



DECEMBER 2010 IMMIGRATION UPDATE

Posted on December 1, 2010 by Cyrus Mehta

- **1. [DOS Discusses Upcoming Employment Visa Number Priority Cut-Off Dates](#)** - It is unlikely that any cut-off dates will be set in the employment first preference during the coming months.
- **2. [USCIS Issues Reminder on New Fees, Q&A on New Fee Schedule; Makes Corrections, Clarifications](#)** - The new [fee schedule](#) for immigration-related applications and petitions took effect on November 23, 2010.
- **3. [Do's and Don'ts, Tips on SSN "No-Matches" Released](#)** - The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices issued do's and don'ts for employers and employees on Social Security Number "no-matches"
- **4. [USCIS Revises I-129 Petition for a Nonimmigrant Worker](#)** - The new version includes fee increases.
- **5. [DOL Hits H-2A Employer With \\$1.3 Million in Back Wages, \\$136,500 in Fines](#)** - The Department of Labor's Wage and Hour DivisionK assessed the fines against a Georgia company for violating provisions of the H-2A temporary agricultural worker program.
- **6. [DOS Final Rule Revises Exchange Student Regs](#)** - DOS is revising existing secondary school student regulations and is adopting a new training requirement for all organizational representatives who place and/or monitor students with host families.
- **7. [DHS Extends TPS Designation for Somalia](#)** - DHS has extended the designation of Somalia for TPS through September 17, 2012.

Details...

1. DOS Discusses Upcoming Employment Visa Number Priority Cut-Off Dates

The Department of State's Visa Bulletin for December 2010 notes that it is unlikely that any cut-off dates will be set in the employment first preference during the coming months. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the employment second preference category. Cut-off dates continue to apply to the China and India second preference categories due to heavy demand.

Based on current indications of demand, the Department said the "best case scenarios" for cut-off date movement each month are:

Employment Second:

- China: none to two weeks
- India: no movement

Employment Third:

- Worldwide: three to six weeks
- China: one to three weeks
- India: none to two weeks
- Mexico: although continued forward movement is expected, no specific projections are possible now
- Philippines: three to six weeks

The Department noted that the above ranges are estimates based on current demand patterns, and will be subject to possible fluctuations during the coming months.

The December 2010 Visa Bulletin is available at http://travel.state.gov/visa/bulletin/bulletin_5197.html.

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2. USCIS Issues Q&A on New Fee Schedule; Makes Corrections, Clarifications

The new fee schedule for immigration-related applications and petitions took effect on November 23, 2010. Applications or petitions postmarked or otherwise filed on or after this date must include the new fee or they will be rejected.

USCIS published the new fee schedule in the Federal Register on September 24, 2010, following a review of public comments received after publication of the

proposed rule this past summer. The new fee schedule increases application and petition fees by an average of about 10 percent but does not increase the naturalization application fee.

USCIS issued a related Q&A that notes, among other things, that if mailed through a courier service, the date the item is entered into the courier's service system is considered the postmark date.

Meanwhile, the American Immigration Lawyers Association (AILA) reported on November 19, 2010, that USCIS has confirmed that a receipt notice from a courier service or overnight mailing service will be considered a "postmark" for fee determination purposes.

USCIS has also corrected the new fee for refugee travel documents. As discussed in the preamble to the final rule, the agency had determined that the fee for a refugee travel document for an adult age 16 or older should match the fee charged for the issuance of a passport to a U.S. citizen (\$110 plus a \$25 execution fee). Accordingly, USCIS intended to reduce the fee for filing an Application for Travel Document, Form I-131, for refugees to \$135 for an adult age 16 or older. The final rule inadvertently listed a fee of \$165 for the I-131 refugee travel document for an adult age 16 or older. No other changes were made under this correction.

The Q&A is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1>

[a/?vgnnextoid=67b73dc5cb93b210VgnVCM100000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=67b73dc5cb93b210VgnVCM100000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD). The USCIS alert is

available at

<http://www.aila.org/content/default.aspx?docid=33665>. The correction notice is

available at

<http://edocket.access.gpo.gov/2010/pdf/2010-28719.pdf>. A table listing the old

and new fees is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1>

[a/?vgnnextoid=92c5e116de9eb210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=92c5e116de9eb210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD). The final rule is available

at <http://edocket.access.gpo.gov/2010/pdf/2010-23725.pdf>. K

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3. Do's and Don'ts, Tips on SSN "No-Matches" Released

The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices recently issued the following do's and don'ts for employers on Social Security Number "no-match" letters. These are letters issued by the Social Security Administration (SSA) to employers stating that information supplied to the SSA does not match SSA records.

DO:

- Recognize that name/SSN no-matches can result because of simple administrative errors.
- Check the reported no-match information against your personnel records.
- Inform the employee of the no-match notice.
- Ask the employee to confirm his/her name/SSN reflected in your personnel records.
- Advise the employee to contact the SSA to correct and/or update his or her SSA records.
- Give the employee a reasonable period of time to address a reported no-match with the local SSA office.
- Follow the same procedures for all employees regardless of citizenship status or national origin.
- Periodically meet with or otherwise contact the employee to learn and document the status of the employee's efforts to address and resolve the no-match.
- Submit any employer or employee corrections to the SSA.

