

Siskind's Immigration Bulletin – May 29, 2009

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

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1. Openers

Dear Readers:

The spring is usually pretty quiet for law firms when it comes to filing H-1B petitions. It has been years since the H-1B cap was available in May and in the last two years, so many applications were received on the first day of availability – April 1st – the government had to conduct a lottery to claim the visas.

But 2009 is no ordinary year. The world is mired in the worst recession in 75 years and unemployment in the US has doubled in the last year to nearly 9%. And that has caused H-1B application numbers to drop. USCIS has also been taking a much tougher line in the adjudication of cases, thus discouraging many applicants. And the US government also has been investigating much more vigorously fraud and abuse in the H-1B program and that presumably is depressing the number of applications – particularly from so-called job shops. And that's a good thing since in the long run it will improve confidence in the program and also free up visas for firms that use the program legitimately.

How steep is the drop in demand for H-1B visas? USCIS has been reporting the figures every week since early April and the initial number was shocking – while the master's cap of 20,000 was hit quickly, only 40,000 of 65,000 of the regular H-1B quota of visas were used. And seven weeks later, only 5,500 additional visas have been claimed.

USCIS has not released data yet on who is NOT applying for H-1B visas. However, anecdotal evidence points to a major drop in applications by "job shops" that have been the subject of a great deal of scorn by anti-H-1B groups. Some of the criticism stems from abusive behavior by various job shops such as not paying required salaries, not sending workers to the appropriate locations, submitting fraudulent documents on worker credentials, etc. And USCIS has recently begun cracking down with various investigations in to problem practices. The combination of the bad economy and tougher enforcement is likely causing some of these firms to either scrap or curtail their H-1B filings.

The failure to reach the H-1B cap is obviously great news for some employers. For example, physician employers still are facing a shortage and the ability to file H-1Bs will help enormously. Politically, the news of the reduction in H-1Bs could play out in various ways. Pro H-1B groups might argue that this is evidence that H-1Bs are not taking jobs away from American workers. If H-1B workers were really cheaper, wouldn't employers be firing MORE Americans in order to save money right now? On the other hand, some of the pressure to raise the H-1B cap will be off and that is bad news for when the economy recovers. In the early part of this decade, something similar happened when the H-1B cap was allowed to be reset back to 65,000 (from 195,000 per year) during a recession and then when the economy recovered, the H-1B shortage was worse than ever.

When will the H-1B numbers run out? Right now, only a few hundred applications are being filed each week which could mean the visas are available for many more months.

Many of you listened in on our very first national teleconference last week where I outlined 10 immigration issues making me lose sleep at night. The call went well, but our plan to record and post the call on the web site did not work out as planned due to a technical glitch. We've conducted another conference on May 26th on the impact of layoffs on immigrants. To stream or download the recording, go to <http://visalaw.podbean.com>. To sign up to be a part of our future teleconferences, go to <http://www.visalaw.com/teleconform.html>

Earlier this month I was also a speaker at two conferences. Last Friday, I spoke on Internet marketing ethics to the Chicago Chapter of the American Immigration Lawyers Association. And the following day, I spoke to the American Association of Clinical Endocrinologists on the subject of physician immigration.

Finally, as always, we welcome your feedback. If you are interested in becoming a Siskind Susser client, please call our office at 901-682-6455 and request a consultation. We are a national immigration law firm and work on a broad range of immigration matters for clients locating across the country.

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2. The ABC's of Immigration, Employer Compliance Series: Part VI – Immigration Reform and Control Act Compliance Tips

What are the best ways to prevent being prosecuted for I-9 employer sanctions violations?

Employers can minimize the chances of being found to have violated IRCA's employment verification rules by undertaking several steps:

- Appoint an IRCA compliance officer and establish an IRCA compliance policy.
- Conduct a preventative internal audit of the I-9 files to see if there is a pattern of violations requiring remediation. Such an audit should be conducted by, or under the close supervision of, an immigration lawyer familiar with IRCA.
- Establish a regular training program for human resource professionals regarding I-9 compliance rules. The training should be conducted by an attorney familiar with IRCA rules.
- Establish uniform company policies regarding I-9s. Should copies of documents be retained or not? What kinds of questions can be asked about national origin and citizenship status before the date of hire? Is their uniformity in terms of when the employment verification is commenced? Are employees all treated the same when there is a social security mismatch letter?
- Establish a re-verification tickler system to ensure I-9s are checked in a timely manner.
- Centralize the I-9 Form recordkeeping process.
- Establish a process for human resource professionals to check quickly with counsel when there are any problems in the verification process.
- Establish a backup system to ensure timely compliance with I-9 rules when a human resource professional is out of the office.
- Segregate Forms I-9 from personnel records

- Consider using an electronic I-9 product in order to automate the collection of information, speed up the production of information in the case of a government audit and also ensure timely re-verification of I-9 forms

What are the best ways to avoid immigration-related employment discrimination?

