

Immigration Inbox: News You Can Use

U.S. Immigration:

- 1. Employment-Based Third Preference Visa Numbers Advance Significantly* – The employment-based third preference category cut-off date for most countries advanced significantly for the second month in a row, but this rapid rate is not expected to continue.
- 2. CBP Rolling Out Automation of I-94 Arrival/Departure Records* – The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21.
- 3. SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence* – The Social Security Administration has updated its Program Operations Manual System, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity.
- 4. Senate Judiciary Committee Approves Comprehensive Immigration Reform Bill* – Over 1,000 pages long, S. 744 now heads to the Senate for floor debates and a vote.
- 5. DHS Orders Verification of Student Visas in Wake of Boston Bombings* – Border agents are to use flight manifest information to verify student visa status, and check any for which that information is not available against a DHS database.
- 6. DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing* – The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification.
- 7. USCIS Seeks New Private-Sector Experts for Entrepreneur Initiative* – USCIS seeks experts in performing arts, health care, and information technology.
- 8. DHS Changes US-VISIT Name* – The US-VISIT program is now called the Office of Biometric Identity Management (OBIM).

Seyfarth Workforce Authorization Team (SWATeam)

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U.S. Immigration

1. Employment-Based Third Preference Visa Numbers Advance Significantly

The employment-based third preference category cut-off date for most countries advanced significantly for the second month in a row, as reflected in the June 2013 Visa Bulletin. The Department of State's Visa Office said this recent rate of movement is not expected to continue in the future. Rapid forward movement of cut-off dates is often followed by a dramatic increase in demand for numbers within three to six months, the Visa Bulletin explains. Once such demand begins to materialize, the cut-off date movement will begin to slow or will even stop for a period of time.

For June, the employment-based third preference cut-off date for China is September 1, 2008; for India, January 8, 2003; for Mexico, September 1, 2008; and for Philippines, September 22, 2006. For all other chargeability areas, the date is September 1, 2008. The dates for the "Other Workers" categories in June are the same, except for China-mainland born, which is October 22, 2003.

In May, the corresponding cut-off dates were December 1, 2007 (China, Mexico, and All Chargeability Areas Except Those Listed); December 22, 2002 (India); and September 15, 2006 (Philippines).

For June, the employment-based first preference is Current. Second preference is also Current except for China-mainland born, which is July 15, 2008; and India, which is September 1, 2004. The June 2013 Visa Bulletin is available [here](#).

2. CBP Rolling Out Automation of I-94 Arrival/Departure Records

U.S. Customs and Border Protection (CBP) announced on April 26, 2013, that it has automated the Form I-94, Arrival/Departure Record. The I-94 provides international visitors evidence that they have been lawfully admitted to the United States, which is necessary to verify registration, immigration status, and employment authorization. Affected visitors will no longer need to fill out a paper form when arriving in the U.S. by air or sea. CBP will now generate records of admission using traveler information already transmitted electronically. The change was implemented at air and sea ports on April 30 at Charlotte-Douglas International Airport, Orlando International Airport, Las Vegas Airport, Chicago O'Hare, Miami International Airport, and Houston Bush Intercontinental Airport. It will be rolled out across the country through May 21. Travelers wanting a hard copy or other evidence of admission may access that information [here](#) if they did not receive a hard copy attached to their passport.

From there, individuals can print a copy of the I-94 based on electronically submitted data, including the I-94 number from the form, to provide as necessary to benefit providers or as evidence of lawful admission.

The announcement is available [here](#).

3. SSA Adds Admission Stamp in Unexpired Foreign Passport To List of Primary Evidence of Identity, Updates Policy on New Types of Nonimmigrant Evidence

The Social Security Administration has updated its Program Operations Manual System (POMS), effective April 30, 2013, adding "admission stamp in unexpired foreign passport" to its list of acceptable primary evidence of identity. The updated SSA information, "List of Documents in Priority of Acceptability for Use as Evidence of Identity," says that this is considered a separate document from an unexpired passport. The updated SSA information in POMS refers to "Policy for Number of Documents Required for an SSN Card," which explains:

- An I-551 stamp (Temporary Lawful Permanent Resident stamp) or a U.S. immigration stamp in the applicant's foreign passport and the foreign passport are two separate documents.
- Likewise, an Arrival Departure Record (Form I-94) stapled in a foreign passport and the foreign passport are two separate documents.
- A machine-readable immigrant visa (MRIV) issued by the U.S. Department of State and placed in the foreign passport and the foreign passport are two separate documents.
- The Department of Homeland Security (DHS) admission stamp placed partially on the MRIV is a third document.

