

Immigration Inbox: News You Can Use

U.S. Immigration:

- 1. Details Released on DV-2014 Lottery Program; DV-2013 Entrants Should Keep Confirmation Numbers* - Online registration for the DV-2014 Program begins on October 2, 2012, at noon EDT, and concludes on November 3, 2012, at noon EDT. The Department of State also said it may select more DV-2013 entries on October 1, 2012, so DV-2013 entrants should keep their confirmation numbers even if they have not been selected yet.
- 2. STEM Bill Fails in House* - The House rejected the STEM Jobs Act (H.R. 6429), sponsored by Rep. Lamar Smith (R-Tex.). The bill would have provided permanent residence to 55,000 foreign students each year who graduate with advanced degrees in science, technology, engineering, or mathematics from U.S. universities and agree to work for at least five years in the United States in a STEM field.
- 3. State Dept. Announces Numerical Limits for Immigrants in FY 2012 and Provides Oct. 1 Quota Numbers* - The worldwide employment-based preference limit for fiscal year 2012 is 144,951, and the family-sponsored preference limit is 226,000.
- 4. USCIS Releases Guidance on Accommodating Religious Beliefs When Capturing Photographs and Fingerprints* - If removal of headwear or adjustments are needed, such as a same-gender photographer or fingerprint-taker, USCIS will offer a private or screened area, if available. If such an area is not available, USCIS will offer to reschedule the appointment.
- 5. CBP Discontinues Admission Stamps on Forms for F, M, J International Students and Scholars* - If a state benefit-granting agency rejects an unstamped Form I-20/DS-2019, applicants may make an appointment with USCIS online through InfoPass and take their I-20/DS-2019 to their local USCIS office to be stamped. This transitional step will end on November 21, 2012.
- 6. CBP Warns I-94 Processing May Be Delayed* - The current processing time for entering foreign visitors' travel information into the I-94 database is 30 days or more.
- 7. Groups of Travelers Can Now Submit Multiple ESTA Applications* - Multiple applications may be submitted and paid for in one transaction via the Electronic System for Travel Authorization.
- 8. Second Circuit Finds New York Law Prohibiting Nonimmigrant Pharmacists Unconstitutional* - In *Paidi v. Mills*, the U.S. Court of Appeals for the Second Circuit found unconstitutional a New York law stating that only U.S. citizens and legal permanent residents may obtain a pharmacist's license in New York.
- 9. Labor Department's Chicago National Processing Center Has Moved* - Paper filings for the D-1, H-2A, and H-2B programs should be sent to the CNPC's new addresses.

Seyfarth Workforce Authorization Team (SWATeam)

1. *USCIS Allows 30 Additional Days for Public Comment on Revised I-9 and publishes Paperwork Reduction Act Notice on E-Verify* – USCIS received over 6,200 comments in response to its earlier publication on March 27, 2012. The comment period was extended through September 21, 2012. The agency also published a notice of the opportunity for public comment under the Paperwork Reduction Act on the time required to utilize the E-Verify database, as well as versions of the E-Verify Memorandum of Understanding (MOU) with enrolling employers.

2. *Labor Dept. Proposes Reorganizing Applications for Prevailing Wage Determination and Temporary Employment Certification* – The ETA has proposed reorganizing ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification; and the H-2A Certification Letter With Notification.

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New Postings on Angelo Paparelli's *Nation of Immigrators* Public Policy Blog

U.S. Immigration

1. Details Released on DV-2014 Lottery Program; DV-2013 Entrants Should Keep Confirmation Numbers

Online registration for the DV-2014 Program begins on Tuesday, October 2, 2012, at noon EDT, and concludes on Saturday, November 3, 2012, at noon EDT. Applicants must submit entries electronically during this registration period using the electronic DV entry form (E-DV) [here](#). Paper entries will not be accepted. The Department of State strongly encourages applicants not to wait until the last week of the registration period to enter. Heavy demand may result in website delays.

Selectees for the DV program are chosen by a computer-generated, random drawing. The visas are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration to the United States, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the past five years. No single country may receive more than seven percent of the available diversity visas in any one year.

For DV-2014, natives of Guatemala are now eligible to enter the program.

