JUNE 2011 IMMIGRATION UPDATE

Posted on May 30, 2011 by Cyrus Mehta

Headlines:

1. **Recently Indictments Against Employer Employment Verification Cases.** The Legal Arizona Workers Act requires all Arizona employers use E-Verify and revoke or suspend the business of employers licensed who knowingly hire unauthorized aliens.
2. **USCIS Announces Cap Status.** USCIS announced the cap count as of May 20, 2011.
3. **Proposed Changes to the H-1B Program.**
4. **Lawsuit Challenges Proposed Regulatory Changes.** The administration of the EB-5 immigrant investor program's media and revenue process.
5. **USCIS Launches E-Verification Website.** The website provides employers and employees access to resources, tips, and guidance on completing the I-9 and understanding the I-9 process.
6. **USCIS Announces Fiscal Year 2011 Employment Second Preference Visa Cut-off Date Advances Significantly for Some.** Because of the immigration and Nationality Act (INA) provisions rules for the use of potentially "otherwise unused" employment numbers.
7. **USCIS Fully Implements Secure Mail Initiative.** USCIS provides applicants the ability to track the status of their documents with USPS tracking information, and Secure Delivery.
8. **Retrogression Expected Beginning in June 2011.** Because of the immigration and Nationality Act (INA) provisions rules for the use of potentially "otherwise unused" employment numbers.
9. **USCIS Announces Cap Count.** USCIS announced that as of May 20, 2011, it had received 27,170 petitions toward the 65,000 H-1B cap for the current half of fiscal year (FY) 2011. The count included 20,000 advanced degree petitions and 2,710 pending.
10. **USCIS Issues Memo on Procedures for Revocation of U.S. Passport.** The memo provides background information and outlines revokes under which U.S. passports may be revoked by the Department of State for reasons such as fraud, nonpayment of child support, drug trafficking, non-repayment of a repatriation loan, or conviction for sex tourism.
11. **USCIS Issues Memo on Procedures for Revocation of Naturalization.** The memo provides background information and outlines revokes under which U.S. citizenship may be revoked by the Department of State for reasons such as fraud, nonpayment of child support, drug trafficking, non-repayment of a repatriation loan, or conviction for sex tourism.
12. **USCIS Announces Delay in Mail Delivery in Dual Rate.** The email referenced should be changed to read "Customer Service" instead of "Customer Service".
13. **USCIS Issues Stakeholder Meeting Announcement.** The Internal Employment will take place on Wednesday June 29, 2011, at 1 p.m. (Eastern Time).

Article 1

1. Supreme Court Upholds Arizona's Employer Sanctions Law

On May 26, 2011, the US Supreme Court in *Chamber of Commerce v. Whiting* upheld the legal Arizona Workers Act, requiring all Arizona employers use E-Verify and allow suspending or revoking the licenses of employers who knowingly or intentionally hire unauthorized aliens. Numerous civil liberties organizations joined the US Chamber of Commerce in challenging the law.

Although IRS employment rules from Chaparing contrast in not requiring employers making using Chaparing of unauthorized workers, it is based on an earlier state based in Chaparing and similar legal and statutory rules of litigation.

The Supreme Court held that this legal Arizona Workers Act law falls within the Chaparing and similar based exception of IRCA and signed arguments that the law was not only a licensing law or that it conflicted with IRCA, an exclusive federal enforcement program.

The Court's decision in *Chamber of Commerce Whiting* is available at:

http://www.uscourts.gov/uscourts/Opinions/09-115.pdf

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Article 2

2. USCIS Announces Cap Status

U.S. Citizenship and Immigration Services (USCIS) has announced that as of May 20, 2011, approximately 16,000 H-1B cap subject petitions were received. Additionally, USCIS received 6,500 H-1B petitions for workers with advanced degrees.The announcement is available at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

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Article 3

3. Proposed Changes to the H-1B Program: Accepting Comments

Article 3 cont.