The DOJ's Office of Special Counsel suggests the following ten steps be taken to avoid liability under IRCA's anti-discrimination rules:

- Treat all people the same when announcing a job, taking applications, interviewing, offering a job, verifying eligibility to work, and in hiring and firing.
- Accept documentation presented by an employee if it establishes identity and employment eligibility; is included in the list of acceptable documents; and reasonably appears to be genuine and to relate to the person.
- Accept documents that appear to be genuine. You are not expected to be a document expert, and establishing the authenticity of a document is not your responsibility.
- Avoid "citizen-only" or "permanent resident-only" hiring policies unless required by law, regulation or government contract. In most cases, it is illegal to require job applicants to be U.S. citizens or have a particular immigration status.
- Give out the same job information over the telephone to all callers, and use the same application form for all applicants.
- Base all decisions about firing on job performance and/or behavior, not on the appearance, accent, name, or citizenship status of your employees.
- Complete the I-9 Form and keep it on file for at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later. This means that you must keep I-9s on file for all current employees. You must also make the forms available to government inspectors upon request.
- On the I-9 Form, verify that you have seen documents establishing identity and work authorization for all employees hired after November 6, 1986, including U.S. citizens.
- Remember that many work authorization documents (I-9 Form lists A and C) must be renewed. On the expiration date, you must re-verify employment authorization and record the new evidence of continued work authorization on the I-9 Form. You must accept any valid document your employee chooses to present, whether or not it is the same document provided initially. Individuals may present an unrestricted Social Security card to establish continuing employment eligibility.
 - Permanent resident cards should not be re-verified
 - Identity documents should not be re-verified
- Be aware that U.S. citizenship, or nationality, belongs not only to persons born in the United States but also to all individuals born to a U.S. citizen, and those born in Puerto Rico, Guam, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, and Swains Island. Citizenship is granted to legal immigrants after they complete the naturalization process.

Should a company have an Immigration and Reform and Control Act compliance officer?

Yes. Employers should ensure that an official at the company is thoroughly trained in IRCA's employer sanctions and anti-discrimination rules and is able to supervise all persons charged with handling Forms I-9. The officer should be responsible for the following additional functions:

- ensuring that Form I-9 records are properly retained
- ensuring that a reliable system is in place to re-verify Forms I-9
- act in concert with employees, managers, subcontractors, customers, recruiters, and others to ensure that the company's IRCA compliance policy is followed
- work with outside counsel to ensure that regular Forms I-9 preventative audits are conducted
- work with outside counsel to conduct regular training programs for human resource professionals and others at a company charged with hiring employees
- consult with counsel to properly respond to Social Security Mismatch letters
- work with outside counsel to establish an action plan should the company be the subject of an audit or investigation by DHS, DOL, or OSC
- ensure that contractors supplying labor are properly screened to ensure IRCA compliance
- oversee the company's IRCA compliance policy to ensure it is readily available and periodically updated by counsel

Should a company have an Immigration and Reform and Control Act compliance policy?

Yes. Employers should establish a standard IRCA compliance policy that is included with the company's other personnel policies and materials. The IRCA compliance policy should:

- Name the company's IRCA compliance officer,
- Advise on complying with IRCA's employer sanctions and anti-discrimination rules.
- Contain rules for working with outside contractors,
- Set training requirements for those completing the Forms I-9,
- Have a zero tolerance policy for the employment of individuals who cannot comply with IRCA's employment verification rules,
- Establish the timing and procedures for regular internal Form I-9 audits,
- Contain rules on who has access to Form I-9 records,
- List procedures for using E-Verify,
- Set protocols for interacting with government officials in connection with IRCA compliance, and
- Outline re-verification procedures.

Should companies have special Form I-9 policies for dealing with outside contractors?

Over the last few years, ICE has increasingly targeted companies that use contractors employing unauthorized employees. IRCA specifically states that a person or entity who uses a contract to obtain the labor of an alien knowing that the alien is unauthorized to work shall be considered to have hired the alien for employment in the United States.

