

# Immigration Inbox: News You Can Use

## U.S. Immigration:

1. *Employment-Based Priority Dates Advance in Some Categories for January 2013* - Among other things, for EB-3, China moved ahead by 2.75 months, to September 22, 2006, and India advanced by one week, to November 8, 2002.
2. *State Dept. Projects Visa Numbers; Cut-Off Date Likely for China Employment Fifth Preference Later in FY 2013* - If it happens, this would be the first time a cut-off date has been established in the China employment fifth preference category.
3. *U.S. Mission in India Expands Interview Waiver Program* - The U.S. embassy in New Delhi expects this expansion to affect thousands of visa applicants in India.
4. *DHS Adds Taiwan to Visa Waiver Program* - In FY 2011, 243,186 visitors from Taiwan traveled to the United States. Eligible Taiwanese will now be able to do so without a visa beginning on November 1.
5. *DACA Filings/Approvals Soar After Election; USCIS Releases Guidance for Employers, Filing Tips* - USCIS has received more than 300,000 requests for DACA. Most applicants are from Mexico (212,514).
6. *House Passes STEM Bill; 'Achieve Act' Introduced in Senate, Congressional Hispanic Caucus Reacts; Obama, Dems Advocate Comprehensive Immigration Reform* - The STEM bill would allocate visas to STEM graduates without increasing overall immigration, by eliminating the diversity visa program. Neither the STEM bill nor the Achieve Act are likely to survive in the Senate.
7. *USCIS Expands e-Request Services* - The Web-based tool allows users to ask about applications and petitions submitted to USCIS.
8. *Head of Law Firm Sentenced to Prison for Visa Fraud* - Participants in the scheme to file at least 137 fraudulent employment-based visa petitions "buried" a portion of the profits by purchasing cemetery plots and grave monuments.

## Seyfarth Workforce Authorization Team (SWATeam)

1. *California Attorney General Guidance on Enforcement of Secure Communities* - Information bulletin from California Attorney General Kamala Harris to state & local law enforcement agencies stating California law enforcement agencies can make their own decisions on whether to fulfill individual ICE immigration detainers under Secure Communities program.
2. *E-Verify Guidance on Special Characters in Employee Name* - The E-Verify system only allows letters, spaces, single quotes, and hyphens. As a best practice, employers should enter employee names into E-Verify as they appear in Section 1 of Form I-9, only using characters that E-Verify accepts.
3. *E-Verify Begins Checking Driver's License and ID Cards from the State of Florida* - USCIS announced that the E-Verify system now checks driver's license and ID cards from the state of Florida when presented by a new hire as a List B document for the Form I-9.

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## U.S. Immigration

### 1. Employment-Based Priority Dates Advance in Some Categories for January 2013

The January 2013 Visa Bulletin from the Department of State's Visa Office notes that there has been no change in EB-1 priority dates, which are Current. In the EB-2 category, China progressed 1.5 months, to December 8, 2007. There was no change in India, which remains at September 1, 2004, or in Mexico or the Philippines, which remain Current. In the EB-3 category, Mexico advanced 1.5 months, to February 1, 2007. There was no change in the Philippines in EB-3, which remains at August 15, 2006. However, for EB-3, China moved ahead by 2.75 months, to September 22, 2006, and India advanced by one week, to November 8, 2002.

The January 2013 Visa Bulletin is available [here](#).

### 2. State Dept. Projects Visa Numbers; Cut-Off Date Likely for China Employment Fifth Preference Later in FY 2013

The Department of State's Visa Office released projections for the next several months in its Visa Bulletin for December 2012.

Among other things, it appears likely that a cut-off date will need to be established for the China employment fifth preference category during the second half of fiscal year 2013, the Visa Office said, noting that "[s]uch action would be delayed as long as possible, since while number use may be excessive over a 1 to 5 month period, it could average out to an acceptable level over a longer (e.g., 4 to 9 month) period." This would be the first time a cut-off date has been established in this category, the Visa Office noted, explaining that this is why "readers are being provided with the maximum amount of advance notice regarding the possibility." The Visa Office noted that this advisory is based strictly on the current demand situation, and that demand patterns can change over time. Therefore, "this should be considered a worst case scenario at this point," the Visa Office said.

