a foreign student can obtain M-1 status they must first receive a Form I-20

issued by the school that provides information about the school and the student. Before the school can issue an I-20 the following conditions must be met:

The student must have made a written application to the school
The school must have received the student's academic record and evidence of financial support
The student must meet the school's qualifications for admission, including any English language proficiency
The student must have been accepted by the school

How do I obtain the M Visa and what are its conditions?

After the school issues the I-20, it sends it to the student abroad, who then applies for a visa at their local US consulate. To make the visa application the student must present the I-20, their passport, the necessary visa fee (which varies from location to location), Form OF-156 Application for a Nonimmigrant Visa, and evidence of financial support. Unless there are unusual circumstances, the visa will generally be issued on the day the application is submitted, or only a few days afterward. A prospective student who has not yet decided on a school can request a B-2 prospective student visa, and once in the US they can seek M-1 status. Note, however, that is a prospective student does make his or her intentions clear at the time of entry, the INS could very well deny the case.

After receiving the visa, the student may make an application for admission at a US port of entry. The student must present their passport, visa, evidence of support and the I-20. If admission is granted, the INS will keep one copy of the I-20 and return the second to the student. The student is issued an I-94 Arrival/Departure Record that contains a unique control number. This number is noted on the I-20, and becomes a sort of permanent identifier. For example, if an F-1 student leaves the US, upon reentry they are given a new I-94. However, the number on it is crossed out and replaced with the initial number noted on the I-20.

M-1 students are admitted for a period of one year, or for the amount of time required to complete the course of study. They are also given 30 days grace period in which to depart following completion of the course.

Can I transfer to another school on an M Visa?

M-1 students are not permitted to change schools after six months, unless there are circumstances beyond their control. Before six months, transfers are possible, although the student must take care to ensure that they do not fall out of status. The application to change schools is made on Form I-539. The student must include their I-20s from both their old and new schools. Failure to do any of the following will render the student out of status:

Transfer to a new school without submitting a transfer application,
Enrolling in the new school before the INS approves the transfer unless 60 days have passed since submission of the transfer application,
Failure to pursue the full course of study at the school last approved by the INS without seeking reinstatement.

Is it possible to obtain an extension of stay on an M Visa?

To obtain an extension of stay, the student must submit Form I-538 to the INS along with a copy of Form I-20. The student must show that they have maintained valid status and will continue to do so through the period of the extension. The extension may be granted for a period of up to one year, or the length of time required for completion of the program. If the request for an extension is denied, the student has a period of time, between 10 and 30 days, in which they must leave the US. If they do not leave, they are subject to being placed in deportation proceedings.

Am I allowed to work on an M Visa?

M-1 students are not authorized to accept on- or off campus employment. They are, however, allowed to participate in practical training following the completion of their course of study.

A request for practical training must be submitted no more than 60 days before the completion of studies, and no later than 30 days after completion. The period of practical training is determined by authorizing one month of training for each four-month period of study, however, the practical training is not to exceed six months.

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3. Ask Visalaw.com

1) Question:

I have an H1-B. I also have a greencard application which is pending based upon an I-140 that was filed under the EB3 category, with a priority date from 2006. The I-140 was filed for the position of Supervisor when I only had a Bachelors degree. I have since earned an MBA and have been promoted to the position of Manager. Am I now eligible to change my application from the EB3 category to the EB2 category since now I have a Master's degree and a different role within the company?

Answer:

While you cannot change the category of the current petition, it may be possible for your company to file a new PERM application and immigrant petition (I-140) for you under the EB2 category.

The question is whether the new position requires an MBA or the equivalent. Not only must you have a Masters degree or the equivalent, but the position must also require your Masters degree as a minimum qualification for the position. So if your position requires an MBA, it may be possible for your company to reapply for you under the EB2 preference category. But if you did not receive the MBA until after you started in the new position you are going to have a hard time showing that the MBA was required for the position, since you did not have the MBA when you started in the position.

Even if the new position is eligible to be filed under the EB2 category, since the original PERM application was filed under the EB3 category, your company will have to go through the PERM process again advertising the new position with the requirement of an MBA or the equivalent for the position. But if the original I-140

petition has been approved, you should be able to retain the priority date from the original petition to be counted toward the new petition.

