CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

# SEPTEMBER 2011 IMMIGRATION UPDATE

*Posted on September 5, 2011 by Cyrus Mehta*

**Headlines**

**1.** **DOL Suspends Prevailing Wage Determinations** - Processing of prevailing wage determinations (PWDs), redeterminations, and Center Director Reviews have been suspended temporarily; prevailing wage requests filed since early June 2011 are still pending.

**2.** **DHS Publishes Regulation To Facilitate Electronic Filing** **-** The Department of Homeland Security (DHS) has published the first in a series of regulations intended to promote the migration of U.S. Citizenship and Immigration Services (USCIS) benefit filings from a paper-based environment to an electronic one. USCIS said the regulation "is an important step toward modernizing how USCIS handles the more than 6 million benefit applications submitted annually."

**3.** **Ombudsman Recommends That USCIS Improve EAD Process** - The Ombudsman noted that many problem areas remain unaddressed.

**4.** **Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings** - Secretary of Homeland Security Janet Napolitano announced that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate a related interagency case-by-case review.

**5.** **USCIS Announces Extension of Deferred Enforced Departure for Liberians** - Employment authorization is extended automatically for eligible Liberian nationals covered under deferred enforced departure (DED) through March 31, 2012.

**6.** **ABIL Preparing Amicus Curiae Brief on Extraordinary Ability Case** - This decision will critically affect the adjudication of immigrant petitions for persons of extraordinary ability, outstanding professors or researchers, and exceptional

ability immigrants.

**7.** **USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants** - The new policy memorandum on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants clarifies, among other things, that one or more extensions are appropriate in the exercise of discretion for household members, including the cohabitating partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.

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**9.** **DHS, USCIS Announce Initiative To Promote Startups and Spur Job Creation** - Agencies announce efforts to attract foreign entrepreneurial talent to the U.S.

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**11.** **ICE Announces Intention To Withdraw University of Northern Virginia's SEVP Certification and SEVIS Access for Its Foreign Students** **-** UNVA students must immediately depart the U.S. if they are unable to continue to attend classes and maintain their active status or if they are unable or do not wish to transfer to another SEVP-certified institution.

**12.** **ABIL Global: Training for Professionals in Brazilian Companies: Comparing Normative Resolutions 87 and 88** - Normative Resolutions 87 and 88 are both focused on training people in Brazilian companies but differ in certain aspects.

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**Details**

**1. DOL Suspends Prevailing Wage Determinations**

The Department of Labor (DOL) recently announced that the Office of Foreign Labor Certification's (OFLC) National Prevailing Wage Center (NPWC) has suspended temporarily processing of prevailing wage determinations (PWDs), redeterminations, and Center Director Reviews. The NPWC handles PWDs for the PERM labor certification, H-1B, H-1B1 (Chile/Singapore), H-2B, and E-3

programs. As a result of the suspension, prevailing wage requests filed since early June 2011 are still pending. Previously, such requests were routinely processed in three to four weeks.

DOL also published a final rule on wage methodology for the H-2B (temporary nonagricultural employment) program, effective September 30, 2011.
In response to practitioners' inquiries concerning pending requests, the NPWC has been issuing the following e-mail:

*The OFLC National Prevailing Wage Center is experiencing delays in processing prevailing wage determinations as it is currently working to reissue certain determinations to comply with a court order issued June 15, 2011 in the United States District Court for the Eastern District of Pennsylvania. A Notice of Proposed Rulemaking was published in the Federal Register on June 28, 2011, and a Final Rule will be published on August 1. All Center resources are currently being utilized to comply with this court order. The processing of Prevailing Wage Determinations, redeterminations, and Center Director Reviews has been temporarily suspended. Processing will resume as soon as full compliance with the court order has been completed by OFLC. If you have further questions concerning your PWD, please contact 202-693-3010.*

The American Immigration Lawyers Association (AILA) published notes on a stakeholder call with the Department of Labor (DOL) about this topic. Among other things, Dr. Bill Carlson, a representative from the Office of Foreign Labor Certification, said that DOL was very aware of the impact of the prevailing wage hold and that the agency has been reviewing all appropriate suggestions from stakeholders. However, in considering possible suggestions, he stated that DOL was not considering any proposal that would require waiving regulatory requirements. DOL must issue all of the H-2B wage redeterminations before September 30 to comply with the court order. The stakeholder notes say that after DOL has cleared the H-2B wage redeterminations, it will then move resources to H-2B processing and must process those cases within 30 days. As those are processed, DOL will begin working on PERM and H-1B wage requests.