U.S. Citizenship and Immigration Services (USCIS) has proposed significant changes in the administration of the H1B Immigrant Investor program's media and revenue process. USCIS will accept comments until June 17, 2011, since the first proposed changes to the H-1B program in more than 20 years. The proposed changes would affect the process by which employers file petitions for H-1B nonimmigrant workers, and would also affect the process by which H-1B petitioners and petitioners file petition to request Premium Processing Service, which guarantees processing within 15 calendar days for an additional fee.

Second, USCIS proposes the creation of new specialized those teams with expertise in semi-tech analysis and the RFE (Long) and requested the, RFE's regional center applicants will be able to communicate directly with the specialized those teams and could to simplifies the resolution of issues and address questions or needs raised in their applications.

Third, USCIS proposes to remove an employer liaison Board in similar decisions regarding RFE's regional center applications. The Decision Board will be comprised of an economist and adjudicators and will be supported by legal counsel.

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http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 4

4. Lawsuit Challenges Proposed Regulatory Changes

The administration of the EB-5 immigrant investor program's media and revenue process.

Article 5

5. USCIS Launches E-Verification Website

U.S. Citizenship and Immigration Services (USCIS) has launched "E-Verify," a new online resource center dedicated to the most frequently accessed form on USCIS, Form I-9, Employee Eligibility Verification. The website provides employers and employees access to resources, tips, and guidance on completing the I-9 and understanding the I-9 process.

I-9 Central includes sections on employer and employee rights and responsibilities, step-by-step instructions for completing the form, and information on acceptable documents for establishing identity and employment authorization. The site also includes a discussion of common mistakes to avoid when completing the form, guidance on how to correct errors, and answers to employers' seven most frequently asked questions about the I-9 process.

I-9 Central is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print. USCIS's announcement is available at

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Article 6

6. USCIS Announces Fiscal Year 2011 Employment Second Preference Visa Cut-off Date Advances Significantly for Some

Because of the immigration and Nationality Act (INA) provisions rules for the use of potentially "otherwise unused" employment numbers.

During May, the indicated potential second preference cut-off date granted the use of such numbers, because USCIS had reached its employment second preference annual limit.

Since October 2010, the latest Visa Bulletin for June 2011 suppose, there has been heavy demand by applicants "regarding" that status from employment third to employment second preference. The significant movement of the India employment second preference cut-off dates in May had the potential to greatly increase such demand. Therefore, the Visa Office has since determined that now "upgrade" demand has been minimal. this has allowed the employment second preference cut-off dates governing the use of the I-140 petitioners to advance significantly for June. The same cut-off date (October 15, 2006) applies to both the China and India employment second preference

Other second preference categories are current. The Visa Bulletin for June notes that all of the "otherwise unused" numbers must be provided strictly on a first-date order regardless of the applicant's chargeability.

Cut-off date movement for upcoming months cannot be guaranteed, the June Visa Bulletin notes, and because it has satisfied, instead, "no assumptions should be made until the dates are finally announced." Should there be a sudden or significant increase in India and China employment second preference demand, it may be necessary to slow, stop, or even retrogress that cut-off date as the end of fiscal year (FY) approaches.

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 7

7. USCIS Announces FY 2011 H-1B Cap Count

USCIS announced that as of May 5, 2011, it had received 27,170 petitions toward the 65,000 H-1B cap for the current half of fiscal year (FY) 2011. The count included 20,000 advanced degree petitions and 2,710 pending.

The announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

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Article 8

8. H-1B Petitions Are Proportionally

H-1B petition filings as of April have dropped proportionally since the same time in previous lower years, according to reports. U.S. Citizenship and Immigration Services (USCIS) reported that as of April 8, 2011, it had received approximately 5,000 H-1B petitions, counting toward the 65,000 cap, and approximately 4,500 petitions toward the 20,000 cap exemption for individuals with advanced degrees. At the same time last year (April 8, 2010), it had received more than double that number of cap subject petitions, or approximately 13,500, and about 5,000 petitions for individuals with advanced degrees. They (previous year, on April 20, 2010), USCIS announced that it had received approximately 68,000 cap subject H-1B petitions and 20,000 petitions for those with advanced degrees.