- While you can use the immigration and admission stamp to establish identity and lawful alien status, you can use the foreign passport to establish age.

SSA has also posted policy information on new types of nonimmigrant evidence, including the admission stamp and recently introduced versions of the I-94 Arrival/Departure record, including U.S. Customs and Border Protection's I-94 website printout and the Global Entry I-94, and has added a parole stamp placed in an unexpired foreign passport as acceptable evidence of parole status for a Social Security number (SSN). SSA also updated the 10-day hold procedure for verifying evidence of status for an SSN using the Systematic Alien Verification for Entitlements (SAVE) program through the enumeration system (SSNAP). SSA said it is making these changes as a result of Department of Homeland Security (DHS) automation of the I-94 Arrival/Departure record and recent DHS information regarding the real-time verification of alien evidence. SSA has eliminated the 10-day hold policy for all DHS evidence except DHS Forms N-550/N-570 (Certificate of Naturalization) and N-560/N-561 (Certificate of Citizenship).

The updated information on admission stamps is included in RM 10210 TN 16 (effective date: 4/30/2013), and is available [here](#).

The referenced document, RM 10210.020, is available [here](#).

The new policy documents, also effective April 30, 2013, are available [here](#), [here](#), and the 10-day hold update is available [here](#).

4. Senate Judiciary Committee Approves Comprehensive Immigration Reform Bill

The Senate Judiciary Committee has passed and sent to the full Senate S. 744, the "Border Security, Economic Opportunity and Immigration Modernization Act of 2013," a comprehensive immigration reform proposal developed and managed by the "Gang of Eight" a bipartisan group of senators and introduced on April 17. The Gang of Eight includes Sens. Marco Rubio (R-Fla.); John McCain (R-Ariz.); Lindsey Graham (R-SC); Jeff Flake (R-Ariz.); Chuck Schumer (D-NY); Robert Menendez (D-NJ); Michael Bennet (D-Colo.); and Richard Durbin (D-Ill.) Among other things, the bill would offer a pathway to legalization for an estimated 11 million undocumented persons, introduce a new W visa for lower-skilled immigrants, and clear up the backlogs in the employment and family preference green card categories. It also would create a startup visa for entrepreneurs and increase the number of visas for both high- and low-skilled workers.

As the Washington Post [reported](#), however, "[for] the top 20 companies that used the [work-visa] program last year, the new fees [under S. 744] would have driven the cost of visas approved last year to \$232.2 million, according to data compiled by Bloomberg."

The first amendment to the bill was the "Sponsors Amendment" (see [here](#)). A document showing changes to the bill as introduced is available [here](#). The original text of the bill is available [here](#). A live webcast of the May 9 markup is available [here](#). The list of amendments and their outcome in the markups is available [here](#). A version of the Immigration and Nationality Act with the approved amendments to S. 744 incorporated is available [here](#). For the revised text of S. 744, including all amendments adopted by the Senate Judiciary Committee, click [here](#).

For tips on what employers should do in anticipation of the law's probable enactment, consider this advice on "[immigration portfolio management](#)" from Seyfarth partner, Angelo Paparelli.