The Department of Labor's final rule, published at 76 Fed. Reg. 45667 (Aug. 1, 2011), is available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19319.pdf. AILAXs notes are available at http://xa.yimg.com/kq/groups/15854395/1728587735/name/AILA-DOL%20stak

eh
older%20call%208-18-11.pdf. For an in-depth commentary, see Cora-Ann V. PestainaXs blog *PREVAILING WAGE DETERMINATIONS SUSPENDED UNTIL FURTHER NOTICE: HOW DO I FILE A PERM LABOR CERTIFICATION?* http://cyrusmehta.blogspot.com/2011/08/prevailing-wage-determinations.html.

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**2. DHS Publishes Regulation To Facilitate Electronic Filing**

The Department of Homeland Security (DHS) has published the first in a series of regulations intended to promote the migration of U.S. Citizenship and Immigration Services (USCIS) benefit filings from a paper-based environment to an electronic one. USCIS said the regulation "is an important step toward modernizing how USCIS handles the more than 6 million benefit applications submitted annually."

Over the next several years, USCIS plans to roll out an online account system that will enable people to submit benefit requests and supporting documents electronically. The new Web-based system is intended to simplify the process of applying for immigration benefits. It will assign new users a unique account that will enable them to access case status information, respond to USCIS requests for additional information, update certain personal information, and receive decisions and other communications from USCIS.

The new regulation revises more than 50 parts of DHS title 8 regulations. It eliminates references to outdated USCIS benefit request forms and descriptions of paper-based procedures. In addition, the regulation removes numerous obsolete provisions.

The public is invited to comment on this regulation and offer suggestions on further improvements. Comments must be received by October 28, 2011. The new regulation will become effective on November 28, 2011.

The new regulation, which was published in the Federal Register on August 29, 2011, is available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-29/pdf/2011-20990.pdf. The USCIS announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d

1a/?vgnextoid=169c4ae218702310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD.

### 3. Ombudsman Recommends That USCIS Improve EAD Process

The Ombudsman for U.S. Citizenship and Immigration Services (USCIS) recently made recommendations focused on delays due to processing and adjudications issues of employment authorization document (EAD) applications. The Ombudsman noted that although USCIS has implemented procedures to resolve certain issues, many problem areas have not been addressed. When processing is delayed, the Ombudsman noted, "individuals and employers experience significant adverse consequences such as job loss and disruption in business operations." The Ombudsman recommended specific actions that USCIS can take to improve the EAD process, including:

1. Establishing methods at local offices to facilitate immediate resolution;
2. Establishing a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD;
3. Improving monitoring and ensuring real-time visibility through an automated system for tracking processing times;
4. Following established internal procedures for issuing interim EADs in cases where background checks are pending; and
5. Issuing replacement EADs with validity dates beginning on the date the old EAD expires.

The Ombudsman identified several ways to implement these recommendations that build upon existing USCIS processes.

The Ombudsman's recommendations are available at http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf.

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### 4. Obama Administration Announces Focus on High-Risk Cases in Removal Proceedings

On August 18, 2011, Secretary of Homeland Security Janet Napolitano announced that the Obama administration plans to focus removal efforts on high-priority cases such as convicted felons and others posing a threat to public safety, and to initiate an interagency case-by-case review to ensure that both

those currently in removal proceedings and new cases placed in removal proceedings meet those priorities. Secretary Napolitano cautioned that this process "will not provide categorical relief for any group."

