



## OCTOBER 2011 IMMIGRATION UPDATE

*Posted on October 3, 2011 by Cyrus Mehta*

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1. [House Judiciary Committee Approves E-Verify Legislation](#) - A date for consideration on the House floor has not yet been set.
2. [State Dept. Estimates Employment-Based Visa Availability](#) - The October Visa Bulletin includes estimated visa availability over the coming months.
3. [House Holds Hearing on Immigrant Investor Program and Job Creation](#) - The regional center program is estimated to have created or saved over 65,000 jobs in the U.S. and led to the investment of over \$3 billion in the U.S. economy.
4. [Diversity Visa 2013 Registration Begins](#) - The online registration period for DV-2013 begins on Tuesday, October 4, 2011, and ends on Saturday, November 5, 2011.
5. [Labor Dept. Postpones Revised H-2B Wage Calculations](#) - The new effective date will be November 30, 2011.
6. [SSA Inspector General Finds Anomalies in H-1B Workers' Use of Social Security Numbers](#) - The OIG released a report on H-1B workers' use of SSNs that could result in more close monitoring of status violations by H-1B workers and potential liability for H-1B employers.
7. [State Dept. To Conduct On-Site Reviews of Summer Work Travel Sponsors](#) - On average, the Department expects that each on-site review will take two full business days and will be preceded by written notice 10 days in advance and a request for certain specified documents.
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## **17. Firm In The News...**

### **1. House Judiciary Committee Approves E-Verify Legislation**

The House of Representatives Committee on the Judiciary approved a bill on September 21, 2011, that would mandate E-Verify use by U.S. employers for all new employees. A date for consideration on the House floor has not yet been set. The bill, H.R. 2885, was introduced by Lamar Smith (R-Tex.), chairman of the

Judiciary Committee.

Among other things, there reportedly was much discussion during markup of the bill about its potential effect on agricultural workers. Rep. Dan Lungren (R-Cal.) said that an E-Verify mandate would "devastate the agricultural industry," and that the issue should be dealt with "in a practical fashion." However, Rep. Howard Berman (D-Cal.) offered an amendment that the committee passed, which closed a loophole that would have allowed agricultural employers of returning seasonal workers to be exempt. Rep. Berman said that would amount to a "laughable de facto amnesty," and Rep. Melvin Watt (D-Cal.) agreed that it would be a "loophole big enough to drive freight trucks, airplanes, and locomotives -- all filled with illegal workers -- through." Despite closing the loophole, the bill would still give agricultural employers three years to comply.

A provision to preempt states from mandating E-Verify survived. Rep. Smith argued that preemption "is consistent with a common-sense reading of the Constitution" and that "American businesses need one federal standard for E-Verify, not 50 or more laws."

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## **2. State Dept. Estimates Employment-Based Visa Availability**

The October Visa Bulletin from the Department of State's Visa Office notes that employment-based visa availability in the coming months is expected to be "Current" for the employment first preference (EB-1) category; the employment second preference (EB-2) Worldwide, Mexico, and Philippines categories; and the employment fourth and fifth categories. The Department noted that the estimates are subject to fluctuations in demand, but said that categories with a "Current" projection "will remain so for the foreseeable future."

For categories other than those noted above, the bulletin states:

### **Employment Second:**

China and India: The current cut-off date is approaching the most favorable date previously reached for applicants from China and India. The rapid forward movement is intended to generate demand based on new filings for adjustment of status at U.S. Citizenship and Immigration Services offices, which currently accounts for over 85% of all employment-based number use. Once

the level of demand increases sufficiently, it may be necessary to slow or stop the cut-off movement, and a retrogression of the cut-offs at some point during the year is a distinct possibility.

### **Employment Third:**

Worldwide: up to one month

China: one to three weeks

India: up to two weeks

Mexico: up to one month

Philippines: up to one month

The October Visa Bulletin is available at

[http://www.travel.state.gov/visa/bulletin/bulletin\\_5560.html](http://www.travel.state.gov/visa/bulletin/bulletin_5560.html).