Natives of the following countries are not eligible to apply because the countries sent more than 50,000 immigrants to the United States in the previous five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. A "native" ordinarily means someone born within a particular country, regardless of the individual's current country of residence or nationality. Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

For DV-2014, the Department of State once again will implement an online process to notify entrants of their selection and to provide information about the immigrant visa application and interview. Beginning May 1, 2013, DV-2014 entrants will be able to use their confirmation number provided at registration to check online through Entry Status Check [here](#). Successful entrants will receive instructions on how to apply for immigrant visas for themselves and their eligible family members. Confirmation of visa interview appointments will also be made through Entry Status Check.

For detailed information about DV-2014 entry requirements, along with frequently asked questions about the DV program, see the instructions for the DV-2014 Diversity Visa program, available [here](#). The Department of State also noted that DV-2013 entrants should keep their confirmation numbers until at least September 2013, even if they were not selected on May 1, 2012. The Department said it may select more DV-2013 entries on October 1, 2012. Entrants in the DV-2013 program may check the status of their entries through Entrant Status Check, available [here](#) through September 30, 2013.

2. STEM Bill Fails in House

On September 20, 2012, the U.S. House of Representatives rejected the STEM Jobs Act (H.R. 6429), sponsored by Rep. Lamar Smith (R-Tex.) by a vote of 257-158. (288 votes were required to pass under suspension of the rules.) The bill would have provided permanent residence to 55,000 foreign students each year who graduate with advanced degrees in science, technology, engineering, or mathematics from U.S. universities and agree to work for at least five years in the United States in a STEM field. The bill included requirements for an employer to petition on the student's behalf and a labor certification process.

Democrats who voted against the measure signaled that they were in favor of similar legislation but objected to a provision that would have eliminated the diversity visa program. Congress may take up this and similar bills in November, after the presidential election.

3. State Dept. Announces Numerical Limits for Immigrants in FY 2012 and Provides Oct. 1 Quota Numbers

U.S. The Department of State determines worldwide numerical limitations on visa issuances, based in part on data provided by U.S. Citizenship and Immigration Services (USCIS). On August 8, 2012, USCIS provided the required data to the Department's Visa Office. The Department has determined that the worldwide employment-based preference limit for fiscal year 2012 is 144,951, and the family-sponsored preference limit is 226,000. The per-country limit is fixed at 7 percent of the family and employment annual limits; for FY 2012, the per-country limit is 25,967. The dependent area annual limit is 2 percent, or 7,419.

The Visa Bulletin for September 2012, which includes the cut-off dates for employment-based and family-based visa numbers, is available [here](#). The October 2012 Visa Bulletin is available [here](#).

4. USCIS Releases Guidance on Accommodating Religious Beliefs When Capturing Photographs and Fingerprints

U.S. Citizenship and Immigration Services (USCIS) recently released policy guidance on accommodating religious beliefs during fingerprint and photograph capture. Among other things, the guidance notes that USCIS will accommodate an individual who wears headwear as part of his or her religious practices. Religious headwear may be worn if a reasonable likeness can be obtained from an individual, the full face is visible, and the religious headwear does not cast a shadow on the face. If removal of headwear or adjustments are needed, such as a same-gender photographer or fingerprint-taker, USCIS will offer a private or screened area, if available. If such an area is not available, USCIS will offer to reschedule the appointment.

The notice is available [here](#).

5. CBP Discontinues Admission Stamps on Forms for F, M, J International Students and Scholars

As of August 10, 2012, U.S. Customs and Border Protection (CBP) no longer provides admission stamps on Forms I-20/DS-2019 for prospective and returning international students and scholars (traveling on F, M, and J visas) seeking admission to the United States. CBP said this change makes CBP processes consistent with U.S. Citizenship and Immigration Services'

(USCIS) recent change to stop stamping Forms I-20/DS-2019.

USCIS implemented this change as part of the launch of the USCIS Electronic Immigration System.

CBP noted that placing an admission stamp on Forms I-20/DS-2019 has been a longstanding practice at CBP, but it is not required. Although the admission stamps on Forms I-20/DS-2019 are not indicators of lawful status or academic program duration, some state and federal benefit-granting agencies have required international students and scholars to present stamped versions. State requirements vary.