2) Question:

Can a company ask an employee to pay for the attorney fees and filing fees for the company to sponsor the employee for an H-1B visa?

Answer:

There are several fees and costs associated with a company filing an H-1B petition. These include the legal fees, various expenses such as the cost of translations, and filing fees. There are several filing fees: 1) the I-129 filing fee (currently $320); 2) the Fraud Prevention Fee ($500 one-time fee); 3) the Training Fee ($750 or $1,500 depending on the size of the company); and 4) the Premium Processing Fee (an optional $1,000 fee to have the petition adjudicated in 2 to 6 weeks).

These costs are the responsibility of the company. In part, these costs are a penalty put on the company to make the H-1B less attractive so that companies will be more inclined to hire a U.S. worker rather than an H-1B employee. However, under certain circumstances some of the costs can be paid by the employee.

First, the company must pay the Fraud Prevention Fee and the Training Fee.

Second, the employee may not pay any of the other costs if it would bring the employee's wage below the Required Wage. That includes attorneys fees.

All H-1B employees must be paid no less than a Required Wage. The Required Wage is the higher of either the local Prevailing Wage for the position, generally as determined by the DOL, or the Actual Wage paid to other employees of the company in comparable positions. This rule is required so that companies do not hire H-1B employees at a lower wage than they would hire U.S. workers, thereby suppressing wages.

The costs paid by the employee toward the H-1B petition will be counted as a reduction in the employee's wages. This final wage must not be lower than the Required Wage.

USCIS is now conducting site visits for many H-1B employers and part of their questioning is about who paid the costs for the employee's H-1B petition.

3) Question:

My wife and I are U.S. Permanent Residents. I have been spending a lot of time outside the U.S. due to work. My wife and I recently had a baby girl while outside the U.S. What is the baby's status? Is she a Permanent Resident like us, or do we have to file a petition for her to become a Permanent Resident?

Answer:

This is an important question, because depending on whether or not this is handled correctly, this could be a very simple process, or it could have tragic results.

There is a little-known rule in the immigration regulations that says that where a Permanent Resident woman gives birth abroad, the child is eligible to be admitted to the U.S. as a Permanent Resident, but only if the mother is 1) returning to the U.S. as a Permanent Resident and 2) brings the child with her on her first trip back to the U.S. after the child is born and 3) this trip is before the child's 2nd birthday.

Unfortunately many Permanent Residents do not know this rule and they either take a trip back to the U.S. without the child or they wait until after the child's 2nd birthday to bring the child to the U.S. Where this happens, the child is not eligible to enter the U.S. as a permanent resident under this rule, and the parent must file a petition for the child to enter the U.S. as a Permanent Resident. This can result in hardship for the family, as it can take many years for a visa to become available for a petition for the child of a Permanent Resident.

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4. Border and Enforcement News:

Border patrol faces misconduct accusations

The Los Angeles Times reports that the Justice Department's prosecution of a Border Patrol agent on civil rights charges ended in a mistrial because a juror was taking notes in violation of the judge's instruction. Agent Jesus Diaz Jr. is charged with torturing a teenaged drug smuggler in 2008 and remains on unpaid suspension as he awaits a retrial. In the last 18 months, five Border Patrol agents have been accused or convicted of sex crimes and a number of other agents are facing misconduct cases. In June, Agent Eduardo Moreno pleaded guilty to a federal civil rights charge for assaulting a migrant at processing center in Arizona.

One reason cited for the rise of misconduct cases in the Border Patrol is the fact that the agency has grown from 4,000 agents in the early 1990s to more than 21,000 today. However, because the Border Patrol does not publish information about when and under what circumstances it uses force, criminal cases have been very diffuculy to prosecute and only eight have been filed since 2004.

http://www.latimes.com/news/nationworld/nation/la-na-border-patrol-20100908,0,5346494.story

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Fewer law enforcement officers become immigration agents

USA Today reports that a federal program that authorizes local police officers to act as immigration agents, known as 287 (g), has seen a large decrease in numbers. While 72 agencies have signed up for the program since it was installed in 2002, only 10 have done so in 2009 and 2010.