A related memorandum from U.S. Immigration and Customs Enforcement (ICE) issued in June on prosecutorial discretion notes:

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

The new focus on only deporting high-priority cases, such as criminals, does not amount to an amnesty program for others, as Secretary Napolitano noted. Nor does the new policy necessarily mean that people whose removal cases are stayed can obtain work permits. They will remain in immigration limbo: not in removal proceedings but not legal either. A consumer advisory warning immigrants about the limited nature of the administration's new policy is at http://www.aila.org/content/default.aspx?docid=36705.
Secretary Napolitano's letter is available at

http://blogs.suntimes.com/sweet/11-8949_Durbin_Dream_Act_response_08.18.11.pdf. The ICE memo is available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf. An ICE FAQ about the new policy is at http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf.

For an in-depth commentary, see Cyrus MehtaXs blog *FEWER PEOPLE TO GET DEPORTED UNDER NEW POLICY: HAS THE ADMINISTRATION FINALLY COME TO ITS SENSES?* http://cyrusmehta.blogspot.com/2011/08/fewer-people-to-get-deported-under-new.html.

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**5. USCIS Announces Extension of Deferred Enforced Departure for Liberians**

U.S. Citizenship and Immigration Services (USCIS) announced on August 16, 2011, its intention to extend employment authorization automatically for Liberian nationals covered under deferred enforced departure (DED) through March 31, 2012. USCIS's announcement follows President Obama's announcement of his decision to extend DED through March 31, 2013, for qualified Liberians and those persons without nationality who last habitually resided in Liberia. The six-month automatic extension of existing employment authorization documents (EADs) for eligible Liberians will permit them to continue working while they file their applications for new EADs. The new EADs will be effective for the full 18 months of the DED extension.

Although DED was scheduled to end for Liberian nationals on September 30, 2011, the administration decided that there are compelling foreign policy reasons to continue deferring enforced departure.
Liberians not eligible for DED include:

- Those who did not have temporary protected status (TPS) on September 30, 2007, and are therefore not covered under current DED;
- Certain criminals (e.g., aggravated felons and persons convicted of two misdemeanors);
- Persons subject to the mandatory bars to TPS; and
- Other ineligible persons as described in the President's related

memorandum.

In addition to automatically extending the validity of EADs for Liberian nationals covered under DED, USCIS published a notice in the Federal Register with instructions for these individuals on how to obtain employment authorization for the remainder of the DED extension. Liberian nationals covered under DED also must include the Application for Employment Authorization (Form I-765) and a filing fee of $380 or a fee waiver request.

The USCIS announcement is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=db50a859e04d1310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. The President's memorandum is available at http://www.whitehouse.gov/the-press-office/2011/08/16/memorandum-president-regarding-deferred-enforced-departure-liberians. The Federal Register notice is available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21842.htm.

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**6. ABIL Preparing Amicus Curiae Brief on Extraordinary Ability Case**

The Alliance of Business Immigration Lawyers (ABIL) of which Cyrus Mehta is a member, is preparing an amicus curiae ("friend of the court") brief to the Administrative Appeals Office (AAO) in response to U.S. Citizenship and Immigration Services' (USCIS) recent request concerning the appeal of a denied immigrant petition for a foreign national seeking to be classified as an alien of extraordinary ability. This decision will critically affect the adjudication of immigrant petitions for persons of extraordinary ability, outstanding professors or researchers, and exceptional ability immigrants. In ABIL's view, USCIS misread the U.S. Court of Appeals for the Ninth Circuit when it reviewed an AAO decision dismissing the appeal of an extraordinary ability petition. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

Among other things, the *Kazarian* court firmly reminded both the USCIS and the AAO that they must carefully apply the statutory and regulatory requirements

when performing their duties. Although the "extraordinary ability" visa requirements are restrictive, the AAO cannot impose arbitrary requirements on applicants. By forcing the USCIS and the AAO to make their determinations based on the regulations exactly as written, the Ninth Circuit has assured that the burden placed on future "extraordinary ability" visa applicants will not be higher than what the immigration regulations require. **The** *Kazarian* **court scolded USCIS for making up and applying extra-regulatory evidentiary requirements, yet USCIS has responded by requiring a "final merits determination"** analysis.