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### **3. House Holds Hearing on Immigrant Investor Program and Job Creation**

On September 14, 2011, the House of Representatives' Subcommittee on Immigration Policy and Enforcement held a hearing on the EB-5 investor visa program. House Judiciary Committee Chairman Lamar Smith (R-Tex.) opened the hearing by declaring that the "number one job of Congress is to create jobs." He said the investor visa program plays a part in achieving that goal. "The regional center pilot project, which is almost two decades old, has become the most used part of the investor visa program," Rep. Smith noted. "Investment through a regional center is attractive to potential investors because they are relieved of the responsibility of running a new business and they can count indirect job creation towards the job creation requirement." He said that the Invest in the USA trade association "has estimated that the regional center program has created or saved over 65,000 jobs in the U.S. and has led to the investment of over \$3 billion in the U.S. economy." He also noted that the program is set to expire on September 30, 2012. Rep. Smith said the hearing would focus on how to continue bringing entrepreneurs to the U.S. while rooting out fraud and abuse.

Witnesses included William Stenger, President and Chief Executive Officer, Jay Peak Resort, Vermont; Daniel Healy, Chief Executive Officer, Civitas Capital Group, Texas; Jason Mendelson, Managing Director, Foundry Group, Colorado; and Shervin Pishevar, Managing Director, Menlo Ventures, California.

Rep. Smith's statement and the statements of the witnesses are available at [http://judiciary.house.gov/hearings/hear\\_09142011.html](http://judiciary.house.gov/hearings/hear_09142011.html).

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#### **4. Diversity Visa 2013 Registration Begins**

The online registration period for the 2013 diversity visa program (DV-2013) begins on Tuesday, October 4, 2011, at noon (EDT) and ends on Saturday, November 5, 2011, at noon (EDT). Entries must be submitted electronically with photographs. There are no fees to enter. The Department of State strongly encourages applicants not to wait until the last week to enter, because heavy demand may result in website delays and no applications will be accepted on paper or after the deadline. For fiscal year 2013, the program will make available 50,000 visas to eligible persons from countries with historically low rates of immigration to the U.S.

For DV-2013, natives of the following countries are not eligible to apply: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible. For DV-2013, natives of South Sudan and Poland are now eligible.

To be eligible for the DV program, a person must be a native of one of the listed countries and must meet either the education or work experience requirement of the program. Entrants must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education, or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The Department of Labor's "O\*Net OnLine" database, which will be used to determine qualifying work experience, is available at <http://www.onetonline.org/>.

The submission site is <http://www.dvlottery.state.gov>. A successfully registered entry will result in a confirmation screen showing the entrant's name and a unique confirmation number. The entrant must print this confirmation screen and retain the confirmation number. Starting May 1, 2012, entrants will be able to check the status of their DV-2013 entries by returning to

<http://www.dvlottery.state.gov>, Entrant Status Check, and entering the unique confirmation number and personal information. Entrant Status Check will be the sole means of informing entrants of their selection for DV-2013, providing instructions on how to proceed with an application if selected, and notifying entrants of their appointment for an immigrant visa interview. The Department of State warned that it will be unable to provide an entry confirmation number if it is lost.

The Department of State released "official" instructions in English and "unofficial" instructions in Albanian, Polish, Romanian, Russian, and Uzbek. The English instructions are available at [http://travel.state.gov/pdf/DV\\_2013\\_instructions.pdf](http://travel.state.gov/pdf/DV_2013_instructions.pdf). For more information, see [http://travel.state.gov/visa/immigrants/types/types\\_1318.html](http://travel.state.gov/visa/immigrants/types/types_1318.html).

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## **5. Labor Dept. Postpones Revised H-2B Wage Calculations**

The Department of Labor's Employment and Training Administration has postponed for 60 days the effective date for the final rule on wage methodology for the H-2B temporary nonagricultural employment program. The effective date will be November 30, 2011. The Department said the delay will permit various courts involved in ongoing litigation concerning the rule's implementation to determine the appropriate venue for resolution of all claims and allow the Department to avoid the possibility of administering the H-2B program under potentially conflicting court orders.