Some law enforcement agencies are reluctant to join the program because they say it makes Hispanics suspicious of police and less willing to cooperate with investigations. Some critics of the program say it leads to racial profiling, while others blame the economic downturn for overstretching some law enforcement agencies' resources and making a less labor-intensive ICE program, Secure Communities, a more viable option. Supporters, on the other hand, say the 287 (g) program is necessary due to the lack of tough federal enforcement.

http://www.usatoday.com/news/nation/2010-09-14-immigration_N.htm
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Houston native wrongly deported for 85 days

The Houston Chronicle reports that U.S. Customs and Border Patrol agents cleared 19-year-old Luis Alberto Delgado to enter the United States 85 days after he was detained by immigration officials and forced to sign papers removing him to Mexico. Delgado was detained in South Texas on June 17th after a routine traffic stop while U.S. Border Patrol agents questioned him about his citizenship.

Although Delgado presented his birth certificate, Social Security Card, and Texas identification card, the agents doubted the validity of these documents because he did not speak English well. Delgado was eventually pressured to sign paperwork that resulted in his removal to Mexico. Since returning to Houston, Delgado has learned that his construction job is gone and he has hired immigration attorney Isaias Torres to represent him as he files grievances against the U.S. government.

http://www.chron.com/disp/story.mpl/special/immigration/7199653.html
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5. News from the Courts:

DOJ sues Arizona colleges for employment discrimination

The Washington Times reports that the Justice Department has accused the Maricopa County Community College District in Phoenix, Arizona of illegally asking foreign nationals to show their green cards before being offered jobs. The lawsuit alleges that the school district exhibited 'a pattern of discrimination by imposing unnecessary and discriminatory hurdles to employment for work authorized non-citizens.'

The lawsuit identifies 247 non-citizens who were required to present additional work authorization documents while U.S. citizens were not required to do the same. The lawsuit was filed with the Office of the Chief Administrative Hearing Officer within the Executive Office for Immigration Review and is seeking a penalty of $1,100 for each individual.

http://www.washingtontimes.com/news/2010/sep/7/justice-sues-arizona-in-green-card-hurdles/
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Fremont, Nebraska law questioned in state court

KETV (Omaha, NE) reports that U.S. District Judge Laurie Smith Camp will ask the Nebraska Supreme Court to consider whether cities have power under the state's law to restrict who can rent property or be employed for work. If the high court can answer that, the judge said she will answer questions brought forth in lawsuits against Fremont's immigration ordinance by the American Civil Liberties Union and the Mexican American Legal Defense & Educational Fund.

http://www.ketv.com/r/24924143/detail.html
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Appeals court stops Pennsylvania city's immigration law

The Associated Press reports that a federal appeals court has upheld a ruling that Hazelton, PA may not enforce regulations against illegally present immigrants. These provisions included denying business permits to companies that employed legally present immigrants, fining landlords who rented to them, and requiring tenants to register for a rental permit. The lawsuit was brought by immigrant advocacy groups and claimed that the proposed measures interfered with the federal government's power to regulate immigration.

http://www.google.com/hostednews/ap/article/ALeqM5hkWhluTKRQkgDRIl8zJOqQQSeo-gD9I4FDDG5
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6. News Bytes:

Virginia DMV stops accepting federal work permit card

The Associated Press reports that the Virginia Department of Motor Vehicles will no longer accept Employment Authorization Documents as proof of residence for obtaining a driver's license. The order was issued by Governor Bob McDonnell in response to an August car crash that killed a nun and involved a 23-year-old Bolivian national Carlos Martinelly Montana with previous drunken driving convictions. Montano had been able to obtain a Virginia license even though he faced deportation proceedings.

http://www.washingtontimes.com/news/2010/sep/7/va-no-longer-accepting-employment-authorization-do/
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Sherriff's New Hampshire visit prompts '12 speculation

The Hill reports that Arizona Sherriff Joe Arpaio is headlining a Republican Party event in New Hampshire, prompting speculation that he may be considering a presidential campaign in 2012. Sherriff Arpaio has risen to the forefront of the national immigration debate for his tough policies and has become a spokesperson for advocates of stricter immigration laws. These policies have also brought a civil rights investigation into possible discriminatory practices by the Department of Justice and a lawsuit for refusing to cooperate with investigators.

