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News & Types: Immigration Update

# Business Immigration Weekly for the Week of April 15, 2013

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**PROPOSED IMMIGRATION LAW OVERHAUL**

Eight U.S. senators have released their proposal for overhauling the U.S. immigration laws. The bill attempts to modernize the current U.S. immigration system by making it more attractive to highly skilled and educated foreigners as well as resolve the issue of undocumented immigrants. The bill contains several provisions that if enacted would have a major impact on our clients, these are summarized below:

**1) Major Changes to Green Card Preference Category System**

A. The following immigrants will no longer be counted toward the employment-based preference categories: extraordinary ability aliens in the sciences, arts, education, business or athletics; outstanding professors and researchers; multinational executives and managers; holders of doctoral degrees; certain classes of physicians; and immediate family members of employment-sponsored immigrants.

B. Allocation of a greater number of green cards to those who have:

(1) Advanced degrees and will be sponsored by a US employer in a position related to the sciences, arts, professions or business; or

(2) A master's degree or higher in a science, technology, engineering or mathematics field from a U.S. university or college; earned their degree within five years of the petition filing; and have an offer of employment from a U.S. employer in a related field.

C. Allocation of a greater number of green cards to individuals applying as skilled workers, professionals, and other professionals.

D. Creation of a new green card category for individuals who are establishing a startup in the United States.

E. Creation of a merit-based green card system whereby immigrants are awarded points based on their education, employment history, residence length in the United States, and "other considerations." The more points an individual has, the greater possibility of a green card. This category will have a minimum of 120,000 green cards available per year and this number will increase if the US unemployment rate remains lower than 8.5% to a maximum of 250,000. The allocation of these visas will begin on October 1, 2014 for immigrants (family and employment-based) who have been in the green card process for several years.

F. From fiscal year 2015 to 2023, additional green cards will be allocated to family and employment-based immigrants who are already in the process using certain formulas.

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**2) Mandatory E-Verify for All Employers**

A. Over the course of five years, all U.S. employers will have to register and begin using the E-Verify system to check the work authorization of their workforce. Larger employers will be phased in during the first two years and smaller employers through the fourth year.

B. All non-US citizens will be required to present a biometric Employment Authorization Document (EAD) or biometric Green Card, the photos of which will be stored in the E-Verify system so that it can be compared to existing photos kept in other government databases. Additionally, the employer will have to certify that the photos are identical matches to documents presented.

**3) H-1B Visa Changes**

A. Annual quota is raised from 65,000 to 110,000 with an additional 25,000 visas allocated toward individuals with advanced degrees from U.S. universities in the fields of science, technology, engineering or mathematics. The quota can be raised/lowered by 10,000 visas to a maximum of 180,000 according to certain formulas.

B. Sponsoring employers will have to pay H-1B workers more than US workers for the same position.

C. H-4 dependent spouses will be able to seek work authorization.

D. H-1B holders will have a 60-day grace period in which to look for a new job.

E. H-1B Dependent Employers will have to pay higher wages and higher fees:

– Payment of an additional $5,000 fee per petition by employers with 50 or more employees, of which 30% to 50% are H-1B or L-1 holders (that are not in the green card process) when they sponsor a new worker in either H-1B or L-1 status.

– Payment of an additional $10,000 fee per petition by employers with 50 or more employees, of which more than 50% are H-1B or L-1 holders (that are not in the green card process) when they sponsor a new worker in either H-1B or L-1 status.

F. All Sponsoring Employers will have to recruit before hiring an H-1B worker via a website to be created and maintained by the Department of Labor.

G. Establishment of new procedures and greater penalties to intercept and prevent H-1B fraud.

**4) H-1B and L-1 Caps on Employers with High Certain Percentages of Foreign Workers**

Prohibitions are placed on employers sponsoring more H-1B or L-1 workers for: (1) Employers "whose U.S. workforce largely consists of foreign guestworkers"; (2) In fiscal year 2014, employers with an H-1B/L-1 workforce of more than 75%; and (3) In fiscal year 2015, employers with an H-1B/L-1 workforce of more than 65% and in fiscal year 2016, with an H-1B/L-1 workforce of more than 50%.

**5) Creation of the W Visa for Lower Skilled Workers**

This visa will require employers to register with the government, will allocate a certain number of visas per year and will require an employer to recruit in the US for the position before hiring the worker.

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Other provisions in the bill include:

1) Increase in Border Security – this provision would allocate funds to the creation and implementation of a strategy that would better secure the U.S./Mexico border which includes surveillance systems and greater numbers of agents.

2) Legalization of Undocumented Immigrants – the bill would allow undocumented individuals to apply for permanent residence if they meet a physical presence requirement, pay a $500 fee, have not committed certain crimes, and meet several other criteria. These individuals would receive their permanent residence after 10 years if they remain physically present in the United States, have paid all of their taxes, have worked regularly, pass an English and Civics exam, all other individuals who are waiting for permanent residence under the family and employment sponsored categories are able to apply for permanent residence and pay an additional fine of $1,000.

3) In the E-Verify system, employees will be able to "lock" their Social Security number so that it will be completely unusable until they unlock the number (when they are starting with a new employer). Additionally, individuals will be able to view their E-Verify history so that they can alert authorities of unauthorized use.