The Visa Office said that categories with a "Current" projection "will remain so for the foreseeable future," with the possible exception of the China employment fifth preference category mentioned above.

The following is the projected monthly forward progress for the employment-based categories (monthly):

Employment First: Current

Employment Second:

Worldwide: Current

China: five to eight weeks/month

India: no movement

Employment Third:

Worldwide three to five weeks/month

China: one to two months/month

India: up to two weeks/month

Mexico: three to five weeks/month

Philippines: one to three weeks/month

Employment Fourth: Current

Employment Fifth: Current

The Visa Bulletin for December 2012 is available [here](#).

The Visa Bulletin for January 2013 is available [here](#).

### 3. U.S. Mission in India Expands Interview Waiver Program

The U.S. Mission in India has announced expansion of the Interview Waiver Program (IWP), launched in March 2012, which allows qualified individuals to apply for additional classes of visas without being interviewed in person by a U.S. consular officer. The U.S. embassy in New Delhi expects this expansion to affect thousands of visa applicants in India.

Under the current IWP, Indian visa applicants who are renewing visas that are still valid or expired within the past 48 months may submit their applications for consideration for streamlined processing, including waiver of a personal interview, within the following visa categories:

- Business/Tourism (B-1 and/or B-2)
- Dependent (J-2, H-4, L-2)
- Transit (C) and/or Crew Member (D) - including C-1/D
- Children applying before their seventh birthday traveling on any visa class
- Applicants applying on or after their 80th birthday traveling on any visa class

Under the expanded IWP, the following Indian applicants may also be considered for streamlined processing:

- Children applying before their 14th birthday traveling on any visa class
- Students returning to attend the same school and same program
- Temporary workers on H-1B visas
- Temporary workers on individual L-1A or individual L-1B visas

The renewal application must be within the same classification as the previous visa. If the previous visa is annotated with "clearance received," however, that applicant is not eligible for a waiver of a personal interview.

Not all applications will be accepted for streamlined processing. As always, consular officers may interview any visa applicant in any category. Applicants who are renewing their visas may still need an appointment for biometrics (fingerprint and photograph) collection. All applicants must submit all required fees and the DS-160 application form.

The U.S. embassy in New Delhi said that this is "one of many steps the Department of State is taking to meet increased visa demand in India." The embassy explained that in 2011, consular officers in India processed nearly 700,000 nonimmigrant visa applications, an increase of more than 11 percent over the previous year. Currently, applicants generally wait fewer than 10 days for visa interview appointments and spend less than one hour at U.S. consular facilities in India. In September 2012, the U.S. Diplomatic Mission to India implemented a new visa processing system throughout India that further standardizes procedures and simplifies fee payment and appointment scheduling through a new website at <http://www.ustraveldocs.com/in>.

For more details about procedures for submitting a renewal application, click [here](#).

## 4. DHS Adds Taiwan to Visa Waiver Program

As of November 1, 2012, the Department of Homeland Security (DHS) designated Taiwan for the Visa Waiver Program (VWP). Secretary of Homeland Security Janet Napolitano said the move was “a major step forward in our long-standing economic partnership with Taiwan.”

Taiwan joins 36 participants in the VWP, which permits visa-free travel for eligible travelers visiting the United States for 90 days or fewer for business or tourism. In fiscal year (FY) 2011, the VWP accounted for 18.3 million visits to the United States, or more than 60 percent of tourists and business travelers entering the United States by air. In FY 2011, 243,186 visitors from Taiwan traveled to the United States.

In accordance with the VWP designation process, DHS determined that Taiwan complies with key security and information-sharing requirements, such as enhanced law enforcement and security-related data-sharing with the United States; timely reporting of lost and stolen passports; and maintaining high counterterrorism, law enforcement, border control, aviation, and document security standards.

As with other VWP travelers, eligible Taiwan passport holders who wish to participate in the program must apply for advance authorization through the Electronic System for Travel Authorization (ESTA), a DHS Web-based system. Eligible Taiwan passport-holders with an approved ESTA may visit the United States without visas.

