



## MAY 2010 IMMIGRATION UPDATE

*Posted on May 1, 2010 by Cyrus Mehta*

### Headlines:

- **1. [Controversial New Arizona Statute Signed Into Law](#)** - The governor of Arizona signed a law that directs local police to make immigration status determinations and makes it a misdemeanor to lack proper immigration documents. An amendment passed April 30, 2010, just before this update was published, slightly softens some of the most outrageous aspects of the law but leaves most of the law intact.
- **2. [USCIS Conducts Comprehensive Policy Review, Holds Session on RFEs](#)** - USCIS has launched a comprehensive effort to review all agency policies with the participation of both its workforce and the public.
- **3. [DOS Requests Comments on SEVIS](#)** - The SEVIS forms have been revised to clarify language used and remove unnecessary data collection.
- **4. [ICE Plans More Visa Security Units](#)** - The program is intended to maximize the visa process as a counterterrorism tool.
- **5. [Few H-1 Petitions Filed So Far](#)** - USCIS has received approximately 13,500 H-1B petitions counting toward the 65,000 cap.
- **6. [USCIS Discusses Extension of Post-Completion Optional Practical Training and F-1 Status for Students Under H-1B Cap-Gap Regulations](#)** - The Q&A explains the cap-gap and other details.
- **7. [Dept. of State Discusses Visa Number Availability](#)** - The Mexico employment third and "Other Worker" categories have become "unavailable," and a cut-off date may need to be established for the employment fourth preference category as early as June.
- **8. [USCIS Advises Foreign Nationals Whose Work Permits Expire Before CNMI-Only Visa Categories Are Available](#)** - Certain foreign nationals without umbrella permits whose work permits expire before new visa categories are available to them may be eligible for an interim

status.

## **Details...**

### **1. Controversial New Arizona Statute Signed Into Law**

On April 23, 2010, Governor Jan Brewer of Arizona signed a tough new measure (S.B. 1070) into law that directs local police to make immigration status determinations if there is a "reasonable suspicion" a person may be undocumented, and makes it a misdemeanor to lack proper immigration documents. The law is scheduled to take effect by August.

Gov. Brewer said the new law "represents another tool for our state to use as we work to solve a crisis we did not create and the federal government has refused to fix." Sen. John McCain (R-Ariz.), who is campaigning in a primary against a challenger who has made immigration a main issue, came out in favor of the law only hours before its passage by the state Senate.

Controversy and protests have swirled around the new law. Those opposed are especially concerned about racial and ethnic profiling and the effects of criminalizing a person's failure to carry immigration documents. "A lot of U.S. citizens are going to be swept up in the application of this law for something as simple as having an accent and leaving their wallet at home," warned Alessandra Soler Meetze, president of the American Civil Liberties Union (ACLU) of Arizona. The ACLU plans to sue to block the legislation.

Moments after Gov. Brewer signed the law, the Board of Governors of the American Immigration Lawyers Association called for a boycott of Arizona, instructing its Executive Committee to move the Association's fall 2010 conference, previously scheduled for Arizona, to another state. AILA President Bernie Wolfsdorf explained, "We cannot in good conscience spend association dollars in a state that dehumanizes the people we represent and fight for. What Governor Brewer has done by signing this bill into law is to validate all of the irrational fears by people who are not willing to acknowledge the economic and cultural benefits of immigration to our country. If Arizonans are serious about ending illegal immigration, they should be the first in line at the United States Capitol to urge Congress to do the right thing and pass comprehensive immigration reform."

AILA stated that in addition to being unconstitutional under the Supremacy Clause of the U.S. Constitution, the law effectively authorizes police to engage

in racial profiling and permits citizens to sue any state or local agency if they believe it is failing to enforce the law. "On top of making laws that will be struck down in the courts, it will hurt business and even bankrupt local municipalities. We've seen this happen in other localities trying to be tough on immigration but in the end hurting their own economies," Mr. Wolfsdorf said. AILA cited the example of Tulsa, Oklahoma, where two months after a harsh 2008 law went into effect, construction work was being left unfinished and local businesses were losing customers. AILA also noted that such laws add enforcement of federal immigration law to already overburdened local police departments. Police unions backed the new law, but the state police chief's association opposed the bill, noting that it could damage trust in immigrant communities among potential witnesses.