## USCIS CLARIFIES EXPIRATION OF OLD FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION

The US Citizenship and Immigration Services (USCIS) has clarified that effective May 7, 2013 all U.S. employers must begin using the revised Form I-9, Employment Eligibility Verification. In March, the USCIS issued a new form and instructed employers to begin using the form, however, there was some uncertainty as to when the old form would no longer be valid. The Form I-9 is a form that is used to verify an employee's authorization to work in the United States. Section 1 of the Form I-9 must be completed by employees on the first date of hire and Section 2 must be completed by employers by the third date of hire after the employee presents documentation to verify his/her work authorization. The Form I-9 is available at: http://www.uscis.gov/files/form/i-9.pdf and the employer's handbook which provides guidance in completing the form is available at: http://www.uscis.gov/files/form/m-274.pdf We offer many services to our clients relating to the Form I-9, including internal audit assistance and staff training. Please contact us if you have any questions regarding your own Form I-9 practices and procedures.

## ELIMINATION OF PAPER FORM I-94

On April 30, 2013, the Customs and Border Protection (CBP) agency will begin eliminating the paper Form I-94, Arrival-Departure Record that is completed by foreign travelers at the time they are being processed for entry into the United States. Instead, foreign travelers will only receive an entry stamp in their passports which will include their date of entry, class of admission, port of entry and their status expiration date. The CBP has already eliminated the paper Form I-94 for foreign travelers entering the United States under the Visa Waiver Program.

Foreign travelers who will need a record of their entry to submit to other government agencies when applying for a benefit or service, such as the US Citizenship and Immigration Services (USCIS), Social Security Administration, the various state Departments of Motor Vehicles, etc., will be able to go to www.cbp.gov/I94 and by entering their biographical information, date of entry and class of admission, will be able to print a paper

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Form I-94 which will include an eleven digit record number. This paper Form I-94 can then be submitted to apply for their respective benefit. The USCIS will continue to issue paper Forms I-94 on extension of status and change of status petitions and applications.

CBP will begin eliminating the paper Forms I-94 on April 30th, 2013 in four phases. The first week the Forms I-94 will be eliminated at the following international airports: Charlotte, Orlando, Las Vegas, Miami and Chicago O'Hare. The second week will continue at major air and sea ports in New York, Boston, Atlanta, Puerto Rico, Chicago, New Orleans and Houston. The third week will continue at major air and sea ports at pre-clearance, San Francisco, Hawaii, Guam, El Paso, Seattle, Portland, Los Angeles, San Diego and Laredo. During the fourth week, CBP will institute these procedures at all remaining air and sea ports.

Our firm expects that it will take a significant period of time for CBP and all government agencies to completely transition to the elimination of the paper Form I-94. If you have any questions regarding these procedures or would like further guidance, please contact us.

## MAY 2013 VISA BULLETIN UPDATE

### Current Availability

The U.S. Department of State ("DOS") recently released its May 2013 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of May. This month's Visa Bulletin features the following highlights:

- The EB-2 China category continues to advance steadily advancing one month to May 15, 2008.
- Due to continued high demand, the EB-2 India category has completely stalled at September 1, 2004 and there has been no movement since October 2012 when the new fiscal year's annual quota opened.
- The EB-3 India category has advanced slightly from November 22, 2002 to December 22, 2002.
- The EB-3 World category has also shown significant advancement to December 1, 2007.

### Forecasted Availability to June 2013

The DOS has also forecasted future immigrant visa availability through June 2013. The following is a quick summary:

- EB-2 India category will show no advancement and this category will most likely have to be retrogressed to contain the high demand.
- EB-1 category and EB-2 World, Mexico and Philippines category will remain current.
- EB-2 China category will continue to advance three to six weeks at a time.
- EB-3 category will advance per the following: World – four to six weeks; China – two to three months; India – two weeks; Mexico – four to six weeks; and Philippines – one week.
- EB-5 China category will remain current and will not have to be cut off as the DOS had previously stated in its December 2012 Visa Bulletin.

### Comparison to Prior Months

The following is a comparison of priority date movement since the inception of the current retrogression in 2007:

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| | Dec 2007 | Jun 2008 | Aug 2009 | Mar 2010 | Sept 2012 | Oct 2012 | May 2013 |
|---|---|---|---|---|---|---|---|
| EB-3 World | 09/01/02 | 03/01/06 | U | 12/15/02 | 10/01/06 | 10/22/06 | 12/01/07 |
| EB-2 China | 01/01/03 | 04/01/04 | 10/01/03 | 07/08/05 | U | 07/15/07 | 05/15/08 |
| EB-3 China | 10/15/01 | 03/22/03 | U | 12/15/02 | 12/15/05 | 02/06/06 | 12/01/07 |
| EB-2 India | 01/01/02 | 04/01/04 | 10/01/03 | 02/01/05 | U | 09/01/04 | 09/01/04 |
| EB-3 India | 05/01/01 | 11/01/01 | U | 07/01/01 | 10/08/02 | 10/15/02 | 12/22/02 |
| EB-3 Other Workers | 10/01/01 | 01/01/03 | U | 06/01/01 | 10/01/06 | 10/22/06 | 12/01/07 |

Additional information about the movement of the employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

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