This was the basis of the government's targeting of Wal-Mart in 2005. Sixty Wal-Mart stores were raided by ICE and 245 unauthorized employees were discovered working as night janitors and cleaners. The employees were actually the employees of a contracting firm and the government argued that Wal-Mart was responsible for the contractors' actions. The retail giant eventually paid an \$11 million fine to resolve the dispute.

Employers are also, as noted above, sometimes held to be the actual employer of unauthorized employees as opposed to the contractor that ostensibly employs them. The lesson is that employers may very well need to focus on IRCA compliance by its contractors.

Given the risks associated with using contract labor, many companies are beginning to demand that their contractors adhere to IRCA and provide documentation of their compliance. Consult with your attorney regarding developing appropriate protective measures.

How do mergers, acquisitions and other major changes affect Form I-9 requirements?

While a closing may be a cause for celebration at a company, it can also be the cause of a nightmare for a company since it can instantly render all completed I-9s for an acquired company invalid. An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets may accept the I-9s previously prepared by the predecessor company.

However, the Forms I-9 should be checked in the due diligence process to ensure that the acquired forms are in compliance, as any errors or omissions on the adopted forms become the responsibility of the acquiring employer. Employers should consider adding Forms I-9 to a merger checklist and have all employees of the combined company complete new forms on the day of closing or beforehand. In any case, an immigration lawyer should be consulted in any merger, acquisition, or divestiture to ensure that the transaction does not result in immigration problems.

Can an employer who does not wish to assume an acquired company's liability for Form I-9 violations re-verify the entire work force?

Yes. In such a case, the succeeding employer may have all employees complete new Forms I-9. The benefit of this is that employers will have the opportunity to correct past problems and ensure compliance. Also, if any employees requiring a visa transfer as a result of the merger or acquisition, the employer will have an additional chance to discover the issue.

3. Ask Visalaw.com

If you have a question on immigration matters, write

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

Q - If a teacher from another country wants to come to the US on an H-1B where the sponsor/employer is a teacher placement agency contracted to a school district in the US to provide teachers, must that teacher meet the qualifications for a teaching certificate in the state in which he/she will work before the visa will be issued?

A - H-1B applicants must show they are qualified to perform the job for which they are being sponsored for an H-1B. For a teacher, you would need to show that you have a license and meet any other required certifications. If passing certain exams is required for licensure, you will need to pass those exams.

Q - I became a naturalized citizen in 2003. After that, I brought my 7 year old son as a lawful resident in 2005. Is he a US citizen?

A - The child is a U.S. citizen if:

- 1) the child is under 18 years old
 - 2) the child has been admitted to the U.S. as a Legal Permanent Resident (green card holder)
 - 3) the child is living with you and you have legal custody of the child
 - 4) you are a U.S. citizen
- and
- 5) you are the child's biological parent.

Q - I am from Macedonia. My sister filed form I-130 for me and my family in 1995. My number was available in May 2008 and now I'm at the end of consular processing. When my sister filed form I-130, my children were 11 and 10 years. When the number was available, they were 24 and 23 years. Do my children benefit from the Child Status Protection Act?

A - Whether your children benefit from the CSPA depends on how long it took for USCIS to approve the I-130 (The time from the notice date on or the receipt notice or priority date till the notice date on the approval notice).

You would subtract that length of time from their age on May 1, 2008, the date you said that a visa became available. If the new calculated age is below 21 then they can benefit from the CSPA, but only if a visa application is filed within one year.

So if they are eligible under the CSPA you will want to file the Form DS-230 by the end of this month. If you do not, then USCIS can claim that your child has lost the ability to benefit under the CSPA. There is case law that disagrees with the USCIS's harsh stance on this, but so far USCIS has refused to acknowledge those cases.

Q - Recently my TN visa request was rejected because CBP says only Canadian Diplomas are valid. And my diploma is from out of North America. My degree is not in computer science. My degree equivalency made of my degree+diploma is also not acceptable for TN.

My main question is that are non-canadian diplomas or their equivalency not valid?

A - The CBP officer is incorrect if he states that only Canadian or US degrees are acceptable. The regulations permit other countries' degrees to be submitted. 8 C.F.R. §214.6(d) states

"Degrees received by the applicant from an educational institution not located within Canada, Mexico, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

If you have appropriate educational credentials evaluations documenting equivalency, then you should be eligible.