The DHS designation on Taiwan for the visa waiver permanent program is available [here](#).

## 5. DACA Filings/Approvals Soar After Election; USCIS Releases Guidance for Employers, Filing Tips

Following the results of the presidential election, the Obama administration released statistics showing that 53,273 undocumented persons have received relief as of November 15, 2012, under the deferred action for childhood arrivals (DACA) program. U.S. Citizenship and Immigration Services (USCIS) has received more than 300,000 such requests, of which the largest number by far are from Mexicans (212,514). The Immigration Policy Center estimates that approximately 1.8 million persons may be eligible.

USCIS noted that filing a request for consideration of deferred action for childhood arrivals involves several steps. You need to submit multiple forms, evidence and fees. Small mistakes in preparing your request could lead to it being rejected. USCIS released the following tips below to help avoid having your request rejected or delayed because of common filing errors:

1. Mail all forms together – You must mail the following forms in one package:

- a. Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*
- b. Form I-765, *Application for Employment Authorization*
- c. Form I-765WS, *Worksheet*

Read the [mailing instructions](#) to see where to mail the forms based on the state you live in. Remember to send it to the P.O. Box address if mailing through the U.S. Postal Service. All forms are available on [www.uscis.gov](http://www.uscis.gov) for free. Do not pay for blank USCIS forms either in person or over the Internet.

2. Carefully review age guidelines before filing – If you have never been in removal proceedings, or your proceedings have been terminated, you must be at least 15 years of age or older at the time of filing.

You cannot be 31 or older as of June 15, 2012, to be considered for deferred action for childhood arrivals.

3. Write your name and date of birth the same way on each form – Variations in the way information is written can cause delays. For example, you should not write Jane Doe on one form and Jane E. Doe on another form. It is important to read all instructions on the forms carefully.
4. Sign your forms – You must sign both your Form I-821D and Form I-765. If someone helps you fill out the forms, that person must also sign both Form I-821D and Form I-765 in the designated box below your signature.
5. Use the correct version of Form I-765 – Always make sure you have the most recent form when submitting your request with USCIS. Review the USCIS [Forms page](#) to download the most recent version. You can download all USCIS forms and instructions for free at <http://www.uscis.gov>.
6. Use Form I-821D NOT Form I-821 – Form I-821D is used to request consideration of deferred action for childhood arrivals. Form I-821 is a different form used to apply for Temporary Protected Status, an entirely different process.
7. Do NOT e-file Form I-765 – Requests for consideration of deferred action cannot be e-filed. You must mail your package (Forms I-821D, I-765, I-765WS, evidence and fees) to the appropriate [USCIS Lockbox](#).
8. Submit correct fees – The fee to request consideration of deferred action for childhood arrivals is \$465 and cannot be waived. There are [fee exemptions](#) available only in limited circumstances. You may submit separate checks of \$380 and \$85, or one single check of \$465.
9. Answer all questions completely and accurately – If an item is not applicable or the answer is “none,” leave the space blank. But do not leave date fields blank. See Tip #11, below. To ensure your request is accepted for processing, be sure to complete these required form fields:
  - Form I-821D: Name, Address, Date of Birth
  - Form I-765: Name, Address, Date of Birth, Eligibility Category
10. Provide all required supporting documentation and evidence –You must submit all required evidence and supporting documentation. These documents are required for USCIS to make a decision on your request. Please organize and label your evidence by the guideline it meets. USCIS may issue a request for evidence if additional information is needed to make a decision on your request.
11. Do not leave date or place of entry responses blank – You must fill in all fields related to dates and places of entry on Form I-821D. You may fill in your closest approximation of the date or place of entry if you do not know the exact information. You must enter dates in MM/DD/YYYY format.
12. Personal information to prove economic need – USCIS will consider whether you have an economic need to work by reviewing your personal current annual income, current annual expenses, and the current value of your assets. You do not need to include other household member’s financial information to establish your own economic necessity. It is not necessary to submit supporting documentation, though it will be accepted and reviewed if you choose to submit it.
13. If you make an error on a form, start over with a clean form – USCIS prefers that you type your answers into the form and then print it. If you are filling out your form by hand, use black ink. If you make a mistake, please start over with a

new form. Scanners will see through white out or correction tape and this could lead to the form being processed as incorrect, and lead to processing delays or denial.