If a state benefit-granting agency rejects an unstamped Form I-20/DS-2019, applicants may make an appointment with USCIS online through InfoPass and take their I-20/DS-2019 to their local USCIS office to be stamped. This transitional step will end on November 21, 2012.

The notice is available [here](#).

6. CBP Warns I-94 Processing May Be Delayed

U.S. Customs and Border Protection (CBP) is automating traveler arrival records to streamline passenger processing. The current processing time for entering foreign visitors' travel information into the I-94 database is 30 days or more. This does not affect the majority of foreign travelers visiting for business or leisure and will not affect any visitor's record of departure, CBP said.

Visitors may need to prove their legal-visitor status within the first 30-45 days of their U.S. stay to:

- employers;
- motor vehicle registration or drivers' licensing agencies;
- the Social Security Administration;
- U.S. Citizenship and Immigration Services; or
- universities and schools.

If visitors need to provide evidence of legal status during this time frame, they should include:

- an unexpired foreign passport;
- the country of citizenship; and
- CBP Arrival/Departure Record, Form I-94 (if issued)

Contact CBP for more information or with questions:

Tel: (877) CBP-5511

TTD: (866) 880-6582

The announcement is available [here](#).

7. Groups of Travelers Can Now Submit Multiple ESTA Applications

U.S. Customs and Border Protection (CBP) announced on August 9, 2012, that multiple applications may be submitted and paid for in one transaction via the Electronic System for Travel Authorization (ESTA). The new online application is available beginning on Wednesday, August 15.

Applicants must enter biographic data and an e-mail address to create a Group ID that will allow a family or group the ability to input up to 50 ESTA applications and complete the transaction in a single credit card payment. All payments for ESTA applications must be made by credit card or debit card when applying or renewing. Applications will not be submitted for processing until all payment information is received.

ESTA is an electronic travel authorization that all nationals of Visa Waiver Program (VWP) countries must obtain before boarding a carrier to travel by air or sea to the United States under the VWP. This travel authorization has been mandatory since January 12, 2009. ESTA applications may be submitted at any time before travel, although CBP recommends applying at least 72 hours before departure. Once approved, authorizations are generally valid for multiple entries into the U.S. for up to two years or until the applicant's passport expires or other specific circumstances give rise to a need to reapply, whichever comes first.

The Department of Homeland Security administers the VWP. The program enables eligible nationals of 36 VWP designated countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Additional information regarding the VWP is available [here](#). Frequently asked questions about the VWP and ESTA are available [here](#).

8. Gregorio Second Circuit Finds New York Law Prohibiting Nonimmigrant Pharmacists Unconstitutional

In *Paidi v. Mills*, the U.S. Court of Appeals for the Second Circuit found unconstitutional New York Education Law § 6805(1)(6), which stated that only U.S. citizens and legal permanent residents may obtain a pharmacist's license in New York.

The nonimmigrant plaintiffs had obtained pharmacists' licenses. Most of them had H-1B temporary worker visas; the remaining plaintiffs had TN (Trade NAFTA) visas. The court noted that although all of the plaintiffs were on temporary visas, they all were legally authorized to reside and work in the United States for more than six years, and in some cases for more than 10 years.

The court noted that the Fourteenth Amendment to the U.S. Constitution provides that states may not deny to any person within its jurisdiction the equal protection of the laws. Under the Fourteenth Amendment, any law that interferes with the exercise of a fundamental right or "operates to the peculiar disadvantage of a suspect class" is to be reviewed under a strict scrutiny standard. The court also pointed out that the Supreme Court has long held that states cannot discriminate based on alienage. There are only two exceptions to the strict scrutiny standard, the court noted. The first exception "allows states to exclude aliens from political and governmental functions as long as the exclusion satisfies a rational basis review." The second exception acknowledges that people who reside in the United States without authorization may be treated differently in some instances from those who are in the United States legally.

