

Immigration Inbox: News You Can Use

U.S. Immigration:

1. *State Dept. Announces More Forward Movement in China-Mainland Born and India EB-2 Categories* – USCIS previously reported that the rate of new filings is currently far below that which they had anticipated, prompting continued aggressive movement of the cut-off dates.
2. *USCIS Announces Several Thousand EB-5 Investor Green Cards Issued So Far in First Quarter of FY 2012, Releases Latest Stats* – Between October and mid-January, DOS issued 2,364 EB-5 green cards. At that rate, DOS could issue more than 9,000 EB-5 visas this fiscal year, very close to the statutory cap of 10,000.
3. *USCIS Announces 58 Countries Whose Nationals Are Eligible for H-2A and H-2B Participation* – In addition to the 53 countries currently on the list, DHS designated Haiti, Iceland, Montenegro, Spain, and Switzerland for the first time this year.
4. *U.S. Consulate in Chennai Stops Processing Immigrant Visa Petitions* – Only the U.S. Embassy in New Delhi and U.S. Consulate in Mumbai now process immigrant visa applications in India.
5. *DHS Extends TPS Designation for El Salvador* – The 18-month extension will remain in effect through September 9, 2013. The 60-day re-registration period began January 9, 2012, and will remain in effect until March 9, 2012.
6. *DOS Launches 90-Day Pilot Program Allowing Online U.S. Passport Card Applications* – The U.S. passport card costs \$30 for current passport book holders, and is valid for land and sea travel to and from Canada, Mexico, the Caribbean, and Bermuda. It is not valid for international air travel.

Seyfarth Workforce Authorization Team (SWATeam)

1. *DOJ's Office of Special Counsel Lists Employer Best Practices During Worksite Enforcement Audits* – The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) released best practices for employers facing audits by U.S. Immigration and Customs Enforcement (ICE).
2. *OSC Settles with University of California San Diego Medical Center* – The Justice Department unit had alleged that the medical center subjected newly hired non-citizens to excessive demands for documents to verify their employment eligibility.

Also in this issue:

[Seyfarth Immigration Events and News](#)

U.S. Immigration

1. State Dept. Announces More Forward Movement in China-Mainland Born and India EB-2 Categories

The Department of State's Visa Bulletin for March 2012 reveals that the China and India employment second preference cut-off date have continued to advance at a rapid rate in recent months.

While this continued forward movement increases the potential for an eventual retrogression of the cut-off at some point during the year, it also provides the best opportunity to use all numbers available under the annual limit.

The bulletin for March 2012 is available [here](#).

2. USCIS Announces Several Thousand EB-5 Investor Green Cards Issued So Far in First Quarter of FY 2012, Releases Latest Stats

The Department of State issued 2,364 EB-5 employment-creation investor green cards between October 1, 2011, and mid-January 2012. U.S. Citizenship and Immigration Services (USCIS) announced at its quarterly EB-5 stakeholders meeting on January 23, 2012. At that rate, DOS could issue more than 9,000 EB-5 visas this federal fiscal year, which is very close to the annual statutory cap of 10,000.

USCIS refused to discuss how it would handle pending EB-5 petitions if Congress fails to renew the regional center pilot program by September 30, 2012. Approximately 92 percent of I-526 petitions (Immigrant Petition by Alien Entrepreneur) filed each year are filed by investors in regional centers. Historically, USCIS approves about 80 to 85 percent of I-526 and I-829 EB-5 petitions each year. The USCIS California Service Center (CSC) now has four teams of EB-5 adjudicators, an increase from one team a year ago. Despite the increased staffing, case adjudication times have not improved because of the increase in case filings.

USCIS also announced that it would defer to state determinations on what constitutes a targeted employment area (TEA) for EB-5 purposes. However, the agency will check the data behind states' methodology. USCIS did not say whether a single census tract may qualify as a geographic area. USCIS said that would be covered in written materials not yet available publicly, and referred stakeholders to its December 2009 memorandum for further details (available [here](#)).