5. DHS Orders Verification of Student Visas in Wake of Boston Bombings

The Department of Homeland Security reportedly has ordered U.S. border agents to verify the validity of student visas for every international student arriving in the United States, effective immediately. Border agents are to use flight manifest information to verify student visa status, and check any for which that information is not available against a DHS database, according to the Associated Press, which obtained a copy of an internal memo circulated by David J. Murphy, of U.S. Customs and Border Protection, on May 3, 2013. The order follows news that one of the students accused of hiding evidence after the April 15 Boston Marathon bombings, Azamat Tazhayakov, had returned to the United States in January without a valid visa. Reportedly, the border agent at the airport in New York where Mr. Tazhayakov entered the United States on January 20 did not have access to the Student and Exchange Visitor Information System (SEVIS) and didn't send Mr. Tazhayakov to

secondary inspection where SEVIS information would have been available. All border agents will now be able to access SEVIS. One of the bombers, Tamarlan Tsarnaev, was a U.S. permanent resident and the other, Dzokhar Tsarnaev, was a U.S. citizen. Tamarlan is dead and Dzokhar is in custody.

Delays are expected at ports of entry for international students as a result of the new order.

6. DOL, DHS Publish Interim Final Rule on H-2B Prevailing Wage Methodology; DOL, USCIS Resume Processing

On April 24, 2013, the Departments of Labor (DOL) and Homeland Security published a joint interim final rule on wage methodology for the temporary non-agricultural employment H-2B program. The rule revises the prevailing wage methodology used by the DOL to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification. The interim final rule was published in response to a court order issued by the U.S. District Court for the Eastern District of Pennsylvania on March 21, 2013, in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 09-cv-00240 (E.D. Pa). The court order vacated a portion of the 2008 wage methodology rule dealing with the way the DOL determines the prevailing wage when relying on the Bureau of Labor Statistics' Occupational Employment Statistics (OES) survey, and provided the Department of Labor with 30 days to come into compliance.

On April 24, 2013, the effective date of the interim final rule, the DOL also resumed processing both pending H-2B prevailing wage requests and H-2B applications for temporary labor certification based on the OES wage survey data, in accordance with standards set in the interim final rule. USCIS also has resumed processing of all Form I-129 (Petition for Nonimmigrant Worker) H-2B petitions for temporary nonagricultural workers. On March 22, 2013, USCIS temporarily suspended adjudication of most I-129 H-2B petitions while the government considered appropriate action in response to the court order.

The DOL released frequently asked questions (FAQs) to assist filers in complying with the requirements of the interim final rule. The FAQs address the applicability of the new prevailing wage methodology, employer wage obligations, requests for review, and processing pending H-2B prevailing wage requests and H-2B applications for temporary labor certification. The FAQs were updated on April 25, 2013, and are available [here](#).

The DOL/DHS interim final rule is available [here](#).

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

USCIS's related announcement is available [here](#).

The decision in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis* is available [here](#).

7. USCIS Seeks New Private-Sector Experts for Entrepreneur Initiative

For its "Entrepreneurs in Residence" initiative, U.S. Citizenship and Immigration Services (USCIS) is now seeking new private sector experts, using the Department of Homeland Security's Loaned Executive Program, in the areas of performing arts, health care, and information technology. USCIS said the introduction of expert views in these areas will help the agency gain additional insights and strengthen its policies and practices in areas critical to economic growth. USCIS has also enhanced its online resource center for entrepreneurs, Entrepreneur Pathways.

Over the past year, there have been nearly 30,000 visits to the site, USCIS reported. The site provides entrepreneurs seeking to start a business in the United States a way to navigate the immigration process. USCIS said three aims are key to the initiative: "producing clear public materials to help entrepreneurs understand relevant visa categories; equipping USCIS staff with the right tools to adjudicate cases in today's complex business environment; and streamlining USCIS policies to better reflect the realities faced by foreign entrepreneurs and startup businesses."

For more information on opportunities for private sector experts, click [here](#). The USCIS announcement is available [here](#).

8. DHS Changes US-VISIT Name

The US-VISIT (United States Visitor and Immigration Status Indicator Technology) program is now called the Office of

Biometric Identity Management (OBIM). The Department of Homeland Security (DHS) explained that OBIM provides biometric identification services that help federal, state, and local government decision-makers accurately identify people and determine whether they pose a risk to the United States. OBIM supplies the technology for collecting and storing biometric data, provides analysis, updates its watchlist, and ensures data integrity. DHS created OBIM in March 2013. More information is available [here](#).