**The amicus brief will be prepared by ABIL members Bernard Wolfsdorf, Cyrus Mehta, Robert Loughran, Charles Kuck, and Angelo Paparelli.Sadly, t**he implementation of USCIS's erroneous policy has resulted in almost one-third of the 12,000 first preference immigrant visa numbers going "unused" last year as the top foreign nationals in the sciences, arts, education, business, or athletics have been turned away in droves, only to make other countries more competitive.

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### 7. USCIS Issues Policy Memo on B-2 Extensions for Cohabiting Partners and Other Household Members of Principal Nonimmigrants

U.S. Citizenship and Immigration Services' new policy memorandum on B-2 extensions for cohabiting partners and other household members of principal nonimmigrants does not change eligibility requirements for change of status to B-2, or extension of B-2 status. Rather, it clarifies that such a change and/or one or more extensions are appropriate in the exercise of discretion for household members, including the cohabitating partner of a principal nonimmigrant visa holder, when other eligibility requirements are met.

When evaluating an application for change to or extension of B-2 status based on cohabitation, the memo states, the cohabitating partnerXs relationship to the principal nonimmigrant in another status will be considered a favorable factor in allowing the household member to obtain or remain eligible for B-2 classification. When considering a change of status and/or multiple extensions for the cohabitating partner or other household member, the finite nature of the stay, rather than the duration of the stay or number of extensions sought, is controlling with respect to nonimmigrant intent. For example, the visit should

be considered temporary even if the status may be extended several times over several years to match an extended course of study undertaken by the principal. However, while the I-539 (B-2) application must be adjudicated on its own merits, the memo notes, a finding that the principal nonimmigrant lacks nonimmigrant intent is a negative factor in the exercise of discretion.

The policy memorandum is available at http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/Cohabitating_Partners_PM_081711.pdf.

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**8. USCIS Redesigns Customer Service Center 1-800 Options**

U.S. Citizenship and Immigration Services (USCIS) recently redesigned its Interactive Voice Response System (IVR), accessible via the National Customer Service Center. Among other things, USCIS shortened and reorganized the menu options. The new IVR has three main menu options, a decrease from the 10 options previously in place. The three new options are Immigration Services, Immigration Information, and Special Programs and Other Resources.

The NCSC main number is 1-800-375-5283. Those who are outside the United States and have filed an application or petition with a USCIS Service Center may call 785-330-1048 to check the status of their case via an automated system.

For more information, see http://www.aila.org/content/default.aspx?docid=36776 and http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=943696981298d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=ddce0b89284a3210VgnVCM100000b92ca60aRCRD.

**9. DHS, USCIS Announce Initiative To 'Promote Startups and Spur Job Creation'**

On August 2, 2011, Secretary of Homeland Security Janet Napolitano and U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas announced a series of "policy, operational, and outreach efforts" to fuel the U.S. economy and stimulate investment by attracting foreign entrepreneurial talent

of exceptional ability or those who can create jobs, form startup companies, and invest capital in areas of high unemployment.
The DHS/USCIS announcement noted the following:

- USCIS will conduct internal training on the unique characteristics of entrepreneurial enterprises and startup companies and incorporate input from a new series of stakeholder engagements.
- The employment-based second preference (EB-2 visa) classification includes foreign workers with advanced degrees and individuals of exceptional ability in the arts, sciences, or business. Generally, an EB-2 visa petition requires a job offer and a Department of Labor certification. These requirements may be waived under existing law if the petitioner demonstrates that approval of the EB-2 visa petition would be in the national interest of the U.S. USCIS noted that entrepreneurs may obtain an EB-2 immigrant visa if they satisfy the existing requirements, and also may qualify for a national interest waiver under that visa category if they can demonstrate that their business endeavors will be in the interest of the U.S.
- In response to previous stakeholder feedback, USCIS has updated its existing FAQs to clarify that an H-1B beneficiary who is the sole owner of the petitioning company may establish a valid employer-employee relationship for the purposes of qualifying for an H-1B nonimmigrant visa.
- USCIS is "transforming" the EB-5 immigrant investor intake and review process. In May, USCIS proposed extending the availability of premium processing for certain EB-5 applications and petitions, implementing direct lines of communication between applicants and USCIS, and providing applicants with the opportunity for an interview before a USCIS panel of experts to resolve outstanding issues in an application. After reviewing stakeholder feedback on this proposal, USCIS is developing a "phased plan to roll out these enhancements and is poised to begin implementing the first of these enhancements within 30 days" of August 2, 2011.