The Department explained that it published a final rule on January 19, 2011, revising the wage methodology for the H-2B program and setting the effective date of the wage rule as January 1, 2012. On June 16, 2011, in response to a challenge, the U.S. District Court for the Eastern District of Pennsylvania invalidated that date and ordered the department to announce a new effective date within 45 days. In response to that order, the Department issued a notice of proposed rulemaking on June 28, 2011, which proposed that the wage rule take effect 60 days from the date of publication of a final rule. After a period of public comment, the Department published a final rule on August 1, 2011, which set the new effective date for the wage rule as September 30, 2011, without altering the substance of the rule. With the new postponement, the effective date is now set for November 30, 2011.

The announcement is available at

<http://www.dol.gov/opa/media/press/eta/eta20111404.htm>.

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## **6. SSA Inspector General Finds Anomalies in H-1B Workers' Use of Social Security Numbers**

The Social Security Administration's Office of the Inspector General (OIG) released a report in September on H-1B workers' use of Social Security Numbers (SSNs) that could result in more close monitoring of status violations by H-1B workers and potential liability for H-1B employers.

Based on the results of the review, the OIG estimated that about 7,131 (18 percent) of the 38,546 H-1B workers to whom the SSA assigned an SSN in 2007 may have used their SSNs for purposes other than to work for their approved employer. This estimate included about 4,433 (11 percent) H-1B workers who had posted wages during the audit period from an employer other than their Department of Homeland Security (DHS)-approved employer. The estimate also included about 2,698 (7 percent) H-1B workers who had no posted wages from 2007 through 2009.

The OIG noted that unauthorized work by H-1B workers weakens SSN integrity and may require that the agency pay future benefits to individuals who misuse an SSN to work in the U.S. In addition, the OIG noted, H-1B workers who do not work for their approved employer "could pose a risk to homeland security, because they may obtain employment in sensitive areas."

The OIG also commented on a recent DHS study reporting that about 21 percent of the H-1B petitions it examined involved fraud or technical violations. The types of fraud identified included counterfeit or forged documents, storefront or shell businesses, no bona fide job offer, and misrepresentation of H-1B status. DHS subsequently clarified field guidance and instituted employer site visits to reduce alleged fraud and abuse in the H-1B visa program.

Additionally, the OIG noted, the Department of Justice has pursued criminal charges in some H-1B fraud cases. In one case, six individuals pled guilty to participating in a criminal conspiracy with the owner of a consulting firm to obtain H-1B visas for ineligible or unqualified individuals. All six individuals admitted that they had secured cash-paying jobs from unapproved employers instead of working for the consulting firm. In another case the OIG discussed,



U.S. Immigration and Customs Enforcement agents arrested 11 individuals accused of H-1B visa fraud. This investigation involved companies that did not always have jobs available for H-1B workers, which placed the workers in non-pay status after they arrived in the U.S. These companies and workers also allegedly submitted false statements and documents to support their H-1B visa petitions, the OIG noted. Because the subject of the OIG report involved immigration enforcement and visa-related issues, the OIG said it planned to share the report with the DHS and State Department Offices of Inspector General.

The OIG recommended that SSA contact DHS to offer to establish a data match agreement to assist DHS's efforts to identify and reduce the number of H-1B workers who may use their SSNs for purposes other than to work for their approved employer. SSA agreed with that recommendation.

The OIG report, "H-1B Workers' Use of Social Security Numbers," is available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-11-11114.pdf>.

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## **7. State Dept. To Conduct On-Site Reviews of Summer Work Travel Sponsors**

The Department of State announced on September 23, 2011, that it plans to conduct on-site reviews of Summer Work Travel Program sponsors to evaluate regulatory compliance. The program provides foreign college and university students the opportunity to work and travel in the U.S. during their extended academic break (summer vacation) for up to four months.