14. Review your entire request package – To ensure that your request is accepted for processing, it is important that you review your entire request package before you file with USCIS.

For more information on consideration of deferred action for childhood arrivals, visit [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals). If you have questions about filing a request, please call USCIS at 1-800-375-5283.

USCIS also released guidance for employers on DACA for childhood arrivals, available [here](#). The latest DACA statistics are available [here](#). The tips are available [here](#).

## 6. House Passes STEM Bill; 'Achieve Act' Introduced in Senate, Congressional Hispanic Caucus Reacts; Obama, Dems Advocate Comprehensive Immigration Reform

The U.S. House of Representatives passed H.R. 6429, the "STEM Jobs Act of 2012," by a 245-139 vote on November 30, 2012. The bill would allocate 55,000 immigrant visas for certain foreign graduates of advanced degree programs in science, technology, engineering, and mathematics (STEM). It would exclude students with degrees in biological and biomedical fields. Among other things, it also would eliminate the diversity visa (DV) program so that there would be no overall increase in the level of immigration.

Rep. Jeff Flake (R-Ariz.), said, "We should staple a green card to [foreign STEM graduates'] diplomas." Rep. Darrell Issa (R-Cal.), who also voted in favor of the bill, said, "We need to break up the elephant into bite-size pieces. I want to break this up into passable bill by passable bill."

H.R. 6429 is considered unlikely to pass in the Senate. Democrats said they support STEM visas but did not think the DV program should be eliminated and believe that STEM legislation should be part of a larger immigration reform package. Similarly, the Obama administration said in a statement that it "strongly supports" legislation to attract and retain foreign students who graduate with advanced STEM degrees, to establish a start-up visa for foreign-born entrepreneurs "to start businesses and create jobs," and to "reform the employment-based immigration system to better meet the needs of the U.S. economy." However, the administration said it does not support "narrowly tailored proposals that do not meet the President's long-term objectives with respect to comprehensive immigration reform." The statement advocated an approach that would "provide for attracting and retaining highly skilled immigrants and uniting Americans with their family members more quickly, as well as other important priorities such as establishing a pathway for undocumented individuals to earn their citizenship, holding employers accountable for breaking the law, and continuing efforts to strengthen the Nation's robust enforcement system."

Also, on November 27, 2012, Sens. Jon Kyl (R-Ariz.) and Kay Bailey Hutchison (R-Tex.) introduced the "Achieve Act," S. 3639, which would allow certain undocumented youth to attain a visa. They would have to apply for employment authorization after they have completed higher education or served in the military. "We have to get this ball rolling ... and this particular part of immigration reform seemed a logical place to begin," Sen. Kyl said. The bill is more restrictive than the previously proposed DREAM Act and would limit eligibility to those who entered the United States under the age of 14, among other things. Sen. Hutchison also noted that the bill "doesn't allow them to cut in line [for U.S. citizenship] in front of people who have come and abided by the rules of our laws today. It doesn't keep them from applying under the rules today, but it doesn't give them a special preference." The Achieve Act is also considered unlikely to pass in the Senate.

The Congressional Hispanic Caucus rejected the Achieve Act, outlining nine principles that they said should be part of any effort toward comprehensive immigration reform: (1) requiring the estimated 11 million undocumented persons in the United States to register with the government, among other things, and "earn a path to permanent residency and eventual citizenship"; (2) reducing family backlogs to keep spouses, parents, and children together, including same-sex couples; (3) attracting "investors, innovators, and skilled professionals," including those in STEM fields; (4) building on the DACA program and incorporating "DREAMers"; (5) including a "balanced, workable solution for the agriculture industry" that ensures that

agricultural workers have a route to citizenship and employers have the workers they need; (6) providing legal avenues for foreign workers to fill gaps in the workforce, including labor rights, protection from discrimination, and a “reasonable path to permanency”; (7) ensuring enforcement that both protects the borders and fosters commerce; (8) establishing a “workable” employment verification system; and (9) ensuring that all workers “pay their fair share of taxes, fully integrate into our way of life and bear the same responsibilities as all Americans” and reaffirming “our shared belief that the Citizenship Clause of the Constitution is a fundamental freedom that must be preserved.”