DON'T:

- Assume the no-match conveys information regarding the employee's immigration status or actual work authority.
- Use the receipt of a no-match notice alone as a basis to terminate, suspend or take other adverse action against the employee.
- Attempt to immediately reverify the employee's employment eligibility by requesting the completion of a new Form I-9 based solely on the no-match notice.
- Follow different procedures for different classes of employees based on

national origin or citizenship status.

- Require the employee to produce specific documents to address the no-match.
- Ask the employee to provide a written report of SSA verification.

The document is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/Employers.pdf>. A similar document for employees is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/Employees.pdf>. A related FAQ is available at

<http://www.justice.gov/crt/osc/pdf/publications/SSA/FAQs.pdf>.

Also, the National Employment Law Project issued "Top 10 Tips for Employers" on Social Security no-match letters. The tips are available at

http://www.nilc.org/immsemplymnt/ssa-nm_toolkit/top_ten_tips_11-07-07.pdf,

and are linked to a National Immigration Law Center "No-Match Letter Toolkit" available at http://www.nilc.org/immsemplymnt/ssa-nm_toolkit/index.htm.

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4. USCIS Revises I-129 Petition Form

U.S. Citizenship and Immigration Services (USCIS) has issued a new version of the Petition for a Nonimmigrant Worker (Form I-129) to include the new fee increases. USCIS will accept previous versions of the form until December 22, 2010. Beginning on December 23, 2010, USCIS will only accept the revised form and will reject previous versions.

Among other changes, the revised I-129 form requires employers who are sponsoring foreign nationals for certain work visas to certify that they have made an export licensing determination regarding each employee sponsored. More specifically, employers must certify that they have evaluated the applicable export control regulations and have determined whether the employee will require an export license to perform the job.

Under the Department of Commerce's export control regulations, the release of technical information to a foreign national is deemed an export to that person's country of origin. That remains true even if the foreign national is lawfully employed. Compliance with this deemed export rule can be complex.

Instructions and a link to the revised form

(<http://www.uscis.gov/files/form/i-129.pdf>) are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f56e4154d7b3d010VgnVCM10000048f3d6a1RCRD>.

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5. DOL Hits H-2A Employer With \$1.3 Million in Back Wages, \$136,500 in Fines

The Department of Labor's Wage and Hour Division (WHD) is assessing J&R Baker Farms LLC of Ellenton, Georgia, \$1,311,644 in back wages owed to 244 workers and \$136,500 in fines for violating provisions of the H-2A temporary agricultural worker program.

WHD found that the vegetable farm allegedly failed to provide at least 75 percent of the hours promised in the work contract. WHD is asking an administrative law judge to order the farm to pay \$1,311,644 in back wages to 148 U.S. workers and 96 H-2A workers and pay a fine of \$122,000.

The investigation also discovered that the farm failed to provide a copy of the H-2A work contract at the time of recruitment to 29 U.S. workers who performed the same type of work as the H-2A workers. The Department is recommending a fine of \$14,500 for that offense.

A press release announcing the findings is available at <http://www.dol.gov/opa/media/press/whd/WHD20101532.htm>.

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6. DOS Final Rule Revises Exchange Student Regs

In a final rule effective November 26, 2010, the Department of State is revising existing secondary school student regulations regarding the screening, selection, school enrollment, orientation, and quality assurance monitoring of exchange students, host families, and field staff. The Department also is adopting a new training requirement for all organizational representatives who place and/or monitor students with host families.

A proposed requirement to conduct FBI fingerprint-based criminal background checks will not be implemented now. The agency said it continues to examine that proposed requirement and a subsequent final rule will be forthcoming.

The final rule governs the designated exchange visitor programs under which

foreign secondary school students (ages 15 to 18 1/2) may study in the U.S. at accredited public or private secondary schools for an academic semester or year while living with American host families or residing at accredited U.S. boarding schools.

Compliance with a new requirement for a mandated training module for local coordinator training will not be required until the development of an online training platform is completed and launched, which is anticipated to be in January 2011. A subsequent Federal Register notice will be published when that occurs.

The final rule is available at

<http://edocket.access.gpo.gov/2010/pdf/2010-27200.pdf>.

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7. DHS Extends TPS Designation for Somalia

The Department of Homeland Security (DHS) has extended the designation of Somalia for temporary protected status (TPS) for 18 months, from its current expiration date of March 17, 2011, through September 17, 2012. DHS determined that an 18-month extension is warranted because conditions in Somalia prompting the TPS designation continue to exist. Armed conflict in Somalia is ongoing. Due to that conflict and "other extraordinary and temporary conditions," requiring the return of eligible individuals with TPS to Somalia "would pose a serious threat to their personal safety," the agency said.

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

USCIS will issue new EADs with a September 17, 2012, expiration date to eligible TPS beneficiaries who timely re-register and apply for EADs. The 60-day re-registration period begins November 2, 2010, and will run until January 3, 2011.

The USCIS notice is available at

<http://edocket.access.gpo.gov/2010/pdf/2010-27613.pdf>. A related Q&A is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1dffa8ac980c210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9>

[010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1dffa8ac980c210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9). Additional information on TPS for Somalians can be found at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=928f3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=928f3e4d77d73210VgnVCM100000082ca60aRCRD>.

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