The Department explained that on April 26, 2011, it published an interim final rule governing the Summer Work Travel category under the Exchange Visitor Program. In that rulemaking, the Department set forth its three-step approach to addressing a number of concerns regarding sponsor administration of this program:

- The Department adopted a pilot program in January 2011 to enhance protections for foreign nationals from Belarus, Bulgaria, Moldova, Romania, Russia, and the Ukraine.
- The Department issued the interim final rule, which incorporated many of the concepts of the pilot program into the overall Summer Work Travel Program regulations.



- The Department intends to conduct on-site reviews to monitor sponsor performance, to assess category-wide regulatory compliance, and to consult with sponsors about implementation of the interim final rule.

Close monitoring of Summer Work Travel sponsors during the summer of 2011 resulted in the Department's modifying its plans for the on-site reviews. Specifically, the Department evaluated all Summer Work Travel sponsors' compliance with program regulations regarding the maintenance of current and accurate records in the Student and Exchange Visitor Information System (SEVIS) from September 1, 2009, through August 30, 2010. It also reviewed Summer Work Travel-related complaints for the 2011 summer season and monitored the media for additional reports of program problems. As a result of these efforts, the Department determined that it will not visit sponsors based solely on their size, but instead "will conduct compliance reviews of those designated sponsors whose compliance with the relevant Exchange Visitor Program regulations deserve closer examination by the Department."

Currently there are 51 designated sponsors in the Summer Work Travel category. Of those, the Department has identified 14 sponsors that will be reviewed. Although the Department may later decide to evaluate additional sponsors, it intends to visit these 14 sponsors (which the Department did not name but said that they together sponsor about 65 percent of all Summer Work Travel participants) between October and December 2011. On average, the Department expects that each on-site review will take two full business days and will be preceded by written notice 10 days in advance and a request for certain specified documents.

The Department said the on-site reviews will focus on evaluating the overall program administration and the effectiveness of the modifications to sponsors' program administration resulting from implementation of the interim final rule and the pilot program. A primary goal of these reviews is to assess whether the sponsors have been able "to comply and remain in continual compliance with all provisions of Part 62" (22 CFR 62.3(b)(1)). To this end, the reviews will focus on sponsor compliance with the pilot program guidelines and participant monitoring requirements, maintenance of accurate SEVIS records, and sponsors' relationships with third parties they have engaged to assist in carrying out the core programmatic functions inherent in the administration of exchange visitor programs (i.e., screening, selection, orientation, placement,

monitoring, and the promotion of mutual understanding). Other areas of interest may include sponsors' roles in assisting participants in finding suitable housing; decision-making processes (including the numbers of participants accepted); self-imposed compliance mechanisms; procedures for handling student participant problems (including finding new jobs for those whose pre-arranged placements were unsatisfactory); and policies for refunding deposits or payments to student participants.

Finally, the Department said it intends to use these reviews as an opportunity for sponsors to provide feedback on the pilot program and the interim final rule in general, and more specifically, sponsors' experience with the relevant new regulatory provisions during the summer season of 2011. Feedback will be used to assist in issuing the final rule. Best practices will be collected from the on-site reviews and shared with the wider sponsor community.

Sponsors who are not included in these reviews and wish to comment should e-mail their comments and concerns to the Department at [JVisas@State.gov](mailto:JVisas@State.gov).

The notice is available at

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-23/pdf/2011-24551.pdf>.

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## **8. DHS Launches 'Study in the States'**

On September 16, 2011, Secretary of Homeland Security Janet Napolitano and Immigration and Customs Enforcement (ICE) Director John Morton announced an initiative to streamline the international student visa process for foreign students seeking to study in the U.S. The "Study in the States" initiative is "a key component of a government-wide effort to encourage the best and brightest foreign students to study and remain in the U.S.," a Department of Homeland Security (DHS) media release said.

"Attracting the best and brightest international talent to our colleges and universities is an important part of our nation's economic, scientific and technological innovation and competitiveness," Secretary Napolitano said.

"Foreign students and exchange visitors bring invaluable contributions to our nation, and the Study in the States initiative is an important step in empowering the next generation of international entrepreneurs, right here in America."