Seyfarth Workforce Authorization Team (SWATeam)

1. I-9 Updates

In a recent meeting with representatives of the American Immigration Lawyers Association (AILA), U.S. Customs & Immigration Enforcement (ICE) confirmed that pre-population of Section 1 of the Form I-9 (often a feature of electronic I-9 software programs) is an unacceptable practice. This is contrary to previous guidance by U.S. Citizenship and Immigration Services (USCIS). Software providers and employers who use electronic I-9 software should consider this most recent policy statement and may wish to speak with an attorney about how to handle I-9s that may have been completed using pre-population.

Also in a meeting with AILA representatives, USCIS clarified that the 3-day rule for completing Section 2 is based on the employer's operations schedule. If a business is closed on weekends, weekends do not count in calculating the 3-day deadline. However, if the employer's business operates 7 days a week, such as a hospital or production plant, weekends count in the calculation. This interpretation applies even if the business does not have human resources or management staff available on such weekends or holidays. This is a shift from previous ICE guidance.

Remember that the deadline for using the new version of the Form I-9 was May 7, 2013. On and after that date, all employers should be using only the new 2-page version of the Form I-9.

I-9 and E-Verify Webinar Available

On May 30, 2013 Angelo A. Paparelli presented a webinar, "Weathering the Storm: Limiting Immigration Exposure in a Climate of Aggressive Enforcement," covering I-9, E-Verify enforcement, actions of other immigration agencies, related provisions in the Senate comprehensive immigration reform bill, S. 744, and best practices for employers. A link to the Webinar audio and slide deck is available [here](#).

Seyfarth Immigration Events and News

Practice Accolades

Seyfarth Shaw's Business Immigration Group and a number of attorneys were recently recognized in the 2013 Chambers USA rankings. Chambers USA, an independent research organization, publishes the leading directories of the legal profession. Seyfarth's Immigration practice earned a Band 2 Ranking for both its Nationwide and California immigration practices. In addition, Angelo Paparelli was recognized with a Star ranking for California, the highest rank available, and Band 1 nationwide. Attorneys Sharon Poorak (Band 2), Russell Swapp (Band 3) and Jim King (Band 3) were also recognized.

Article Published

Angelo Paparelli co-authored, "Obligations Overlooked: Typical Mistakes H-1B Employers Make," reprinted with permission of the New York Law Journal and ALM Properties Inc. (April 25, 2013), and available [here](#).

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

The Immigration Scandal at DHS -- Just as Bad as at IRS

Americans are outraged when tax laws and revenue agents bite them, but seem scantily or not at all troubled when our immigration laws and their bureaucratic enforcers devour people and property rights. Leaders of the USCIS and ICE unions have announced, in effect, that they will choose which laws to enforce if Comprehensive Immigration Reform is passed.

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However, this brazen disregard for the rule of law has received little public attention.

Immigration's Minnesota Nice, Sen. Al Franken, Helps Small Businesses and Regular Folks with the I-9 Process

To steal a line from Sen. Franken's former SNL persona, Stuart Smalley, Franken is "good enough, smart enough, and doggone it -- immigration reform advocates really like him." Sen. Franken's amendment, to create an "Office of the Small Business and Employee Advocate" which would assist small businesses and individuals with I-9 compliance, wins high praise.

No Time for Rich-Whining, CIR Advocates Must Stay Focused on the Senate

Although Comprehensive Immigration Reform continues to make progress through the Senate, Angelo warns that now is not the time to bask temporary victories. Reform will be doomed if the poison-pill pharmacists on the right are allowed to administer a deadly dose of crippling amendments.

Memo to GCs: If Ever There Is a Time for Immigration Portfolio Management, It's Now?

Although most of the media focus on Comprehensive Immigration Reform has homed in on border security and the treacherous path to citizenship for undocumented immigrants, U.S. companies -- especially the General Counsel (GCs) who advise them -- are slated to be on the receiving end of shock and awe if the "Border Security, Economic Opportunity, and Immigration Modernization Act," or BESSIE MAE, as wags like to call it, ever becomes law.

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