

Immigration Inbox: Immigration News You Can Use

Headlines

1. **President, Members of Congress Discuss Immigration Reform**– Department of Homeland Security Secretary Janet Napolitano will lead a group that will work with key members of the House and the Senate on immigration issues.
2. **More on E-Verify Federal Contractor Rule Delay**– USCIS has instructed federal contractors not to use E-Verify to verify current employees until the final rule becomes effective on September 8, 2009, and they are awarded a contract that includes the FAR's E-Verify clause.
3. **H-1B Processing Time Increased on July 1, 2009**– The DOL's new iCert Labor Condition Application takes longer to issue; hence, an employer's ability to file an H-1B extension or change of employer petition for an H-1B employee on a same-day, or even same-week, basis has ended.
4. **China, India EB-2 Priority Dates Progress in August; DOS Determines FY 2009 Limits**– The State Department's Visa Bulletin for August 2009 shows an October 1, 2003, cut-off date for both the China-mainland born and India EB-2 categories.
5. **USCIS Takes Tougher Stance on L-1 Intracompany Transfers**– USCIS has begun to apply tougher requirements in a number of employment-based nonimmigrant visa categories. Among the toughest are the standards used when USCIS considers L-1 intracompany transfer petitions.
6. **DOS Releases DV-2010 Lottery Results**– The highest number for any single country went to Nigeria, at 6,006; dates for the upcoming DV-2011 program registration period will be announced in August.
7. **Ninth Circuit Rules That Revocation of I-140 Trumps Portability**– USCIS may revoke its previous approval of a visa petition at any time for "good and sufficient cause."
8. **CBP Reminds Visa Waiver Travelers of New Emergency/Temporary Passport Requirements**– Effective July 1, 2009, all VWP emergency or temporary passports must be electronic.
9. **USCIS Discusses Requirements for H-1Bs in Health Care Specialty Occupations**– USCIS issued a memorandum clarifying the standards for adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in a health care specialty occupation.

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Seyfarth Shaw Events and News

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10. **USCIS Explains “Full-Time,” Discusses Job Creation Timing in EB-5 Immigrant Investor Program**– USCIS clarified that for purposes of the Immigrant Petition by Alien Entrepreneur adjudication and job creation requirements, USCIS will consider the two-year period to begin six months after approval of the I-526 petition.
11. **USCIS Issues Guidance on Education, Training, and Experience Requirements for Foreign Physicians**– In particular, the memo provides guidance on determining whether a foreign medical degree (MD) is the equivalent of a U.S. MD and thus constitutes an advanced degree for EB-2 purposes.
12. **USCIS, FBI Eliminate Name Check Backlog, Set New Standard**– The goal is to complete 98 percent of name check requests submitted by USCIS within 30 days, and remaining 2 percent within 90 days.
13. **USCIS Opens International Adjudication Branch in California**– The International Adjudications Support Branch (IASB) will not accept in-person appointments.
14. **USCIS Issues Court Notice to Pending I-360 Religious Workers**– The court has ordered USCIS to accept properly filed I-485s and I-765s from beneficiaries of religious worker I-360s and is allowing individuals whose concurrent filings were rejected previously to reapply for adjustment of status.

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1. President, Members of Congress Discuss Immigration Reform

President Barack Obama met on June 25, 2009, with several members of his cabinet, advisors, and Congress to discuss immigration reform. President Obama noted that Department of Homeland Security Secretary Janet Napolitano will lead a group that will work with key members of the House and the Senate on immigration issues. President Obama said that “we’ve got a responsible set of leaders sitting around the table who want to actively get something done and not put it off until a year, two years, three years, five years from now, but to start working on this thing right now.”

Meanwhile, Charles Schumer (D-N.Y.), chair of the Senate’s immigration subcommittee, said on June 24, 2009, that he will hold hearings on employment-related immigration in July 2009. Stay tuned.

President Obama’s statement is available [here](#).