Just before this update was published, a new law, H.B. 2162, was enacted by the Arizona legislature that slightly softens some of the most outrageous sections of S.B. 1070, but leaves the core of the law intact. H.B. 2162 clarified that Arizona police should inquire about immigration status during "any lawful stop, detention or arrest . . . in the enforcement of any other law or ordinance," rather than during "any lawful contact" as the original S.B. 1070 had said, but did not provide any limit on how minor of a suspected violation of law or ordinance justifies a "lawful stop" during which immigration status should be ascertained. In addition, H.B. 2162 reduced the maximum penalties for failure to carry alien registration documentation to coincide better with those provided by Federal law, and deleted the word "solely" from the restriction that "A law enforcement official or agency of this state . . . may not solely consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution." This restriction was also added to several additional subsections of the law. Nonetheless, H.B. 2162 retains the proviso that race, color or national origin may be considered in enforcement of the law "to the extent permitted by the United States or Arizona Constitution." For additional discussion of the problems caused by this language and other parts of the new Arizona law, see

<http://cyrusmehta.com/perseus/news.aspx?SubIdx=ocyrus201042724527>.

The text of the new Arizona law is at

<http://www.azleg.gov/legtext/49leg/2r/bills/sb1070h.pdf>. A summary of the law is at

[http://www.azleg.gov/legtext/49leg/2r/summary/h.sb1070\\_04-15-10\\_houseengrossed.doc.htm](http://www.azleg.gov/legtext/49leg/2r/summary/h.sb1070_04-15-10_houseengrossed.doc.htm). The amendment, H.B.2162, is available at: <http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/49leg/2r/bills/hb2162c.htm>.

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## **2. USCIS Conducts Comprehensive Policy Review, Holds Session on RFEs**

U.S. Citizenship and Immigration Services (USCIS) has launched a comprehensive effort to review all agency policies with the participation of both its workforce and the public. USCIS invited outside stakeholders to identify their highest priorities for the policy review through a two-week survey that ended on April 29, 2010. USCIS said it will publish a summary of the results later this spring.

Throughout the policy review, USCIS said it will continue to seek feedback from its workforce and external stakeholders to ensure that the resulting policies are "informed, responsive, and effective."

As part of USCIS's overall efforts to review agency policies, on April 12, 2010, USCIS Director Alejandro Mayorkas and the head of the Service Center Operations Directorate, Donald Neufeld, held a listening session for U.S. national stakeholders to review and revise the Request for Evidence (RFE) templates. This was the first time that the USCIS held a dialogue with stakeholders to obtain their feedback on how to improve the RFE process and to clarify any concerns that have arisen due to recent changes, the Alliance of Business Immigration Lawyers noted. The reviewed visa types included the O (extraordinary ability or expertise), P (athletes and entertainers), Q (cultural exchange), and EB-1 (first preference extraordinary ability) visa categories.

At the session, a number of people asked about a January 8, 2010, guidance memorandum by Mr. Neufeld, and expressed unease about the number of RFEs that are being issued on cases that used to be approved. Mr. Mayorkas and Mr. Neufeld replied that they will offer more opportunities for the public to understand the adjudication process while taking into account the needs of employers, attorneys, and immigrants.

USCIS's announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?v>

[gnextoid=d0c77dffc108210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7](#)

[755cb9010VgnVCM10000045f3d6a1RCRD](#). A related Q&A is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?v>

[gnextoid=66681f7af1208210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c](#)

[7755cb9010VgnVCM10000045f3d6a1RCRD](#).

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### **3. DOS Requests Comments on SEVIS**

The Department of State has issued a request for comments on the recording, reporting, and data collection requirements under the Student and Exchange Visitor Information System (SEVIS). SEVIS is used to monitor foreign students and exchange students in the United States. The forms have been revised to clarify language used and remove unnecessary data collection. Comments will be accepted up to 60 days from April 22, 2010, and may be submitted by e-mail, mail, or online to the location named in the notice, which is available at <http://edocket.access.gpo.gov/2010/pdf/2010-9325.pdf>.

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### **4. ICE Plans More Visa Security Units**

U.S. Immigration and Customs Enforcement (ICE) recently announced that the agency plans to expand its visa security units from 12 countries to 16 this year and an additional country next year. ICE works with the Department of State to identify high-risk posts to receive visa security units. The program, intended to maximize the visa process as a counterterrorism tool, assigns experienced special agents to visa security units overseas to review visa applications, initiate investigations, and provide advice and training to consular officers.