Q - I am a U.S born citizen, my husband entered the U.S at 22 yrs old. He got permanent residency at the age of 28. We are applying for his naturalization this month. We were told upon applying for his permanent green card (last year) that he would need to be registered for the selective service to then apply for citizenship. I sent his application to the selective service as soon as we found out, but he of course got denied (being already 29 years old). I am afraid we will have problems with the citizenship app because of this. What should we do?

A - You actually should be okay. You need to register upon acquiring permanent residency IF you're under 26 at that point. That was not the case for your husband.

4. Border and Enforcement News

Immigration advocacy groups are requesting the Obama administration reconsider the screening process at border posts by limiting questions about Americans' political beliefs and religious practices and establishing a process for US citizens and residents who are mistakenly included on terrorist watch lists to clear their names. *The Washington Post* reports that the Asian Law Caucus of San Francisco released a report citing over 40 complaints from US citizens and immigrants that it has received since 2007 as evidence of what it calls "a much wider pattern of profiling and discrimination at US borders."

Specifically, the report says "many people in America's Muslim, South Asian, and Middle Eastern communities have come to expect harassment and discriminatory treatment at our nation's doorstep" when reentering the US. In response, Muslim

Advocates, the advocacy arm of the National Association of Muslim Lawyers, issued a report saying that citizens should not be threatened with detention for not answering questions that go beyond establishing their legal status to enter the US.

A Department of Homeland Security spokesperson declined to comment, saying that the department had not seen the reports, but acknowledged that Secretary Janet Napolitano had ordered a "wide-ranging review of all of our border security immigration policies and procedures," which is ongoing.

In an effort to crack down on undocumented immigrant labor, the Department of Homeland Security announced it intends to step up enforcement efforts against employers who knowingly hire such workers, according to *The New York Times*. Under new guidelines issued last week to Immigration and Customs Enforcement field offices, agents will be instructed to focus their prosecution towards employers and supervisors. Senior officials of DHS pledged to continue the process of detaining undocumented workers in workplace raids. But the officials said they hoped to depart from past practices by using these detainees as an effort to build criminal cases against employers.

"Enforcement efforts focused on employers better target the root causes of illegal immigration," say the new DHS guidelines. "ICE must prioritize the criminal prosecution of actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal work force."

Among the most significant of the new guidelines is one in which agents are instructed to "obtain indictments, criminal arrest or search warrants, or a commitment form a US attorneys office to prosecute the targeted employer, before arresting employees for civil immigration violations at a work site."

The Obama Administration announced that has made a selection for director of US Citizenship and Immigration Services, with *The Los Angeles Times* reporting that former federal prosecutor Alejandro Mayorkas has been tapped to fill Department of Homeland Security's immigration agency. The Cuban-born Mayorkas was selected because his "expertise covers a wide array of issues critical to the department, including law enforcement, civil rights, computer crime, and international money laundering" said DHS Secretary Janet Napolitano.

Optimistic about the pick is Robert Bonner, the first commissioner of Customs Border Protection. Bonner said Mayorkas had the skills to run the overburdened and underfunded immigration court system, a key component to any overhaul of US immigration policy. "Improving the capabilities of USCIS is critical to dealing with immigration reform," said Bonner. "I have the highest regard for Ali, who is the right person and at the right time to make CIS functional. He has the personal and management skills that will be needed for what is one of the most difficult jobs in Washington."

Mayorkas was the US attorney for the Central District of California from 1998 to 2001. Afterwards, he served as a litigation partner at LA-based O'Melveny and Myers.

Customs and Border Protection officials announced that they plan to begin construction later this month on the long-planned "virtual fence" among the US-Mexico border, *The Associated Press* reports. Estimates from the organization suggest that the fence could completely cover the nearly 2,000 mile border within five years.

The project will begin with the construction of the first permanent towers, equipped with sensors, cameras and communications gear to detect drug smuggling and undocumented border crossing, and will be built along 53 miles of Arizona's Tucson sector, according to Mark Borkowski, the CBP official in charge of the program. After these initial towers are built, more towers will be constructed along the remaining 320 miles of the Arizona border, before setting up virtual fencing in New Mexico and California. The electronic monitoring is meant to serve as a replacement to physical fencing and vehicle barriers that have already been built along 624 miles of the border.

The virtual fence is designed to use radar and cameras with about a six-mile range, including infrared devices and other technologies and detect smuggling attempts. A prototype virtual fence, monitoring 28 miles of Arizona border, has been in use since late 2007. This practice run was criticized by the GAO, who last year told Congress that the fence did not fully meet expectations and that its design wouldn't be used as the basis for future developments.