2. More on E-Verify Federal Contractor Rule Delay

Following the announcement of the delay in the effective date of the new E-Verify rule until September 8, 2009, U.S. Citizenship and Immigration Services (USCIS) has instructed federal contractors not to use E-Verify to verify current employees until the rule becomes effective and they are awarded a contract that includes the Federal Acquisition Regulation’s E-Verify clause. The new final E-Verify rule will require federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, and to confirm the employment eligibility of federal contractors’ current employees who perform contract services for the federal government within the United States.

Frequently asked questions about the new rule are posted [here](#).

3. H-1B Processing Time Increased

The ability to file an H-1B extension or change of employer petition for an H-1B employee on a same-day, or even same-week, basis ended on July 1, 2009.

In the past several years, employers have become used to immediate turnaround of H-1B petitions, made possible by the Department of Labor’s (DOL) electronic system for filing and certification of the required Labor Condition Application (LCA). Effective June 30, 2009, the new iCert system for LCAs eliminated same-day LCA approvals in many cases. Instead, the DOL may take up to seven business days to certify the LCA. Early experience with the system indicates that DOL is using all seven business days or more.



In the era of iCert, advance planning is necessary. Employers should monitor the expiration dates of H-1B employees and allow sufficient time (4-6 months) for the preparation and filing of H-1B extensions and amendments.

This delay in filing H-1B petitions will also affect the usefulness of H-1B portability, because an individual in H-1B status will only be authorized to work for the new employer upon the filing of the new petition, and a certified LCA is required to make that filing. Under the new system, LCA delays will likely add at least a week to 10 days to that process. Unfortunately, employees who fall victim to the economy will also feel the impact of the delayed LCA certification timing, because it will delay their ability to file a new H-1B petition once they have obtained new employment.

4. China, India EB-2 Priority Dates Progress in August; DOS Determines FY 2009 Limits

The State Department's Visa Bulletin for August 2009 shows an October 1, 2003, cut-off date for both the China-mainland born and India EB-2 categories, which is close to a four-year jump from last month's cut-off date. The third preference and "other workers" employment-based categories are unavailable; all other categories are current. EB-3 visa numbers worldwide and for India, China, and Mexico are expected to remain unavailable for the remainder of this fiscal year at least. The EB-3 category for India could remain unavailable indefinitely.

This follows on the heels of news last month that the India and China EB-2 categories could become unavailable in August or September and remain unavailable indefinitely. The Department had explained that there is a backlog of at least 25,000 India EB-2 cases awaiting visa numbers.

Charles Oppenheim of the Department of State's Visa Office reportedly stated that without legislative relief, the waiting time for Indian EB-2 applicants may be measured in years, even decades.

The Department also noted in the August Visa Bulletin that heavy applicant demand for numbers in the employment-based fourth preference is likely to require the establishment of a cut-off date, or the preference becoming unavailable, for September. The category can be expected to return to a current status for October, the first month of the new fiscal year.

Meanwhile, the Department of State has determined the family and employment preference numerical limits for FY 2009. The worldwide employment-based preference limit is 140,000.

The per-country limit is fixed at 7 percent of the family and employment annual limits. For FY 2009, the per-country limit is 25,620. The dependent area annual limit is 2 percent, or 7,320.

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

5. USCIS Takes Tougher Stance on L-1 Intracompany Transfers

Over the past several months, United States Citizenship and Immigration Service (USCIS or "the Service"), the unit within the Department of Homeland Security responsible for determining eligibility for immigration benefits, has applied much tougher requirements in a number of employment-based nonimmigrant visa categories. Among the toughest are the standards used when USCIS considers L-1 intracompany transfer petitions.



Lawyers across the country have reported a dramatic increase in requests for evidence (RFE) and denials of L-1 petitions. Despite concerns articulated by immigration practitioners that USCIS officers are deviating from established policies, agency officials at many recent public conferences have maintained that the Service officers are acting within applicable statutes, regulations, and current headquarters interpretations. Recent experience suggests, however, that USCIS is scrutinizing L-1 petitions much more closely and applying much stricter standards. As a result, employers must prepare and file more detailed petitions supported by strong documentary evidence.

For additional details, see our alert entitled “The Changing L-1 Landscape – USCIS Takes Tougher Stance on L-1 Intracompany Transfers,” available [here](#).