In this case, the court noted that New York was proposing that a third exception be established that the Fourteenth

Amendment's protections not apply to nonimmigrant lawfully admitted persons who require a visa to remain in the United States. The court rejected New York's approach, noting that, among other things, the bedrock of the Supreme Court's decisions in this area is the fact that "although lawfully admitted aliens and U.S. citizens are not constitutionally distinguishable, aliens constitute a discrete and insular minority because of their limited role in the political process" and are therefore relatively powerless and vulnerable. The court said that the state's focus on lawfully admitted nonimmigrants' "transience" was "overly formalistic and wholly unpersuasive," since the plaintiffs were transient in name only.

The court said it agreed with the district court that there is no evidence that transience among New York pharmacists threatens public health or that nonimmigrant pharmacists, as a class, are considerably more transient than LPR and citizen pharmacists. "Citizenship and Legal Permanent Residency carry no guarantee that a citizen or LPR professional will remain in New York (or the United States for that matter), have funds available in the event of malpractice, or have the necessary skill to perform the task at hand." Noting that there are other ways to limit the dangers of potentially transient professionals, the court held that the statute unconstitutionally discriminated against the plaintiffs in violation of their Fourteenth Amendment rights.

The court added that the federal power to determine immigration policy is settled, extensive, and predominant. Federal law recognizes that states have a legitimate interest in ensuring that applicants for professional licenses have the necessary educational and experiential qualifications for the positions sought. But "that traditional police power cannot morph into a determination that a certain subclass of immigrants is not qualified for licensure merely because of their immigration status," the court said. By making immigration status a professional qualification and thereby causing the group of noncitizens and non-LPRs whom Congress intended to allow to practice specialty occupations to be ineligible to do so, the New York statute "has created an obstacle to the accomplishment and execution of the [Immigration and Nationality Act]," the court noted, agreeing with the district court that Congress's federal laws creating H-1B and TN status were not merely "advisory."

The decision is available [here](#).

9. Labor Department's Chicago National Processing Center Has Moved

The Chicago National Processing Center (CNPC) has a new address. Paper filings for the D-1, H-2A, and H-2B programs should be sent to the CNPC's new addresses below. The CNPC move does not affect the electronic filing of labor condition applications (LCAs), but any employer with permission to file by hard copy should direct its LCA filing(s) to the new address.

Payments of H-2A labor certification fees should be sent to the new P.O. Box address (also listed below).

Mailing Address for Application Filings:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification

Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105
P.O. Box Address for the Receipt of H-2A-Related Filing Fees:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
P.O. Box A3804
Chicago, IL 60690-3804

Seyfarth Workforce Authorization Team (SWATeam)

1. USCIS Allows 30 Additional Days for Public Comment on Revised I-9

U.S. Citizenship and Immigration Services (USCIS) announced that it allowed an additional 30 days for public comment on the revised I-9 form. USCIS received over 6,200 comments in response to its earlier publication on March 27, 2012. Additional comments were accepted through September 21, 2012.

USCIS previously announced that employers should continue to use the current I-9 employment eligibility verification form even after the August 31, 2012, Office of Management and Budget control number expiration date passes.

The notice announcing the extension of the comment period, which includes instructions on submitting comments, is available [here](#).

In a related note, the agency also published a notice of the opportunity for public comment under the Paperwork Reduction Act on the time required to utilize the E-Verify database, as well as versions of the E-Verify Memorandum of Understanding (MOU) with enrolling employers. The E-Verify notice and MOU versions are available [here](#) (at the bottom of the linked page).

2. Labor Dept. Proposes Reorganizing Applications for Prevailing Wage Determination and Temporary Employment Certification

The Department of Labor's Employment and Training Administration (ETA) has proposed reorganizing ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification; and the H-2A Certification Letter With Notification.

Specifically, the Department is soliciting comments concerning the collection of data in the following information collections: Office of Management and Budget (OMB) Control Number 1205-0466, currently containing ETA Form 9141, Application for Prevailing Wage Determination, and ETA Form 9142, Application for Temporary Employment Certification, which expires on October 31, 2012; and OMB Control Number 1205-0404 containing the H-2A Certification Letter known as ETA-9144.