USCIS acknowledged that many regional center applications are being held up at headquarters pending resolution of economic methodology issues. The USCIS hopes to resolve those issues soon. USCIS is analyzing all the I-924A forms submitted by regional centers and will draft a report that includes regional center-specific information sometime this year. USCIS acknowledged growing pains in determining what constitutes a "shovel-ready" project for EB-5 purposes. It hopes to address the issue later this year when it revises the I-924 form to provide greater consistency.

USCIS also released its latest data on EB-5 filings and regional centers (RCs):

- RC approvals continue to increase. As of January 28, 2012, there are 217 approved RCs operating in 40 states, including the District of Columbia and Guam.
- The agency reported 41 initial RC proposal filings in the first quarter of fiscal year (FY) 2012, compared to 192 initial filings in all of FY 2011 and 110 initial filings in all of FY 2010. The number of amended RC proposal filings was 17 by the end of the first quarter; there were 86 filings received for all of FY 2011 and 42 filings received for all of FY 2010.
- In the first quarter of FY 2012, the agency approved 14 of the 41 initial RC proposals and denied 22, an approval rate of 39 percent. In FY 2011, when USCIS approved 80 and denied 51, an approval rate of 61 percent. The approval rate of amended RC proposals in the first quarter of FY 2012 was 57 percent, with 4 approvals and 3 denials. By comparison, in FY 2011 USCIS approved 43 amended RC proposals and denied 7, an approval rate of 86 percent.

- USCIS also reported significant increases in individual I-526s and I-829s (Petition by Entrepreneur to Remove Conditions). In the first quarter of FY 2012, USCIS received 1,293 I-526 petitions, compared to 3,805 for all of FY 2011. USCIS received 250 I-829 petitions in the first quarter of 2012. By comparison, USCIS received 2,345 I-829 petitions in all of FY 2011.
- In the first quarter of FY 2012, the agency approved 1,076 I-526 petitions and denied 222, an approval rate of 83 percent, while in all of FY 2011 USCIS approved 1,563 and denied 11, an approval rate of 93 percent. USCIS approved 1,067 I-829 petitions and denied 46 in all of FY 2011, an approval rate of 96 percent.

The full list of RCs by state is available at <http://www.uscis.gov/eb-5centers/>.

The next USCIS stakeholder engagement meetings are scheduled for May 1, 2012 (general EB-5 discussion); July 26, 2012 (regional center discussion); and October 18, 2012 (general EB-5 discussion). See the link [here](#) for additional details on the engagement meetings.

3. USCIS Announces 58 Countries Whose Nationals Are Eligible for H-2A and H-2B Participation

U.S. Citizenship and Immigration Services (USCIS) announced that the Department of Homeland Security (DHS), in consultation with the Department of State, has identified 58 countries whose nationals are eligible to participate in the H-2A (temporary agricultural) and H-2B (temporary nonagricultural) programs for the coming year. Each country's designation remains valid for one year from the date of publication.

USCIS generally may only approve H-2A and H-2B petitions for nationals of countries the Secretary of Homeland Security has designated as eligible to participate in the programs. USCIS may approve H-2A and H-2B petitions for nationals of countries not on the list if it is determined to be in the interest of the United States.

In addition to the 53 countries currently on the list, DHS designated Haiti, Iceland, Montenegro, Spain, and Switzerland for the first time this year.

Effective January 18, 2012, nationals of the following 58 countries are eligible to participate in the H-2A and H-2B programs: Argentina, Australia, Barbados, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Jamaica, Japan, Kiribati, Latvia, Lithuania, Macedonia, Mexico, Moldova, Montenegro, Nauru, the Netherlands, Nicaragua, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Samoa, Serbia, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Spain, Switzerland, Tonga, Turkey, Tuvalu, Ukraine, United Kingdom, Uruguay and Vanuatu.

This new list does not immediately affect the status of beneficiaries who are currently in the United States in H-2A or H-2B status, unless they apply to change or extend their status.