http://thehill.com/blogs/ballot-box/presidential-races/117847-sheriff-joe-arpaio-heads-to-new-hampshire-sparking-presidential-talk
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Study: effects of birthright citizenship repeal

According to a recent study reported in *The Wall Street Journal*, the abolition of birthright citizenship would actually increase the number of illegally present immigrants in the United States. Jennifer Van Hook, a demographer and professor and Pennsylvania State University, noted that even when considering an immediate halt in new immigration, a repeal of birthright citizenship would still cause in increase in the number of illegally present immigrants. Analysis by the Migration Policy Institute estimated the number of illegally present U.S-born individuals would be about five million by 2050 if birthright citizenship were repealed in the near future.

Homeland Security to test iris scanners

USA Today reports that the Department of Homeland Security plans to test iris scan technology that will store digital images of people's eyes in a database. DHS will run a two week test in October at a Border Patrol station in McAllen, Texas where iris scans will be used on illegally present immigrants.

While the iris scan technology is seen as a quicker alternative to fingerprints, its use has generated criticism from the American Civil Liberties Union. ACLU lawyers fear that iris scanners could be used covertly to identify an individual at a distance. They argue that this technology would allow authorities to track an individual without his knowledge.

http://www.usatoday.com/tech/news/surveillance/2010-09-13-1Airis13_ST_N.htm?POE=click-refer
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U.S. Embassy will process some visas in Mexico City

The Associated Press reports that the U.S. Embassy in Mexico City will begin processing some immigrant and adoption visas in response to security threats that caused the brief closing of the consulate in Ciudad Juarez in August. Starting October 1st, the embassy will process F4 visas for siblings of U.S. citizens who have filed petitions on their behalf.

http://www.chron.com/disp/story.mpl/ap/tx/7199455.html
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7. Washington Watch:

Democrats fail in attempt to add DREAM Act to defense bill

As noted in Openers, Senate Majority Leader Harry Reid (D-NV) failed in his attempt to attach the DREAM Act as an amendment to the Defense Department authorization bill. The DREAM Act provides a path to citizenship for young undocumented immigrants who have attended college or joined the military.

The measure was filibustered by Republicans and Democrats fell four votes shy of the number needed to keep the measure moving. It is not clear yet how Senator Reid will proceed.

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Senator Kerry pitches softer approach to immigration raids

Politico reports that Senator John Kerry (D-MA) has authored the 'Families First Immigration Enforcement Act of 2010', a bill that requires federal authorities to take a more benevolent approach when enforcing immigration laws. The bill calls for ICE to give advanced notice before it conducts an immigration raid so state agencies can provide adequate transportation for the detainees. The bill also requires ICE to release elderly, sick, pregnant, or other vulnerable detainees and to hold detainees in local facilities to prevent them from being sent far away from their families.

http://www.politico.com/blogs/glennthrush/0910/Kerry_pitches_softer_approach_to_immigration_raids.html
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Napolitano: It's Congress' turn to act on immigration

The San Antonio Express News reports that Homeland Security Secretary Janet Napolitano said that an extraordinary amount of manpower and technology has secured the U.S. border with Mexico, clearing the way for Congress to pass comprehensive immigration reform. Napolitano criticized lawmakers for continuously 'moving the goal posts' on immigration reform when the Obama administration has met every benchmark set by Congress. Napolitano called for a bipartisan effort to implement a fair system that provides a path to citizenship for illegally present immigrants.

http://www.mysanantonio.com/news/politics/Napolitano_Its_Congress_turn_to_act_on_immigration_102829304.html
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Report: Immigrant children high achievers in school

The Providence Business News reports that two Brown University professors conducted a recent study entitled 'The Immigrant Paradox in Children's Education & Behavior: Evidence from New Research'. According to the report, first-generation immigrant children display lower rates of juvenile delinquency than children of second or third generation families. In addition, the reports affirms some first-generation immigrant children outperform second and third-generation children on standardized test and have a more positive attitude towards school and teachers.