Borkowski declined to estimate how much the virtual fence project will cost but comments made by House Homeland Security Committee officials suggest that the estimate cost will be about \$6.7 billion by 2014.

The Department of Homeland Security recently requested a \$55.1 billion budget for fiscal year 2010, with some the budget intended to fund border security initiatives and bolster immigration laws enforcement, according to *United Press International*.

Specifically DHS Secretary Janet Napolitano said the proposed budget would allocate \$112 million to strengthen employment eligibility verification systems, \$139 million to expedite the application process for new legal immigrants, and \$144.9 million to support implementation of the Western Hemisphere Travel Initiative.

A bipartisan group of senators have expressed concern with President Obama's budget cut to a program that reimburses states for jailing undocumented immigrants, according to *The San Antonio Express*. The proposed cut aims to eliminate the State Criminal Alien Assistance Program, which provides financial support to government facilities that handle immigration violations; last year, the program provided \$118 million for California and over \$50 million for Texas to jail undocumented immigrants.

Sens. Kay Bailey Hutchison & John Cornyn [R-TX] joined Sens. Dianne Feinstein & Barbara Boxer [D-CA], Sen. Jeff Bingaman [D-NM] and Sen. Jon Kyl [R-AZ] joined together to send a letter to Senate leaders requesting the funding for the program remain in financial appropriation bills. "Not only does this disproportionately affect border states, but for every dollar less that SCAAP reimburses states, a dollar less is available for critical public safety services in the affected communities," Hutchison said.

5. News From the Courts

Last month, a US District judge ordered DHS to reopen the cases of 22 people who were denied green cards because their American spouses died during the application process. *The Associated Press* reports that Judge Christina A. Snyder ruled the so-called "widow penalty" doesn't necessarily require that immigrants' permanent residency applications be denied when their American spouses die. Citing an earlier decision by the 9th Circuit Court of Appeals, Snyder held that applicants don't lose their status as spouses of US citizens if the death occurs before the government rules on their applications.

The decision, if made final, would be a victory for over 200 people across the US who have been affected by the widow penalty, said attorney Brent Renison, who filed the class-action lawsuit on behalf of the widows affected. "This case is very significant because it's the first that follows the circuit court decision and gives guidance to the agency on what it can and cannot do in these situations," Renison said.

DHS spokeswoman Amy Kudwa said she could not comment on any of the lawsuits, but she acknowledged that the widow penalty has been a top priority in her department since DHS Secretary Janet Napolitano took office earlier this year. "A review of our legal, legislative and other possible means to address the problem is under way," Kudwa said.

The widow penalty was struck down for a widow last week by the 1st Circuit Court, who held that despite her US citizen spouse's death, the foreign national qualified as an "immediate relative" for purposes of citizenship approval.

The Associated Press reports that the Justice Department's civil rights division is reviewing evidence surrounding a fight last summer between school football players and undocumented immigrant Luis Ramirez in predominantly white Schuylkill County, ending in the murder of Ramirez. "The civil right division is reviewing the evidence, to determine if there is a prosecutable violation of federal civil rights statutes," DOJ spokesman Alejandro Miyar said.

Two Pennsylvania teens were acquitted for Ramirez's death earlier this month: Brandon Piekarsky, 17, of third-degree murder and ethnic intimidation and Derrick Donchack, 19, of aggravated assault and ethnic intimidation. Both were convicted of simple assault. Another defendant, Colin Walsh, pleaded guilty to a federal civil rights charge before trial and testified at trial, admitting he threw a punch that

knocked Ramirez unconscious, and was sentenced to four years. Another defendant, Brian Scully, 18, was charged in juvenile court with aggravated assault and ethnic intimidation.

The July 12 fight occurred when Ramirez, 25, was walking with his girlfriend and had encountered a group of teens, at least some of whom had been drinking. Immigration advocates attended the trial on behalf of Ramirez's family, and later called for federal charges. "Luis's death reflects a steady increase of hate crimes targeting Latinos," said Gladys Limon, an attorney with the Mexican American Legal Defense and Education Fund. "This drastic rise of hate crimes against Latinos must be addressed by the new administration and Congress."

The American Immigration Lawyers Association called on the Justice Department this month to consider dismissing the guilty pleas of nearly 300 undocumented immigrant workers arrested in a meatpacking plant raid at the Iowa Agriprocessors last year, according to *The New York Times*. The request came hours after the US Supreme Court ruled that identity theft by an undocumented immigrant had to consist falsifying information to employers with advance knowledge that the identification documents actually belonged to another person.