As of June 30, 2011, USCIS estimated that the EB-5 program has resulted in more than $1.5 billion in capital investments and created at least 34,000 U.S. jobs.

- Premium processing service is being expanded for immigrant petitions for

multinational executives and managers.

- Finally, USCIS is launching a new series of engagement meetings for entrepreneurs and startup companies. These meetings will focus on soliciting input from stakeholders on how USCIS can address the unique circumstances of entrepreneurs, new businesses, and startup companies through its employment-based policies and regulations. USCIS also seeks feedback on examples of the business lifecycle for entrepreneurial ventures, small businesses, and startups, to include initial funding available, typical organizational structure, ownership structure, and payment of salaries; and examples of typical business plans for entrepreneurs and startups.

The DHS/USCIS announcement is at http://www.dhs.gov/ynews/releases/20110802-napolitano-startup-job-creation-initiatives.shtm.
A USCIS FAQ on entrepreneurs and the EB-2 category is available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=93da6b814ba81310VgnVCM100000082ca60aRCRD&vgnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD.

For more information on USCIS's public meetings, see http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ea015fc5440072 10VgnVCM100000082ca60aRCRD&vgnextchannel=ea015fc544007210VgnVCM100000082ca60aRCRD. For an in-depth commentary, see Cyrus MehtaXs blog *DO WE HAVE A START-UP VISA FOR ENTREPRENEURS EVEN WHEN CONGRESS HAS NOT LIFTED A FINGER?* http://cyrusmehta.blogspot.com/2011/08/do-we-have-start-up-visa-for.html.

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**10. ICE Declares 'Secure Communities' Mandatory, Not Optional**

U.S. Immigration and Customs Enforcement (ICE) Director John Morton sent a letter on August 5, 2011, to governors terminating all existing Secure

Communities memoranda of agreement "to clarify an issue that has been the subject of substantial confusion," which is that " between ICE and a state is not required to operate" Secure Communities in that state. In recent months, several state and local jurisdictions had signed MOAs before participating, and some states subsequently attempted to rescind their MOAs.

Noting that participation in the program is not optional, ICE said that "nce a state or local law enforcement agency voluntarily submits fingerprint data to the federal government, no agreement with the state is legally necessary for one part of the federal government to share it with another part." ICE said it plans to continue expanding the program and hopes to achieve nationwide activation by 2013.

Secure Communities uses an already existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI). For decades, local jurisdictions have shared the fingerprints of individuals who are booked into jails with the FBI to see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to ICE to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the U.S. or otherwise removable due to a criminal conviction, ICE takes enforcement action, prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors, as well as those who have repeatedly violated immigration laws.

ICE noted that "Secure Communities imposes no new or additional requirements on state and local law enforcement," and that "the federal government, not the state or local law enforcement agency, determines what immigration enforcement action, if any, is appropriate."

An example of the letter sent to governors is available at http://uncoverthetruth.org/wp-content/uploads/SGN-RSP-for-Jack-Markell.pdf. For more information on Secure Communities, see http://www.ice.gov/secure_communities/.

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### 11. ICE Announces Intention To Withdraw University of Northern Virginia's SEVP Certification and SEVIS Access for Its Foreign Students

On July 28, 2011, following a review of the University of Northern Virginia’s

(UNVA) certification, a Student and Exchange Visitor Program (SEVP) representative served school officials at UNVA with a notice of the agency's intent to withdraw the school's SEVP-certification and Student and Exchange Visitor Information System (SEVIS) access. Foreign students at UNVA must immediately depart the U.S. if they are unable to continue to attend classes and maintain their active status under the regulations or if they are unable or do not wish to seek transfer to another SEVP-certified institution.