The Department proposes to divide 1205-0466 into three distinct information collection requests (ICRs), segregated by program, and to merge 1205-0404 into the collection that remains in 1205-0466. The Department proposes to separate out ETA Form 9141, Application for Prevailing Wage Determination, into its own collection, 1205-NEW2. The Department also proposes to divide the ETA Form 9142, Application for Temporary Employment Certification, into two collections. One would remain as 1205-0466 and would contain the ETA Form 9142A, H-2A Application for Temporary Employment Certification and Appendix A, along with other information collection burdens for the H-2A Temporary Labor Certification Program, while the second would become 1205-NEW1 and contain ETA Form 9142B, H-2B Application for Temporary Employment Certification and Appendix B, along with all the information collection burdens for the H-2B Temporary Labor Certification Program. Once separated, 1205-0404, which contains one additional information collection burden for the H-2A program, would be merged with 1205-0466 so that most of the H-2A materials can be accounted for in one ICR.

The Department said it is using this opportunity to separate the collections into "more manageable and easy to understand ICRs."

Comments will be accepted by October 15, 2012. The notice, which includes instructions on submitting comments, is available [here](#).

Seyfarth Immigration Events and News

Seyfarth Shaw Immigration Attorneys' Recent Publications

James King, Jason Burritt and Nicole Kersey wrote an article published in the September 2012 issue of Practical Law Company's (PLC) publication, Labor & Employment. The article, available [here](#), discusses what employers should know about electronic I-9 systems to ensure compliance with federal law.

Leon Sequeira Quoted in BNA Daily Labor Report

Seyfarth Shaw Labor & Employment attorney Leon Sequeira is extensively quoted in Bloomberg BNA's Daily Labor Report on September 10, 2012. The article discusses what employers need to know in order to avoid enforcement actions by Immigration and Customs Enforcement regarding employees seeing relief under the Deferred Action for Childhood Arrivals (DACA) program. Bloomberg BNA subscribers can read the entire article at www.bna.com.

Angelo Paparelli provides trainings on I-9, E-Verify, L-1B Specialized Knowledge, Immigration 101, and Advanced Green Card Strategies

Immigration partner, Angelo Paparelli, made several presentations in September. He participated in a [Knowledge Congress](#) webinar ("Are You Prepared for Immigration and Customs Enforcement's I-9 Audits?"), an [Alliance of Business Immigration Lawyers](#) internal training on "Trends and Strategies Affecting L-1B Specialized Knowledge Workers," and a training for a California IT client on "Immigration 101" and "Advanced Green Card Strategies." If your organization would like to arrange a webinar or in-person presentation or training session on the latest immigration developments and strategies, please contact your Seyfarth Immigration Attorney.

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

[The Immigration Week That Was](#)

Angelo reviews recent humorous, serious and important events in the U.S. immigration ecosphere.

[Immigration Buffets and Buffeting in Congress](#)

After next week, Congress will likely go dark until after the November election as each party campaigns for hegemony in the executive and legislative branches. A lame duck session will probably follow. Perhaps then winners and losers will at last put country before party on immigration and a host of other issues. Maybe legislators whose careers are ending through a loss at the ballot box or retirement -- with nothing to lose -- will grow spines.

[The Democrats' Immigration Position: Better But Blemished](#)

The inevitable comparisons of the two parties' convention performances give the edge to the Democrats' oratory, production values, crowd enthusiasm and diversity. On immigration policy, the Dems offered more substantive messaging, while the GOP stressed ancestral memories of arrivals long ago.

[The GOP Position: Immigration under Glass](#)

Republicans wax poetically during their convention about nostalgic immigration successes from generations past, but offer little in the way of substance in discussing their current restrictionist immigration plans.

Seyfarth Shaw — Immigration Inbox

The EB-5 Investor Immigration Program: Green Shoots or Chutes and Ladders?

The existing EB-5 investor program and its bewildering array of laws, regulations, and bureaucratically-contrived traps for the unwary resembles the “game of rewards and consequences” that frustrated many of us as children. Fortunately, USCIS Director Alejandro Mayorkas has announced a variety of program changes that may bring some predictability and accountability to the process.

By: *Angelo Paparelli, Liz Wheeler, and John Quill*

Angelo Paparelli is a Partner and *Liz Wheeler* is an Attorney in Seyfarth’s Downtown Los Angeles 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, Liz Wheeler at ewheeler@seyfarth.com, John Quill at jquill@seyfarth.com or any Business Immigration attorney on our website.



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