DHS noted that more than 1.1 million active nonimmigrant students and

exchange visitors and their dependents study in U.S. universities, exchange programs, and training opportunities. Study in the States will examine regulatory changes, expand public engagement between the government and academia, and provide a central online information hub for DHS and its agency partners to provide current and prospective students with updated and relevant visa requirements in a user-friendly format.

"Study in the States encourages international students who seek the wealth of educational opportunities available in the U.S. to remain here following their studies and apply their new skills here in our country," said ICE Director Morton. "We aim to strike a balance providing an open and welcoming experience for international students and visitors seeking information, while maintaining the integrity and security of our visa process. This site is an important step toward reaching that goal."

DHS said that the Study in the States website is intended to be an innovative, interagency portal that will include:

- Interactive and accessible information, allowing prospective and current students to visually navigate steps of the student visa process on their own "Road Map to Success."
- Links to social media websites, such as Facebook and Twitter, disseminating relevant visa requirements and information to international students, exchange visitors, and the academic community.
- A blog with posted videos, public service announcements, relevant news, requirements, helpful tips, and success stories.

DHS said that Study in the States builds on other new policies intended to encourage talented students from other countries to study and work in the U.S. For example, earlier this year, DHS announced an extension to science, technology, engineering and math (STEM) degrees for international student studies, allowing graduates of a STEM degree to remain in the U.S. through Optional Practical Training (OPT) for up to 29 months after graduation.

For more information on the initiative, see <http://studyinthestates.dhs.gov/>. The announcement is available at

<http://www.dhs.gov/ynews/releases/20110916-study-in-the-states.shtm>. A fact sheet is available at

<http://www.dhs.gov/ynews/releases/20110916-fact-sheet-study-in-the-states.sh>

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## **9. ICE Issues Notice on Special Relief for Libyan F-1 ESL Students**

U.S. Immigration and Customs Enforcement (ICE) issued a notice to SEVIS users on September 14, 2011, on special relief for Libyan F-1 students enrolled in English as a Second Language programs, as outlined in a Federal Register notice published on June 10, 2011. The relief includes employment authorization for full-time work and the opportunity for a reduced course load. ICE noted that the goal of this relief is to provide full-time employment authorization to eligible students experiencing severe economic hardship due to the civil unrest in Libya.

The notice is available at

<http://www.ice.gov/doclib/sevis/pdf/1107-01broadcast-libyan-esl-student-relief.pdf>. The Federal Register notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-10/pdf/2011-14482.pdf>.

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## **10. USCIS Institutes Direct E-Mail Communication for Regional Center Applicants**

USCIS is implementing the first phase in a series of proposed enhancements to the EB-5 immigrant investor program. Beginning on September 13, 2011, Form I-924 (Application for Regional Center Under the Immigrant Investor Pilot Program) applicants are able to communicate directly with USCIS adjudicators via e-mail.

USCIS intends to monitor the progress of this new line of communication to assess whether changes are needed and to implement any needed changes on a "real-time basis." Feedback in response to the use of the direct line of communication for the I-924 may be e-mailed to [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov).

USCIS said it "is eager to implement all of the proposed enhancements to the EB-5 program that it first announced on May 19, 2011." USCIS is exploring how it can accelerate the implementation of premium processing, "which customarily takes months due to the need to revise the applicable forms." USCIS said it is hiring economists and other experts who will enhance and accelerate the adjudication process and also help constitute the Decision Board

that was first described on May 19.

USCIS said it will provide more information at its national stakeholder engagement on September 15. A related Q&A is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=efccf0aec9262310VgnVCM100000082ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD>. Information on the proposed enhancements to EB-5 processing is available at <http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operartional%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf>.

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## **11. DOL Releases H-2A Employer Filing Tips**

The Department of Labor's Office of Foreign Labor Certification has released "H-2A Employer Filing Tips." Based on 16 months of processing experience at the Chicago National Processing Center, the filing tips remind employers about common mistakes that may result in processing delays for temporary agricultural workers. Included are tips on pre-filing, forms, and recruitment.