The STEM bill text and additional information are available [here](#). A statement on the STEM Jobs Act from Rep. Lamar Smith (R-Tex.), chairman of the House Judiciary Committee, is available [here](#). The Obama administration’s statement is available [here](#).

Information on the Achieve Act, including the text of the bill, is available [here](#). The Congressional Hispanic Caucus’ statement is available [here](#).

## 7. USCIS Expands e-Request Services

U.S. Citizenship and Immigration Services (USCIS) has expanded the services available via its e-Request system. The Web-based tool allows users to ask about applications and petitions submitted to USCIS. Users can now:

- Create a service request for all forms to either inquire about the status of an application or petition if it is outside of the normal processing time or notify USCIS about an administrative error in a notice or document USCIS sent.
- For Forms I-90 and N-400 only, ask about an Application Support Center appointment notice or other notice the user was expecting to receive.
- Access services for individuals with disabilities (508 compliant).

To submit an e-Request, go to the USCIS e-Request home page ([here](#)) and have the receipt number available.

The USCIS notice is available [here](#).

## 8. Head of Law Firm Sentenced to Prison for Visa Fraud

Joseph Wai-Man Wu, the head of East West Law Group, a former law firm in Los Angeles, California, was sentenced to 10 months in prison on November 15, 2012. For approximately 13 years, from 1996 to 2009, he and others in his firm filed at least 137 employment-based visa petitions fraudulently for nearly 100 clients.

They also set up almost a dozen shell companies as part of the scheme, and laundered a portion of the profits by purchasing cemetery plots and grave monuments. The clients paid from \$6,000 to \$50,000 each. “Our agents encounter a lot of unusual money laundering schemes, but this is the first time we’ve come across a case where the suspects sought to bury their profits by buying cemetery plots,” said Claude Arnold, special agent in charge for HSI Los Angeles.

The press release is available [here](#).

# Seyfarth Workforce Authorization Team (SWATeam)

## 1. California Attorney General Guidance on Enforcement of Secure Communities

The California Department of Justice (CalDOJ) and the Office of the Attorney General have received inquiries about state and local law enforcement responsibilities under Secure Communities, a federal program administered by the Immigration and Customs Enforcement agency (ICE) of the United States Department of Homeland Security (DHS).

DHS implemented the Secure Communities program as a way to identify, detain, and remove from the United States unlawfully present immigrants who have been convicted of a crime and those who pose a threat to public safety. The program does not require California law enforcement agencies to determine an individual’s immigration status or to enforce federal immigration laws.

Secure Communities works when fingerprints taken by state and local law enforcement agencies are sent to CalDOJ to positively identify the arrestee and to check his or her criminal history. In addition to checking its own records, CalDOJ forwards the fingerprints to the FBI's Criminal Justice Information Services division to search for federal and out-of-state arrest, warrant, and conviction history—an action that is essential both for officer safety and to identify and detain fugitives who may have fled other jurisdictions. Under the Secure Communities program, the FBI forwards the fingerprints to DHS to be checked against immigration and other databases. DHS then sends the immigration response, if any, to the FBI, which sends it, along with any criminal history information, to CalDOJ, which generally delivers all the information to the requesting law enforcement agency.

Read more [here](#).

## 2. E-Verify Guidance on Special Characters in Employee Name

The E-Verify Besides letters, the only characters allowed in E-Verify are spaces, single quotes, and hyphens. As a best practice, employers should enter their employees' names into E-Verify as they appear in Section 1 of Form I-9, without any special characters E-Verify does not accept.

Read more [here](#).