6. DOS Releases DV-2010 Lottery Results

The Kentucky Consular Center has registered and notified the winners of the DV-2010 diversity visa lottery. Applicants registered for the DV-2010 program were selected at random from over 13.6 million qualified entries received during the 60-day application period that ran from October 2, 2008, through December 1, 2008. The visas have been apportioned among six geographic regions with a maximum of 7 percent available to persons born in any single country. During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years.

Only participants in the DV-2010 program who were selected for further processing have been notified; those who have not received notification were not selected. The dates for the registration period for the DV-2011 lottery program will be announced in August 2009.

The highest number for any single country went to Nigeria, at 6,006. The country-by-country breakdown of DV-2010 registrations appears [here](#).

7. Ninth Circuit Rules That Revocation of I-140 Trumps Portability

A recent decision by the U.S. Court of Appeals for the Ninth Circuit affirmed that U.S. Citizenship and Immigration Services (USCIS) may revoke its previous approval of a visa petition at any time for “good and sufficient cause.” In *Herrera v. USCIS*, the court found that the plaintiff’s changing jobs (“portability”) did not shield her from revocation of her previously approved I-140 Immigrant Petition for Alien Worker, which USCIS had concluded was justified because of the company’s small size (seven employees) and the agency’s conclusion that the plaintiff did not perform managerial or executive duties.

The full text of the decision is available [here](#).



8. CBP Reminds Visa Waiver Travelers of New Emergency/Temporary Passport Requirements Effective July 1, 2009

U.S. Customs and Border Protection (CBP) recently reminded Visa Waiver Program (VWP) travelers that effective July 1, 2009, all VWP emergency or temporary passports must be electronic. Under the VWP, an e-Passport contains an integrated chip that stores biographic data, a digitized photograph, and other information about the true bearer as indicated by a symbol on the passport cover. In lieu of an e-Passport, foreign nationals may apply for visitor's visas from the State Department instead of traveling through the VWP.

CBP may exercise discretion for those who do not have e-Passports if they are traveling for medical or other emergency reasons.

The announcement is available [here](#).

9. USCIS Discusses Requirements for H-1Bs in Health Care Specialty Occupations

U.S. Citizenship and Immigration Services (USCIS) has issued a memorandum clarifying the standards for adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in a health care specialty occupation.

Among other things, the memo notes that if the petitioner provides documentary evidence that the beneficiary has a valid license to practice a health care occupation (and meets the definition of specialty occupation) in the state in which the beneficiary will be employed, the adjudicator "should not look beyond the license." However, the petitioner will still need to provide evidence that the beneficiary is admissible. This guidance applies regardless of whether the beneficiary has a bachelor's degree, master's degree, or doctoral degree in the health care occupation.

If the beneficiary has an unrestricted license and the petition is otherwise approvable, the memo states that an adjudicator should approve the petition for the full H-1B period requested (up to three years), but may not approve the petition beyond the validity of the labor condition application. The memo notes that most states require a license to be renewed periodically. If the beneficiary has an unrestricted license, the memo states that the renewal date should not be considered when determining the validity period of the approval.

The memo is available [here](#).

10. USCIS Explains "Full-Time," Discusses Job Creation Timing in EB-5 Immigrant Investor Program

U.S. Citizenship and Immigration Services (USCIS) recently issued a guidance memorandum providing USCIS adjudication officers with instructions related to the timing of job creation and the meaning of "full-time" positions in the EB-5 Immigrant Investor Program.

The memo clarifies that for purposes of the Immigrant Petition by Alien Entrepreneur (Form I-526) adjudication and job creation requirements, USCIS will consider the two-year period to begin six months after approval of the I-526 EB-5 petition.

USCIS officers will ensure that the business plan filed with the I-526 reasonably demonstrates that the requisite number of jobs will be created by the end of the two-year period. For Regional Center petitions and for purposes of indirect job creation, USCIS adjudicators may consider economic models that rely on certain variables to show job creation and the amount of investment to determine whether the required infusion of capital or creation of direct jobs will result in a certain number of indirect jobs.