The notice is available [here](#).

4. U.S. Consulate in Chennai Stops Processing Immigrant Visa Petitions

As of January 1, 2012, the U.S. Consulate General in Chennai, India, no longer processes immigrant visa petitions. The U.S. Embassy in New Delhi and U.S. Consulate in Mumbai are now the only acceptance centers in India for immigrant visa applications. Applicants currently in the process of petitioning for an immigrant visa may e-mail ChennaiVU@state.gov for clarification of their status.

5. DHS Extends TPS Designation for El Salvador

The Department of Homeland Security (DHS) has extended the designation of El Salvador for temporary protected status (TPS) for 18 months from its current expiration date of March 9, 2012. The 18-month extension of the TPS designation of El Salvador is effective March 10, 2012, and will remain in effect through September 9, 2013. The 60-day re-registration period began January 9, 2012, and will remain in effect until March 9, 2012.

The notice sets forth procedures necessary for nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) (Forms I-766) with USCIS. Re-registration is limited to persons who previously registered for TPS under the designation of El Salvador and whose applications have been granted or remain pending. Certain nationals of El Salvador (or those having no nationality who last habitually resided in El Salvador) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

USCIS said it will issue new EADs with a September 9, 2013 expiration date to eligible Salvadoran TPS beneficiaries who timely re-register and apply for EADs under this extension. DHS recognizes that all re-registrants may not receive new EADs until after their current EADs expire on March 9, 2012. Accordingly, the notice automatically extends the validity of EADs issued under the TPS designation of El Salvador for six months, through September 9, 2012, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the I-9 and E-Verify process.

The notice is available [here](#).

6. DOS Launches 90-Day Pilot Program Allowing Online U.S. Passport Card Applications

On January 24, 2012, the Department of State's Office of Passport Services launched a 90-day pilot program allowing adult U.S. citizens living in the United States and Canada to apply for a passport card online. Those applying online are not required to mail in their current passport book. The wallet-sized U.S. passport card costs \$30 for current passport book holders, and is valid for land and sea travel to and from Canada, Mexico, the Caribbean, and Bermuda. It is not valid for international air travel.

To participate in the program, applicants must currently possess a valid 10-year U.S. passport book with at least 12 months of validity remaining, upload an acceptable digital photograph, and make an online payment in U.S. dollars via Pay.gov. Applications accepted through the program will be subject to the same adjudication standards as in-person or mail-in applications.

The Department of State began producing the passport card in 2008 in response to travel document requirements imposed by the Western Hemisphere Travel Initiative. Since then, more than 4.5 million cards have been issued.

The notice is available [here](#).

To apply for the passport card using the online application, go to the link [here](#).

Seyfarth Workforce Authorization Team (SWATeam)

1. DOJ's Office of Special Counsel Lists Employer Best Practices During Worksite Enforcement Audits

The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) released the following do's and don'ts for employers facing audits by U.S. Immigration and Customs Enforcement (ICE):

DO:

- Develop a transparent process for interacting with employees during the audit, including communicating with employees that the employer is subject to an ICE audit.
- Provide all workers with a reasonable amount of time to correct discrepancies in their records identified by ICE. Treat all workers in the same manner during the audit, without regard to national origin or citizenship status. This means that all workers with like discrepancies who are asked to present additional documents are provided with the same timeframes and the same choice of Form I-9 documents to present.

- If your workers are represented by a union, inform the union of the ICE audit and determine whether a collective bargaining agreement triggers any obligations.
- Inform employees from whom you seek specific information that you are seeking this information in response to an ICE audit.
- Communicate in writing with employees from whom you seek information, and describe the specific basis for the discrepancy and/or what information you need from them. Follow the instructions on the ICE notice and the instructions for the Form I-9 when seeking to correct Form I-9 defects, including the Lists of Acceptable Documents and the anti-discrimination notice.