School officials at UNVA no longer have access to SEVIS and will not be able to manage nonimmigrant students' records in SEVIS. U.S. Immigration and Customs Enforcement (ICE) said that UNVA nonimmigrant students should contact SEVP, as they would their designated school official, to report any changes, so their SEVIS record and Form I-20 (Certificate of Eligibility for Nonimmigrant (F-1) Student Status) can be updated accordingly.

ICE noted that SEVP-certified schools "are subject to a review of their certification at any time based on regulations." According to news reports, ICE agents came to the UNVA campus on July 28 and confiscated records and computers. Most of UNVA's students are foreign and the school is reportedly accredited only by the American University Accreditation Council, an entity that the U.S. Department of Education does not recognize. ICE did not explain why it raided the school or its decision to withdraw foreign student certification.

Instructions for University of Northern Virginia foreign students are available at http://www.ice.gov/sevis/unva/.

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### 12. ABIL Global: Training for Professionals in Brazilian Companies: Comparing Normative Resolution 87 and 88

Normative Resolution Nos. 87 and 88 are both focused on training people in Brazilian companies. However, even though they have similarities, there are still details that distinguish the procedures and applications for work permits under these resolutions.

Normative Resolution No. 87 allows a visa to a foreign national, linked to a company abroad, for job training by the branch, subsidiary, or Brazilian headquarters belonging to the same economic group. In other words, this work

permit, valid for one year (non-extendable), provides for a professional who already belongs to the same economic group of companies to come to Brazil for professional improvement, exchanging information with the Brazilian team and bringing new techniques and knowledge to the company abroad. The foreigner may not necessarily be paid in Brazil and may receive his or her salary from the company abroad.

On the other hand, Normative Resolution No. 88 provides for a visa to a foreigner who comes to Brazil for an internship for one year (extendable for the same period). This means that the foreigner will participate in a supervised educational exchange, developed in the workplace and aimed at preparation for productive work for students who are attending regular classes in institutions of higher education. Also, such foreign nationals may receive financial grants to support their stay in Brazil as well as other benefits under Brazilian internship law. The applicants for this type of permit should go to the Brazilian consular office in their country of origin to apply for this type of visa. They should bring a signed agreement between the assignee, the entity granting the internship, and the Brazilian educational institution.

Thus, both permits are geared toward training professionals, whether they have already graduated (Normative Resolution No. 87) or await graduation (Normative Resolution No. 88). The conditions under which the foreigner national may come to Brazil are what differentiate one from another. In both cases, however, the experience abroad provides an educational exchange and a convenient alternative for those seeking to improve their language skills and grow professionally and personally.

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### 13. Firm In The News

**Mr. Mehta** and **Charles Kuck** (bio: http://www.abil.com/lawyers/lawyers-kuck.cfm?c=US) were quoted recently in the *Washington Post* in an article on the August 2, 2011, announcement by DHS/USCIS about efforts to attract foreign entrepreneurial talent. Mr. Mehta said, "Not only did the USCIS director have to probably override some of his own staffers and skeptics, but Mayorkas also did this administratively when Congress is in a stalemate." Mr. Kuck expressed concerns about "the anti-business attitude of the vast majority of the adjudicators, who would rather find reasons to deny legitimate cases and chase off investment and jobs than

approve them." He noted, "We'll know how serious the government is about supporting entrepreneurs when new applications are filed." The article is available at http://www.washingtonpost.com/national/on-immigration-a-step-in-the-right-direction/2011/08/03/gIQA2bGgsI_story.html.

Cora-Ann V. Pestaina's blog was cited in the Legal Action Center's Practice Advisory on Mandamus Litigation to Address Delays in Prevailing Wage Determinations, footnote 8, http://www.americanimmigrationcouncil.org/sites/default/files/Mandamus-DOL-4-25-2011.pdf.

Cyrus Mehta's essay was included in the National Foundation For American Policy on reforming the naturalization process, http://bit.ly/r06BXx.

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