Before the SCOTUS ruling, a federal district judge had ruled that Agriprocessors manager, Laura Althouse could withdraw a guilty plea she entered last year. Althouse had pleaded guilty to aggravated identity theft, after prosecutors accused her of helping undocumented immigrants to hire on the plant using identification documents she knew were false. In legal papers, Ms. Althouse's attorneys argued that she had not been aware that the documents some of the immigrants presented belonged to other people and were not wholly fabricated fakes.

The Postville, Iowa, raid was considered by immigration advocates to be the toughest application to date of criminal charges of undocumented immigrants whose main offense was that they were merely working without authorization. Rep. Zoe Lofgren [D-CA], chairwoman of the House immigration subcommittee said of the raid fallout that the DOJ should "start from scratch and pretend these cases never happened."

6. News Bytes

Minuteman Project co-founder Chris Simcox announced last month that he will run against Arizona Senator John McCain, arguing that the senator and former presidential candidate has abandoned the conservative values he claims to represent. According to *The Associated Press*, undocumented immigration will be one of the central themes of Simcox's campaign against McCain, who in 2006 launched an effort to reform immigration laws, a move panned by critics such as the Minuteman Project as "amnesty" for undocumented immigrants currently in the US.

"No one is willing to challenge John McCain on this issue. I am," Simcox said at his April 22 press conference to announce his candidacy. Top aides for Simcox's campaign argue that he is not a single-issue candidate and will show voters he represents core Republican ideals. "(Simcox) is a true conservative Republican. His platform is what it should be," said Eric Johnson, one of Simcox's campaign advisors. In addition to the immigration issue, Simcox also criticized McCain for his attempts to reform federal immigration laws, sponsoring campaign finance laws, and limiting sales of firearms at gun shows.

Simcox said during his announcement that he has already started getting donations from across the country through his website. But Arizona's other Senator, Jon Kyl, dismissed the seriousness of Simcox's challenge to McCain. Kyl laughed off the idea that Simcox could be a threat to the senator. "For you all that don't know, that's not necessarily tough news for Sen. McCain," Kyl said.

The US' first Hispanic Secretary of Labor announced last week that among her top priorities in office are ensuring undocumented workers receive fair payment and that improvements are made in worker safety. *The Associated Press* reports that Secretary Hilda Solis, acknowledged that while stabilizing the economy and health care reform must come first for the Obama administration, she stressed the plight of American day workers, who are often denied payment and are afraid to press for wages when they're unauthorized to work in the country. "We're going to have people going out in the field and investigating," Solis said. "We're going to be more robust in this area and also with respect to OSHA."

Her latest comments on the topic came in April when she visited with to a group of Hispanic leaders in the northern New Jersey area, where they discussed workplace safety. "In terms of Latinos in the work force, we're probably the ones that are faced with the most fatalities and injuries." Solis said, citing the many Hispanics in the US construction industry.

Solis said the discussion of comprehensive immigration reform will begin this summer. She said goals for reform include the elimination of the underground economy that has sprung up around undocumented workers, as well as the prevention of separating families which include children who are US citizens.

For the first time in three years, CIS saw fewer than the maximum amount of H1-B visa applications requested, receiving only 45,000 of the 65,000 maximum spots allotted, *USA Today* reports. In the past two years, all 65,000 spots were snatched within two days of the April 1 application period. For 2009, almost 1/3 of the FY 2009 H1-B visas were still available by the beginning of May.

CIS spokeswoman Chris Rhatigan says the slower pace reflects normal fluctuations in the visa application. Specifically, she cites 2006, when it took 56 days to meet the 65,000 cap, an increase that almost doubled from the previous year. Before the economic downturn beginning last year, she indicated that there had been a steady increase in H1-B requests from 2000 to 2008, particularly in emerging industries such as biotechnology and renewable energy.

Congress may be revisiting the issue of Real ID, the federal program that requires all states to issue more secure driver's licenses and has remained at a standstill due to rule disputes between the federal government and state lawmakers. *Stateline.org* reports that proposed legislation is currently making the rounds on Capitol Hill, aiming to give states more time, flexibility and funding to meet federal Real ID requirements.