USCIS also has concluded that certain direct and indirect jobs that previously would have been considered to be temporary or intermittent (such as construction jobs) may be considered as permanent jobs for purposes of the EB-5 program if the positions can be expected to last at least two years.

A notice announcing the memo is available [here](#). The memo is available [here](#).

11. USCIS Issues Guidance on Education, Training, and Experience Requirements for Foreign Physicians

U.S. Citizenship and Immigration Services (USCIS) has issued a memorandum providing guidance on adjudication of the I-140 Petition for Alien Worker filed for certain physicians. In particular, the memo provides guidance to Immigration Services Officers (ISOs), formerly known as Information Immigration Officers (IIOs) or Adjudications Officers (AOs), on determining whether a foreign medical degree (MD) is the equivalent of a U.S. MD, and thus constitutes an advanced degree for EB-2 purposes.

The memorandum also addresses how to determine whether a foreign physician has met the education, training, and experience requirements of labor certification and licensure in the area of intended employment. The memo clarifies that all EB-2 and EB-3 physicians must overcome the “unqualified physician” provisions of INA § 212(a)(5)(B) at the time of the permanent job offer.

The memo notes that the United States is one of the few countries where medical school applicants must obtain a bachelor’s degree as a prerequisite to admission to medical school. As a result, a U.S. MD is considered to be an advanced degree. In many other countries, USCIS noted,

a person may be admitted to medical school directly out of high school. In these instances, the program of study for the foreign medical degree is longer in length (generally 5-7 years in duration) than the program for a less specialized foreign bachelor’s degree (generally 3-4 years in duration.)

The memo is available [here](#).

12. USCIS, FBI Eliminate Name Check Backlog, Set New Standard

U.S. Citizenship and Immigration Services (USCIS) has announced that, in partnership with the Federal Bureau of Investigation (FBI), it has met all milestones set forth in a joint business plan announced April 2, 2008, resulting in elimination of the FBI National Name Check Program (NNCP) backlog.

The goal was to complete 98 percent of name check requests submitted by USCIS within 30 days and the remaining 2 percent within 90 days. This performance level will become the new standard, USCIS said. As is the case with all security checks undertaken by USCIS, any information provided by the FBI through these checks may require further evaluation and may lead to follow-up queries to other agencies. This could result in additional delays in processing, which USCIS said are not governed by the processing goals in the joint business plan. In the majority of instances, however, USCIS said the completion of a backlogged FBI name check has resulted in a “no record response.” Next steps in the adjudication of any cases that were delayed because of a pending FBI name check request may now include updating fingerprint results, scheduling interviews, requesting additional evidence and other reviews to determine whether the applicant is eligible for the requested immigration benefit. The announcement is available [here](#).



13. USCIS Opens International Adjudication Branch in California

The International Operations Division of U.S. Citizenship and Immigration Services (USCIS) recently opened a new support branch in Anaheim, California, to assist in processing select paper-based applications and petitions received from its international offices. The International Adjudications Support Branch (IASB) will not accept in-person appointments.

Initially, the IASB will focus its efforts on adjudicating non-health related applications to waive grounds of inadmissibility (Forms I-601) from USCIS's office in Ciudad Juarez, Mexico. Such applicants must continue to file their waiver applications with USCIS at the U.S. consulate having jurisdiction over their place of residence.

The public may contact the IASB by mail at P.O. Box 65006, Anaheim, CA 92815-5006, or by e-mail to iopsla@fins3.dhs.gov. The announcement is available [here](#).

14. USCIS Issues Court Notice to Pending I-360 Religious Workers

On June 11, 2009, the U.S. District Court for the Western District of Washington issued an order in *Ruiz-Diaz v. U.S.*, finding that 8 CFR § 245.2(a)(2)(i)(B), which does not allow religious workers to concurrently file an Application to Register Permanent Residence or Adjust Status (Form I-485), was invalid and unenforceable. The court has ordered USCIS to accept properly filed I-485s and I-765s from beneficiaries of religious worker I-360 petitions. The court order also allows individuals whose concurrent filings were rejected previously to reapply for adjustment of status. The order accords a spouse and children of I-360 beneficiaries the same benefits.