The professors have called their findings the 'immigrant paradox', citing the widespread stigmatization of immigrants as a detriment to society. The professors attribute the paradox to an environment created by immigrant families and communities that emphasizes the benefits of education and social inclusion.

http://www.pbn.com/detail/52371.html
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8. Updates from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- OBAMA: DON'T EXPECT ADMINISTRATIVE ACTIONS TO AVOID GRIDLOCKED CONGRESS
- H-1B EXHAUSTION TARGET: MARCH 15, 2011
- DREAM ACT CAN'T PROCEED
- CRITICAL DREAM ACT VOTE THIS AFTERNOON
- RARE MOMENT OF HONESTY
- WHY ATTACHING THE DREAM ACT TO THE DEFENSE BUDGET BILL IS APPROPRIATE
- 500 EMPLOYER AUDITS COMING THIS WEEK
- SEIU UNION AND PROGRESSIVE ACTIVISTS TO BLAST CONGRESS ON MONDAY
- KOBACH MOVING ON TO A NEW AREA OF UNCONSTITUTIONAL LAW DRAFTING
- BENNETT AND HATCH TO VOTE NO ON DREAM ACT
- GUTIERREZ: SUPPORT FOR RAHM'S MAYORAL RUN TIED TO DREAM ACT
- H-1B EXHAUSTION TARGET: MARCH 15, 2011
- IS DREAM BACK ON THE TABLE?
- NYT EDITORIAL: REVAMP LEGAL IMMIGRATION SYSTEM WITH AUCTIONS
- NATIONAL PARKS ACROSS AMERICA TO HOST NATURALIZATION CEREMONIES
- CHAMPION TENNIS PLAYER REGULARLY SUBJECTED TO GRILLING AT US PORTS OF ENTRY
- CALL FOR INFORMATION
- CONSULATES SUDDENLY TARGETING K-1 FIANCÉ APPLICANTS
- IS ENSIGN READY TO BE THE NEXT GOP SENATOR TO BACK IMMIGRATION REFORM?
- SHERIFF JOE TO RUN FOR PRESIDENT?
- OCTOBER VISA BULLETIN IS OUT
- APPEALS COURT STRIKES DOWN HAZLETON, PA LAW
- DHS TO DEVELOP SINGLE, SEARCHABLE IMMIGRATION DATABASE
- ONE WAY TO ADDRESS THE OBESITY EPIDEMIC
- H-1B EXHAUSTION TARGET: MARCH 8, 2011

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

SIM VALLEY, CA PASSES E-VERIFY ORDINANCE

Visalaw Fashion, Sports, & Entertainment Blog

- ACTRESS LONGORIA PUSING PRO-IMMIGRATION MEASURES IN HILL VISIT
- CHAMPION TENNIS PLAYER REGUALRLY SUBJECTED TO GRILLING AT US PORTS OF ENTRY

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9. State Department Visa Bulletin: October 2010

Number 25
Volume IX
Washington, D.C.

A. STATUTORY NUMBERS

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

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

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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

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

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e)apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, 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	INDIA	MEXICO	PHILIPPINES
1st	15FEB06	15FEB06	15FEB06	15DEC92	01MAR97
2A	01APR10	01APR10	01APR10	01JAN10	01APR10
2B	01APR05	01APR05	01APR05	22JUN92	01SEP02
3rd	01MAY02	01MAY02	01MAY02	22OCT92	01MAR95
4th	01DEC01	01DEC01	01DEC01	08DEC95	01APR91

*NOTE: For October, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN10. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT the MEXICO** with priority dates beginning 01JAN10 and earlier than 01APR10. (All 2A numbers provided for the MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Employment-Based	**All Chargeability Areas Except Those Listed**	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
1st	C	C	C	C	C
2nd	C	22MAY06	08MAY06	C	C
3rd	08JAN05	08NOV03	15JAN02	22APR01	08JAN05
Other Workers	22MAR03	22MAR03	15JAN02	22APR01	22MAR03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C

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

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

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for

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

For **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	

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

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

For **November**, 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	12,000	Except: Egypt 9,300 Ethiopia 11,000 Nigeria 10,000
ASIA	10,750	
EUROPE	12,500	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	650	
SOUTH AMERICA, and the CARIBBEAN	675	

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

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

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