The filing tips are available at

[http://www.foreignlaborcert.doleta.gov/pdf/650090\\_slaughter\\_H-2A\\_filing\\_tips\\_8-29-11.pdf](http://www.foreignlaborcert.doleta.gov/pdf/650090_slaughter_H-2A_filing_tips_8-29-11.pdf). A FAQ on the H-2A program is available at <http://www.foreignlaborcert.doleta.gov/pdf/H-2AFAQsRound3fnl.pdf>.

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## **12. USCIS Considers Changes to Employment Authorization Policies for TPS Beneficiaries**

On September 8, 2011, U.S. Citizenship and Immigration Services' Office of Policy and Strategy and Office of Public Engagement held a teleconference to discuss the employment authorization of temporary protected status (TPS) beneficiaries and applicants.

USCIS initiated a review of the current policies related to TPS in 2010. During this review, USCIS noted that 8 CFR § 244.12:

- Allows TPS beneficiaries and applicants who have TPS withdrawn or denied to remain authorized for work until their employment

authorization documents (EADs) expire, rather than upon withdrawal or denial; and

- Extends the employment authorization of TPS beneficiaries or applicants whose TPS has been withdrawn or denied through any appeal to the Administrative Appeals Office (AAO) and/or a de novo determination during removal proceedings.

USCIS explained that TPS beneficiaries are authorized to work based on their status. TPS applicants who are found to be prima facie eligible for TPS may also receive employment authorization as a "temporary treatment benefit" while their TPS applications remain pending. USCIS is considering a regulatory change that would terminate their employment authorization if TPS is withdrawn or denied, rather than allow it to exist until the expiration of their EADs. Additionally, USCIS is considering:

- Whether a person who has appealed a TPS denial or withdrawal decision to the AAO or who has sought de novo review of such a decision in removal proceedings should be permitted, in certain circumstances, to request that USCIS issue an EAD while his or her TPS request is under review; and
- If so, what limitations, if any, should be placed on the EADs that may be issued while an AAO appeal is pending or while the TPS request is under review in removal proceedings.

The USCIS notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ad140013f0602310VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD>.

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### **13. SEVP Updates SEVIS Instructions, List of Approved Schools**

U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) released updated instructions on September 7, 2011, for users of the Student and Exchange Visitor Information System (SEVIS). The instructions include information for new users, users with deleted SEVIS access, those deleting or terminating access, and password resets. Also, on September 1, SEVP released an updated list of approved schools, along with an approved schools map.

The updated instructions are available at <http://www.ice.gov/doclib/sevis/pdf/sevis-instructions-to-all-users-pics-access.pdf>. The latest list of approved schools is available at <http://www.ice.gov/doclib/sevis/pdf/ApprovedSchools.pdf>. The map is available at <http://www.ice.gov/sevis/map/approvedschoolsmap.htm>.

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#### **14. U.S. Consulate in Mumbai Resumes H and L Visa Processing**

The U.S. Consulate General in Mumbai recently announced the resumption of interviews for H and L visas, after a stoppage beginning in March 2011 due to aging infrastructure. In 2010, Indian applicants received 65 percent of all H-1B visas issued worldwide. All interviews will be conducted at the Lincoln House Consulate building, located at 78, Bhulabhai Desai Road, until further notice. Visa appointments may be made online via VFS at <http://www.vfs-usa.co.in/AppInForms/ScheduleMenu.aspx>. The announcement is available at <http://mumbai.usconsulate.gov/interviews-and-appointments.html>.

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#### **15. USCIS Publishes CNMI Transitional Worker Final Rule**

U.S. Citizenship and Immigration Services (USCIS) published a final rule on September 7, 2011, that establishes a transitional worker nonimmigrant visa classification (CW) for workers in the Commonwealth of the Northern Mariana Islands (CNMI). The CW classification allows employers in the CNMI to hire nonimmigrant workers who are otherwise ineligible to work.

A foreign worker may be eligible for CW status if he or she is:

- Ineligible for a nonimmigrant or immigrant classification under the Immigration and Nationality Act;
- Entering or staying in the CNMI to work as a needed foreign national worker to supplement the resident workforce;
- The beneficiary of a petition filed by a legitimate employer who is doing business in the CNMI;
- Not present in the United States, other than the CNMI;
- Lawfully present in the CNMI or, if not present, intending to enter the CNMI with a visa; and



- Admissible to the United States or has received any necessary waiver of a ground of inadmissibility.