The list of countries to be added has not been announced, but the Department of Homeland Security separately has identified 14 nations whose citizens underwent mandatory secondary screening for a temporary period after the Christmas Day bombing attempt: Afghanistan, Algeria, Cuba, Iran, Iraq, Lebanon, Libya, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, and Yemen. Currently, ICE has visa security units in Canada, Egypt, Germany, Hong Kong, Indonesia, Jordan, Morocco, Pakistan, Philippines, Saudi Arabia, United

Arab Emirates, and Venezuela.

Sen. John Cornyn (R-Tex.) and Rep. Lamar Smith (R-Tex.) introduced companion bills on March 4, 2010 in the House and Senate to fund 16 visa security units in high-risk nations, including Algeria, Colombia, India, Iraq, Jerusalem, Kuala Lumpur, Kuwait, Lebanon, Mexico, Nigeria, South Africa, Syria, Tel Aviv, Turkey, United Kingdom, and Yemen.

The Department of Homeland Security's Office of Inspector General released a report in 2008 on the visa security unit program. The report is available at [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_08-79\\_Jul08.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_08-79_Jul08.pdf).

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## **5. Few H-1B Petitions Filed So Far**

U.S. Citizenship and Immigration Services (USCIS) announced on April 22, 2010, that it continues to accept H-1B nonimmigrant petitions subject to the fiscal year (FY) 2011 cap. USCIS will monitor the number of petitions received for both the 65,000 general cap and the 20,000 U.S. master's degree or higher educational exemption.

USCIS has received approximately 16,025 H-1B petitions counting toward the 65,000 cap. The agency has received approximately 6,740 petitions for individuals with advanced degrees. This is lower than the number of H-1B petitions USCIS had received by the same date in 2009. If this trend continues, H-1B numbers may be available for some time.

When USCIS receives the necessary number of petitions to meet the cap, it will issue a public update that the FY 2011 H-1B cap has been met as of a certain date (the "final receipt date"). The final receipt date will be based on the date USCIS physically receives the petition, not the date that the petition has been postmarked. The date USCIS informs the public that the cap has been reached may differ from the actual final receipt date.

USCIS said it may randomly select the number of petitions required to reach the numerical limit from the petitions received on the final receipt date. USCIS will reject cap-subject petitions that are not selected, as well as those received after the final receipt date.

For cases filed for premium processing during the initial five-day filing window of April 1-7, 2010, the 15-day premium processing period began April 7. For

cases filed for premium processing after the filing window, the premium processing period begins on the date that the petition is physically received at the correct USCIS Service Center.

Petitions filed by employers who are exempt from the cap or petitions filed on behalf of current H-1B workers who have been counted previously against the cap within the past six years will not count toward the congressionally mandated H-1B cap.

USCIS keeps a weekly update of the number of H-1B petitions filed under the FY 2011 H-1B cap at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD> .

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## **6. USCIS Discusses Extension of Post-Completion Optional Practical Training and F-1 Status for Students Under H-1B Cap-Gap Regulations**

U.S. Citizenship and Immigration Services (USCIS) released a Q&A (questions and answers) document on April 2, 2010, that addresses the automatic extension of F-1 student status in the United States for certain students with pending or approved H-1B petitions (indicating a request for change of status from F-1 to H-1B) for an employment start date of October 1, 2010, under the fiscal year (FY) 2011 H-1B cap.

The Q&A notes that an employer may not file, and USCIS may not accept, an H-1B petition submitted earlier than six months in advance of the date of actual need for the beneficiary's services or training. As a result, the earliest date that an employer can file an H-1B petition for the following fiscal year is April 1. If USCIS approves the H-1B petition and the accompanying change of status request, the earliest date that the student may start the approved H-1B employment is the first day of the new fiscal year, October 1. Consequently, F-1 students who do not qualify for a cap-gap extension, and whose periods of authorized stay expire before October 1, must leave the U.S., apply for an H-1B visa at a consular post abroad, and then seek readmission to the U.S. in H-1B status for the dates reflected on the approved H-1B petition.

H-1B petitions must be timely filed on behalf of an eligible F-1 student, the Q&A notes. Timely filed means that the H-1B petition (indicating change of status rather than consular processing) was filed during the H-1B acceptance period, while the student's authorized duration of status (D/S) admission was still in effect (including any period of time during the academic course of study, any authorized periods of post-completion OPT, and the 60-day departure preparation period, commonly known as the "grace period").