A June 25, 2009, USCIS memo implementing the decision and providing information about filing applications for foreign religious workers with pending I-360s is available [here](#).

Recent News from Seyfarth Shaw's Immigration Group

The Votes Are Counted: Seyfarth is Top-Ranked by Legal 500, Chambers, and the International Who's Who of Business Lawyers

Seyfarth's Immigration Group has been honored by three prestigious peer-reviewed surveys of immigration lawyers.

- The 2009 edition of *Legal 500* United States, an independent guide to America's foremost law firms, recommends Seyfarth's Immigration Group as one of the three best in the United States. Details can be found [here](#).
- In the 2009 edition of *Chambers USA: America's Leading Lawyers for Business*, Seyfarth's Immigration practice earned impressive rankings in Georgia and California. In addition, Immigration attorneys Jim King, Angelo Paparelli, Susan Wehrer and Nicole Kersey are individually recognized as leaders in their field by *Chambers*. Details can be found [here](#).
- The International Who's Who of Business Lawyers named Angelo Paparelli "Corporate Immigration Lawyer of the Year" for the third time in the last four years. Details can be found [here](#).

Seyfarth Presents LexisNexis® Screening Solutions Webinar on Late-Breaking I-9 and E-Verify Developments

On June 25, 2009, four members of Seyfarth's Immigration Group—Dyann DeVecchio, Nicole Kersey, Jim King, and Angelo Paparelli—addressed nearly 100 webinar participants on the latest developments in immigration enforcement and compliance. The topics covered the latest on electronic and paper-based I-9 compliance, the pros and cons of E-Verify, E-Verify's potential replacement—the proposed New Employee Verification Act (NEVA)—and an update on mandatory



federal contractor E-Verify rules. For a digital copy of the presentation, send an e-mail request to Marie Bullamore (mbullamore@seyfarth.com). Seyfarth's Immigration Group has also produced an alert entitled "Homeland security focuses immigration spotlight on employers: ICE launches hundreds of I-9 audits," available [here](#).

Seyfarth Speaks on "Using Lean Six Sigma to Achieve Organizational Excellence" in Corporate Immigration Programs

On June 17, 2009, the American Council on International Personnel (ACIP) sponsored an interactive panel presentation at its Annual Symposium in Pentagon City, Virginia, featuring Seyfarth attorney Angelo Paparelli; Seyfarth Sr. Business Immigration Specialist & National Knowledge Management Coordinator Rebekah McCorvey; and Publisher of *Immigration Daily* Sam Udani. The panelists described the use of Lean Six Sigma in the management of domestic and global immigration programs. "Six Sigma" is a proven strategy for improving operational performance by listening to the Voice of the Client, reducing complexity and variation, and measuring and reducing error rates. "Lean" improves on Six Sigma in reducing overall cycle time by accelerating the velocity of individual process steps and eliminating or reducing waste in all its forms. Send an e-mail request to Marie Bullamore (mbullamore@seyfarth.com) for a digital copy of their presentation and "SeyfarthLean - Using Lean Six Sigma and Project Management Methodologies to Create a Shared Value Proposition," describing Seyfarth's innovative use of these strategies in a wide array of practice areas, including immigration.

Seyfarth Publishes Blog Posting on E-Verify

Seyfarth attorney Angelo Paparelli published "Federal Contractor E-Verify: Official Intermeddling and the Immigration Nanny-State," which proposes that E-Verify be put on hold and comprehensive immigration reform be enacted instead. The blog posting is available [here](#). The article also provides a link to "New Corporate Procurement Strategy: Minimizing Immigration Risks From Service Providers," co-authored by Mr. Paparelli.

Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

- For USCIS Service Center processing times online, click [here](#).
- For Department of Labor processing times and information on backlogs, click [here](#).
- For Department of State Visa Bulletin, click [here](#).

For more information, please contact the Seyfarth attorney with whom you work, or any [Business Immigration](#) attorney on our website.



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