## 3. E-Verify Begins Checking Driver's License and ID Cards from the State of Florida

The United States Citizenship and Immigration Services (USCIS) announced that the E-Verify system now checks driver's license and ID cards from the state of Florida when presented by a new hire as a List B document for the Form I-9. Florida is the second state (behind Mississippi) to join the Records and Information from DMVs for E-Verify (RIDE) Program, which was officially launched last year in June. As with most new E-Verify enhancements, the name of the game here is improving accuracy and reducing the likelihood of document fraud.

Will the expansion of the RIDE program be a boon or a bane for employers using the system? And how exactly does the E-Verify RIDE program even work?

Read more [here](#).

# Seyfarth Immigration Events and News

## Seyfarth Shaw Immigration Attorneys' Recent Publications

On November 14, 2012, at the New York City office of Seyfarth Shaw LLP, Jean-Noël Ben Hamou, Jason Burritt, and Dyann DelVecchio presented the Breakfast Briefing: Immigration Update. The presentation provided an overview of the looming landscape for immigration law and offered updates on immigration hot topics including: current backlogs in green card processing; policies for "conversion" from EB-3 to EB-2 and EB-1; and expansion of E-Verify. Jean Noel provided a brief overview on why every employer should be concerned about Canadian immigration policies – even if the employer does not have a presence in Canada, including: acceptable conduct of business visitors. There was also a discussion regarding new immigration rules relating to illegal representation and counseling, as well as change in working conditions.

On November 15, 2012, Jason Burritt presented the Webinar, "[The Election Results Are In: What The Hospitality Industry Should Expect In The Next Four Years.](#)"

**In addition, Angelo Paparelli has posted several new blog entries on his [Nation of Immigrants](#) public policy blog:**

[Guest Blog: All I Got for Christmas Was a Crumb-y Immigration Compliance Checklist](#)

[Ten of Nici Kersey's greatest tips for avoiding liability for immigration-related violations](#)



### *Rethinking Immigration: Stop the Alienation of Affection*

With the Obama Administration and lawmakers in both parties promising to fix our dysfunctional immigration system, it's time for a reality-based understanding of global migration and a fresh choice of words.

### *"Bibles, Badges and Business" Converge for Comprehensive Immigration Reform*

Representatives from national religious organizations, law enforcement and commerce ("Bibles, Badges and Business") spoke eloquently about the urgency to enact Comprehensive Immigration Reform and offered common-sense wisdom that acknowledged just how surreal our immigration policies have become.

### *The Senate Must Modify Its Filibuster Rules to Pass Comprehensive Immigration Reform*

An improved set of filibuster reforms, while still protecting minority rights, might just peel off enough moderate Republicans to enact America-friendly Comprehensive Immigration Reform.

### *Immigration by Chance -- Save the DV Green Card Lottery*

The annual 55,000 green-card DV lottery -- which I've criticized as a program "[relying] on casino-style randomness as the basis to sprinkle green cards on a lucky few" -- now upon further reflection seems to me as a category worth saving.

### *Reforming Immigration "with Liberty and Justice for All"*

Revitalizing our broken and outdated 20th Century immigration laws to respond to the needs of 21st Century America will turn in large part on how we face the challenge of persuading desirable foreign citizens to make our country their home. Coveted immigrants now enjoy an array of choice locales; they are lured by the wealth, opportunity and blandishments of competitor nations throughout the developed and developing world.

While the U.S. has long been the most preferred destination, our national rose seems to have lost much of its bloom. For too many foreigners possessing the attributes and skills we need, America may be tempting but just too risky. We have posted a "road closed" sign when we should be cleaning off the welcome mat.

### *Barack Be Nimble: Go BIG and BOLD on Comprehensive Immigration Reform*

As with the Fiscal Cliff and the imminent increase of revenue (through elimination of the Bush tax cuts) and the automatic spending cuts (demanded by Sequestration), so too with immigration. President Obama holds the upper hand, and Republicans can be made to stand tall like a skier in Dancer's Pose or to fall in the new American yoga of immigration reform.

By: *Angelo Paparelli* and *Elizabeth Wheeler*

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