Once a timely filing has been made, the Q&A notes, the automatic cap-gap extension will begin and will continue until the H-1B petition adjudication process has been completed. If the student's H-1B petition is selected and approved, the student's extension will continue through September 30 unless the petition is denied, withdrawn, or revoked. If the student's H-1B petition is not selected and approved, the student will have the standard 60-day grace period from the date of the rejection notice or his or her program or OPT end date, whichever is later, to prepare for and depart the U.S.

USCIS strongly encourages students "to stay in close communication with their petitioning employer during the cap-gap extension period for status updates on the H-1B petition processing."

The Q&A, which includes details about how to obtain proof of continuing status under the cap-gap extension, limitations on travel and unemployment, and other information, is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=1d175ffaae4b7210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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## **7. Dept. of State Discusses Visa Number Availability**

Due to continued heavy applicant demand, primarily by U.S. Citizenship and Immigration Service offices for adjustment of status cases, the annual limits for the Mexico employment third and "Other Worker" categories have been reached. As a result, both categories have become "unavailable," the Department of State Visa Bulletin for May 2010 notes. Visa numbers will become available once again in October with the start of the new fiscal year.



The Visa Bulletin for May 2010 also notes that applicant demand for employment fourth preference numbers remains very heavy. It is likely that a cut-off date will need to be established in an effort to keep number use within the annual limits. Depending upon number use, this action could occur as early as June, the Visa Bulletin warns.

The May Visa Bulletin also notes that during the past 15 months, the demand for numbers in the family-sponsored preference categories has been very low. As a result, cut-off dates for most family preference categories have been advancing at a very rapid pace in an attempt to generate demand so that the annual numerical limits may be fully used. The Visa Office warns that if demand for family-sponsored green cards begins to materialize, cut-off date movements may begin to slow or stop.

The May Visa Bulletin includes a reminder that any changes of address for applicants processing their case overseas should be reported to the National Visa Center so that information regarding the processing of the case at an overseas post may be sent to the applicant. The May Visa Bulletin notes:

When contacting the National Visa Center (NVC) directly about an immigrant visa application case, always include the following information:

- The NVC case number
- Name of the principal applicant
- Principal applicant's date of birth
- Name of the petitioner
- Petitioner's date of birth

### **E-Mail**

The public may submit inquiries to the NVC via e-mail at: [nvcinquiry@state.gov](mailto:nvcinquiry@state.gov).

o ensure a prompt response:

- Provide the relevant NVC Case Number on the subject line of the e-mail.
- Provide the applicant's name and date of birth, and the petitioner's name and date of birth.
- Provide the name of the law office requesting information.
- Provide the name of the employer if the petition is employment based.
- Refer to only one case per e-mail message.

### **Customer Service**

Telephone operators are available to respond to inquiries Monday through Friday from 7:30 am until 12:00 am (EST). Please call (603) 334-0700

### **Postal Mail**

National Visa Center  
Attn: WC  
31 Rochester Avenue, Suite 200  
Portsmouth, NH 03801-2915

The May 2010 Visa Bulletin is available at  
[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4805.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4805.html).

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### **8. USCIS Advises Foreign Nationals Whose Work Permits Expire Before CNMI-Only Visa Categories Are Available**

U.S. Citizenship and Immigration Services (USCIS) announced on April 21, 2010, that it will grant parole-in-place status to certain foreign nationals in the Commonwealth of the Northern Mariana Islands (CNMI). Foreign nationals without umbrella permits whose work permits expire before new visa categories are available to them under federal immigration laws may be eligible for this interim status.

Certain employers and their foreign national employees did not apply for umbrella permits covering the two-year transition period to federal immigration law. They may have planned to apply for CNMI-only transitional worker visas immediately after the transition period began in November 2009. However, a court ruling that month stopped this nonimmigrant category from being available. As a result, some foreign nationals face losing their legal immigration status because of a gap between the expiration of their current CNMI work permit and the availability of the new "CNMI-Only Transitional Worker" status.

Certain foreign nationals with CNMI investor permits may also face a gap between the expiration date of their CNMI investor permit and the availability of the "CNMI-Only E-2 Investor" status.

Parole-in-place would give affected foreign nationals authorization under federal immigration law to remain in the CNMI and permit continued employment authorization until the CNMI-only transitional worker program

and the CNMI investor status are implemented.

USCIS's announcement includes details about how and where to apply for parole-in-place and what documents to submit. The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=72aaf95c93228210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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