Under the plan currently being discussed in Congress, federal funding and other key state concerns would be addressed, according to a draft of the latest bill. The bill, known as the Pass ID Act, aims to give states more time to comply with Real ID by creating a new-rule making process by which states would be able to shape the rules during a public comment period.

The Real ID Act, passed by Congress in 2005, was created to bolster nationwide security standards for driver's licenses to prevent circumvention by undocumented immigrants and terrorists. The Act originated from a 9/11 Commission recommendation, after the panel learned that the Sept. 11 hijackers had obtained 30 pieces of state identification. The Act has faced a barrage of criticism from individual states, calling it an "unfunded federal mandate" that infringes on the core state responsibility of driver's license issuance. "A lot of us believe that Real ID is a slap in the face of (state) legislative prerogative," said Oregon state Sen. Bruce Starr, who this month voted for a bill that would prevent the state from spending any more money on Real ID unless the federal government steps up funding.

7. Siskind's Legislative Update

[NURSE BILL INTRODUCED IN HOUSE](#)

H.R. 2536 has been introduced in the House by Congressman Robert Wexler. This is the first step in what will be a very tough process. The bill's text has not yet been released, but it is going to be highly similar to [H.R. 5924](#), introduced last year. The bill would allocate 20,000 additional green cards per year for three years for nurses and physical therapists. Spouses and children will get green cards and will not be included in the 20,000 figure. Employer petitioners will pay a \$1500 fee in addition to regular green card fees. The fee will support nurse training programs around the US.

[THE HILL: DEMS CLOSE TO FILIBUSTER-PROOF MAJORITY ON DREAM ACT](#)

Senator Durbin [says the votes are there](#), but that a vote on DREAM is not likely right now. Instead, the legislation is seen as an attractive item to include in a comprehensive reform bill.

OBAMA SETS DATE FOR IMMIGRATION REFORM WHITE HOUSE "CONVERSATION"

President Obama recently mentioned plans for holding a White House meeting to discuss proceeding with immigration reform legislation. And now [he is keeping that promise](#) by setting June 8th, just three weeks from now, to hold the meeting.

According to Politico:

"The meeting will be an opportunity to launch a policy conversation that we hope will be able to start a debate that will take place in Congress later in the year," the official, who asked not to be named, said.

Asked if the session would be billed as a summit or a forum, like similar meetings on health care and fiscal responsibility earlier in the year, another official said, "This isn't a forum or a summit with outside groups, this is solely a meeting with members of Congress on both sides of the aisle and both sides of the issue."

Another aide said about possible labels for the meeting: "I don't know that we're going to brand this in any particular way."

E-VERIFY FEDERAL CONTRACTOR REGULATION DELAYED AGAIN

[The effective date is pushed back to June 30th](#) while the Obama Administration formulates its position on the issue. The regulation is the subject of litigation challenging the manner in which the rule was rolled out.

RHODE ISLAND TAKES STEP CLOSER TO NEW SANCTIONS LAW

The Rhode Island General Assembly's Labor Committee [has passed](#) a bill by a 11-3 margin that would require employers to sign a pledge that all of their workers are legal. Employers would then be liable for criminal penalties if they are later found to have violated the pledge.

8. Notes from the Visalaw.com Blogs

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

- Podcast: Immigration Consequences of Layoffs and Downsizing
- Tea Leaf Reading: Does Sotomayor Nomination Hurt Chances for Immigration Bill? Or Help?
- The Hill: Dems Close to Filibuster-Proof Majority on DREAM Act
- Resolution Would Recognize SS St. Louis Tragedy
- Border Arrests at Lowest Level in Over 30 Years
- Schumer: Borders Now Secure Enough to Move on Immigration Reform
- Nurse Bill Introduced in House
- Obama Sets Date for Immigration Reform White House "Conversation"
- Study: No Link Between Immigration and Unemployment
- Hispanic Voters Getting Ready to Reward/Punish over Immigration Issue
- Will Democrats Fumble The Ball with Latino Voters?
- Can the GOP Bring Back Latino Voters?
- Immigration Humor: Homer Simpson Starts the Springfield Minutemen
- A Testimony to Survival
- Conservative Heritage Foundation Endorses H-1B Program
- Wadhwa: Free H-1B Workers
- America's Voice Draws Link Between Sessions and White Supremacist Groups
- H-1B Visas Barely Getting Used
- Judge Wood Would Be A Friend for Immigration on the Supreme Court
- John Demjanjuk Deported

[The SSB I-9, E-Verify, & Employer Immigration Compliance Blog](#)