Speculation about the causes of the slowdown range from the economic sluggishness of the U.S. economy to skilled workers seeking work in their home countries and the east in visa fees. Some prominent H-1B sponsors have noted that the rate of hiring is significantly lower in their home countries and they can be closer to family and parents, who often cannot be brought to the U.S. because of difficulties in obtaining visas for them. Critics of the program in congress and elsewhere have also contributed to an overall negative climate for hiring H-1Bs.

Reuters' article announcement is available at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 9

9. USCIS Issues Memo on Procedures for Revocation of U.S. Passport

U.S. Citizenship and Immigration Services (USCIS) released a memorandum on April 15, 2011, on procedures for nonrenewing revocation of a U.S. passport in the Department of State (DOS). The memo provides background information and outlines revokes under which U.S. passports may be revoked for reasons such as fraud, nonpayment of child support, drug trafficking, non-repayment of a repatriation loan, or conviction for sex tourism.

The memo provides that USCIS officers may request revocation of a U.S. passport when they have reasonable grounds to believe that the passport was obtained illegally or improperly, or that the passport holder is a fugitive from justice.

USCIS takes the authority to revoke or notify revoke a U.S. passport, the memo states. The memo lists over 200 fraudulent acts which the validity of a passport not to use the passport, left the bearer that there are issues with it, or intention the bearer to return U.S.DOS. Instead, USCIS prefaces an U.S.DOS to the prerequisites outlined in the memo to request revocation of the passport from DOS.

It is unclear from the memo whether USCIS notifies the passport bearer directly when a passport is revoked. The memo states that

the USCIS officer will notify the passport holder of the revocation "in accordance with the Department of State's regulations." Nonetheless,

USCIS officers in Legal Affairs generally provides revocation notification within 30-60 days of receipt.

In the case of revocation, DOS will nullmerie a copy of the revocation letter to the office by United Carrier. The DOS revocation letter must be placed in the individuals's USCIS record. If DOS revokes the passport, the passport is then marked revoked in the Passport Information Electronic Records System (PIERS) and the information is transmitted to TECS.

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 10

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Article 11

11. USCIS Release Final I-140 Extraordinary Ability Job Template

U.S. Citizenship and Immigration Services (USCIS) has released a final template for requests for evidence (RFEs) with respect to the Immigrant Petition for Alien Worker (Form I-140) for the E11 classification extraordinary ability in the sciences, arts, education, business, or athletics. USCIS posted the template "For stakeholder visibility" until May 17, 2011. The template outlines the evidence that may be submitted to satisfy the various E11 requirements.

The template is available until May 17 at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 12

12. USCIS Announces E-Verify E-Mail Address in Final Rule

On April 21, 2011, the Department of Homeland Security published a final rule in the Federal Register (76 Fed. Reg. 21,626) establishing the documents acceptable for employment eligibility verification. These rules an inadvertent error in the final rule. The e-mail referenced should be changed to read "E-verify@uscis.gov" instead of "E-verify@uscis."

The DHS notice is available at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

Article 13

13. USCIS Issues Stakeholder Meeting Announcement

13. USCIS Quarterly Stakeholder Meeting Announcement

U.S. Citizenship and Immigration Services (USCIS) Service Center Operations Directorate has issued a public invitation to participants to discuss the EB-5 immigrant investor program. The upcoming meeting will take place via teleconference on June 29, 2011, at 1 p.m. (Eastern Time). The deadline to submit agenda items was May 27. The next meeting after that will take place on September 15, 2011, via teleconference and also in person in Washington, DC, and the deadline to submit agenda items for the later meeting is August 15, 2011.

Each meeting will be an opportunity for USCIS to share information on the EB-5 program and address questions or suggestions of interest. USCIS noted that there will be an opportunity for questions and answers, a report of these engagements, but the agency will not address case-specific inquiries.

To respond to this invitation, e-mail the Office of Public Engagement at public.engagement@uscis.gov by June 29, 2011, and reference the following in the subject line of your e-mail: "EB-5 EP Meeting". Include your full name and the organization you represent, if any, in the body of the e-mail.

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f0c7ad1d0f4d0210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7823f7d010VgnVCM100000082ca60aRCRD&vgnextfmt=print

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