DON'T:

- Selectively verify the employment eligibility of certain employees based on their national origin or citizenship status based on the receipt of an ICE Notice of Inspection.
- Terminate or suspend employees without providing them with notice and a reasonable opportunity to present valid Form I-9 documents.
- Require employees to provide additional evidence of employment eligibility or more documents than ICE is requiring you to obtain.
- Limit the range of documents that employees are allowed to present for purposes of the Form I-9.
- Treat employees differently at any point during the audit because they look or sound foreign, or based on assumptions about whether they are authorized to work in the U.S.

The list is available [here](#).

2. Justice Dept. Settles Document Discrimination Complaint Against University of California San Diego Medical Center

The Department of Justice reached an agreement on January 4, 2012, with the University of California San Diego Medical Center, resolving a complaint filed on December 6, 2011, alleging that the medical center failed to comply with proper employment eligibility verification processes for noncitizens authorized to work in the United States.

Specifically, the Department's complaint alleged that the medical center subjected newly hired non-U.S. citizens to excessive demands for documents to verify their employment eligibility but did not require the same of U.S. citizens.

Under the terms of the settlement agreement, the medical center agreed to implement new employment eligibility verification policies and procedures that treat all employees equally regardless of citizenship status. In addition, the medical center agreed to pay a civil penalty of \$115,000, conduct supplemental training of its human resources personnel on their responsibilities to avoid discrimination in the employment eligibility verification process, and work with the Department to ensure compliance with proper employment eligibility verification processes across all University of California campuses, medical centers, and facilities.

The Department's announcement is available [here](#).

Seyfarth Immigration Events and News

Recent News from Seyfarth's Immigration Attorneys

Upcoming Speaking Engagements

Attorney Nicole Kersey will deliver a presentation titled, "*Electronic I-9 Solutions: Jackpot or Crackpot?*" at the National Association of Professional Background Screeners 2012 Annual Conference, to be held April 15-17, 2010 in Nashville, Tennessee.

Seyfarth Shaw — Immigration Inbox

Seyfarth Partner Angelo Paparelli spoke New York International, an association serving “local, global citizens,” on January 23 in Manhattan on “*U.S. Immigration Law Opportunities and Challenges for Foreign Entrepreneurs, Professionals & Investors: Reaping Rewards While Avoiding the Landmines.*”

In addition, Angelo Paparelli has posted several new blog entries on his *Nation of Immigrators* public policy blog:

Faint Immigration Praise

Angelo criticizes a host of Obama Administration actions to fix America’s broken immigration system (while Congress “remains comatose”) as “more like vaporware than tangible solutions.”

“I Hate [Bleep]ing Immigration Law” -- Whenever I Get an Unjust Request for Evidence

In Angelo’s words: “A roguish, stupid or intellectually dishonest RFE, however, will cause me to erupt into silent, internal conniptions. . . . Living in California, the land of holistic therapies, I know that anger swallowed often morphs into depression. To avoid that dreadful fate, I pen this post as a way to release outrage, stay healthy, and light a candle on RFE avoidance and response.”

Powdered Wig Immigration with the Lawyer as Potted Plant

Angelo proposes expanded procedural due process rights and access to legal counsel in immigration matters involving USCIS

The DHS Inspector General Report on Fraud Detection at USCIS: Pious Immigration Baloney

Angelo challenges a recent report finding widespread fraud and legal ineligibility in requests for immigration benefits submitted to USCIS.

By: *Angelo Paparelli, Jason Burritt, and John Quill*

Angelo Paparelli is a Partner in Seyfarth’s Downtown Los Angeles office. Jason Burritt is a Senior Associate in the New York office. John Quill is Senior Counsel in the Boston office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Angelo Paparelli at apaparelli@seyfarth.com, Jason Burritt at jburrirt@seyfarth.com, John Quill at jquill@seyfarth.com or any Business Immigration attorney on our website.



www.seyfarth.com

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) © 2012 Seyfarth Shaw LLP. All rights reserved.

Breadth. Depth. Results.