- E-Verify Usage Growing in California
- HR Chief at Targeted Mississippi Company Indicted
- Kentucky Homebuilder Says Raid was Politically Motivated
- Will Employers Support Obama on Crackdown?
- E-Verify Federal Contractor Regulation Delayed Again
- West Publishes State Immigration Compliance Handbook
- Rhode Island Takes Step Closer to New Sanctions Law

[Visalaw Healthcare Immigration Blog](#)

- Joyce Jones Leaving HHS
- Report: Immigrants not Burdening Health Care System
- Nursing Program Ticket Out of Property for Immigrants
- USCIS Notifies Public of Conrad 30 Extension
- Armed Forces Foreign MD/RN Recruitment Program Begins
- Nursing Green Card Black Out Exacerbates Nation's RN Shortage

[Visalaw Investor Immigration Blog](#)

- Tidbits
- Detroit Leaders Considering EB-5 Regional Center
- Wadhwa: Expand the H-1B Program to Include Housing Investors
- UK Man Being Investigated for EB-5 Fraud
- Ohio Community Gets Ready for EB-5 Program

- New EB-5 Regional Center Approved for South Florida

[Visalaw Fashion, Sports, & Entertainment Blog](#)

- Immigration Status Prevents Wrestling Star from Attending College
- Soccer Helps Immigrant Kids Acculturate
- Lebanese Filmmaker Granted Asylum in US
- Former Baseball Player Faces Deportation
- USCIS Works Out Solution for 10 Year Limit on P Athletes

[Visalaw International Blog](#)

- Canada: Some Jobs Still in Demand
- CBSA Under Scrutiny on Admissions
- Canada: Sergio R. Karas Quoted in Hamilton Spectator
- Canada: Ottawa Sued Over Marriage Fraud

[The Immigration Law Firm Management Blog](#)

- Lawyers in a Hurry
- Hey! Paste It
- Wiki Wiki
- Best of CES: Telephone and PDA Devices
- BEST of CES: Cameras
- Sending Big Files

9. State Department Visa Bulletin for June 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **June**. 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 **May 7th** 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.

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	08NOV02	08NOV02	08NOV02	08OCT92	01SEP93
2A	15DEC04	15DEC04	15DEC04	15MAY02	15MAY04
2B	01FEB01	01FEB01	01FEB01	01MAY92	01APR98
3rd	08OCT00	08OCT00	08OCT00	22OCT92	01JUL91
4th	15AUG98	15AUG98	15AUG98	22MAY95	01AUG86

*NOTE: For June, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 15MAY02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 15MAY02 and earlier than 15DEC04. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Employment-Based					
1st	C	C	C	C	C
2 nd	C	15FEB05	01JAN00	C	C
3 rd	U	U	U	U	U
Other Workers	U	U	U	U	U
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th	C	C	C	C	C
Targeted Employment Areas/	C	C	C	C	C

Regional Centers					
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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-2009 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 **June**, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this 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	39,600	Except: Egypt: 20,650 Ethiopia 19,500 Nigeria 12,750

ASIA	30,350	
EUROPE	28,000	
NORTH AMERICA (BAHAMAS)	15	
OCEANIA	930	
SOUTH AMERICA, and the CARIBBEAN	1,100	

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-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that dates. Similarly, spouses and children accompanying or following to join DV-2009 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 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 JULY

For **July**, immigrant numbers in the DV category are available to qualified DV-2009 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	48,700	Except: Egypt 21,600 Ethiopia 21,100 Nigeria 14,400
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
OCEANIA	CURRENT	
SOUTH AMERICA, and the CARIBBEAN	CURRENT	

D. RETROGRESSION OF THE INDIA EMPLOYMENT SECOND PREFERENCE CUT-OFF DATE

It has been necessary to retrogress the India Employment Second preference cut-off date for June to keep visa issuances within the annual category numerical limit. At this time, it is not possible to estimate whether or not this retrogression will apply throughout the remainder of the fiscal year.

E. EMPLOYMENT-BASED VISA AVAILABILITY DURING THE REMAINDER OF FISCAL YEAR 2009

Applicant demand for numbers, primarily for adjustment of status cases at Citizenship and Immigration Services offices, has been extremely heavy throughout the year. As a result, visa availability during the final quarter could become limited as categories approach their annual numerical limits. Therefore, visa availability throughout the remainder of the year cannot be guaranteed, and the establishment of cut-off dates, or retrogression of existing cut-off dates, cannot be ruled out.

F. 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