An employer may be eligible to petition for a CW worker if the employer:

- Is conducting a legitimate business, as defined in the final rule;
- Has considered all available U.S. workers for the position;
- Offers terms and conditions of employment consistent with the nature of the employer's business in the CNMI;
- Is complying with federal and CNMI employment requirements;
- Files a Form I-129CW, Petition for CNMI-Only Nonimmigrant Transitional Worker, and a CW-1 Classification Supplement with USCIS; and
- Submits the appropriate filing fees.

In most cases, employers may file for multiple beneficiaries on the same form. The filing fees needed to obtain CW status include:

- A \$325 fee for the Form I-129CW;
- A mandatory CNMI education funding fee of \$150 per beneficiary per year; and
- A biometric fee of \$85 if the worker is located in the CNMI.

A limited number of CW visas are available each fiscal year, based on the CNMI government's estimate of nonresident workers. The numerical limitation for fiscal year (FY) 2011 is 22,417 and for FY 2012 will be 22,416. The final rule mandates that the limitation must drop annually and that the Department of Homeland Security determine the fiscal year limitation for CW workers for subsequent fiscal years beginning in FY 2013.

The CW visa classification is valid only in the CNMI and provides no basis for travel or work in any other part of the United States, except for nationals of the Philippines, who may travel between the Philippines and the CNMI through the Guam airport. The final rule also provides for the grant of derivative CW status to spouses and minor children of CW workers.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3b0403dca1042310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The final rule is

available at

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-07/html/2011-22622.htm>. A Q&A is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=378603dca1042310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. For more information and announcements on immigration benefits specific to the CNMI, see <http://www.uscis.gov/cnmi>.

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## **16. Immigration and Customs Training Complex Opens in Georgia**

A new training complex for U.S. Immigration and Customs Enforcement (ICE) special agents and officers recently opened in Georgia, co-located with the Federal Law Enforcement Training Center (FLETC). The new ICE Academy complex includes four computer labs, nine classrooms, two electronics labs, and two breakout rooms.

The ICE-funded project provides a central classroom location for all ICE Academy basic and specialized training programs. The classroom complex will house ICE's two basic training programs: ICE Enforcement and Removal Basic Law Enforcement Training and ICE Homeland Security Investigations Special Agent Training. Specialized ICE programs designated for the building include technical enforcement, Spanish language, and instructor development courses.

In fiscal year 2010, the ICE Academy trained nearly 4,000 ICE employees, enrolled in more than 30 training programs. FLETC serves as an interagency law enforcement training organization for 90 federal agencies. In addition, the organization provides training to state, local, campus, tribal, and international law enforcement agencies. During FY 2010, over 65,000 students trained at the FLETC centers. Since its inception in 1970, nearly 940,000 law enforcement officers and agents have been trained at the largest law enforcement training organization in the country.

Headquartered on a 1,600-acre campus at Glynco, FLETC also operates facilities in Artesia, NM; Charleston, SC; and Cheltenham, MD. Additionally, FLETC has oversight responsibility on behalf of the Department of Homeland Security for the International Law Enforcement Academy (ILEA) at Gaborone, Botswana; assists in the management of the ILEA in Bangkok, Thailand; and supports training at each of these ILEAs, as well as the ILEA in Budapest, Hungary, and

San Salvador, El Salvador.

The announcement is available at

<http://www.fletc.gov/news/press-releases/fletc-opens-2.5m-state-of-the-art-ice-academy-classroom-complex>.

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## 17. Firm In The News...

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm?c=US>) has posted several new blog entries. "Reinterpreting the Automatic Conversion Provision of the CSPA to help DREAM Kids" is available at

<http://cyrusmehta.blogspot.com/2011/09/reinterpreting-automatic-conversion.html>. "Personal Reflections 10 Years After 9/11 As An Immigration Attorney" is

available at

<http://cyrusmehta.blogspot.com/2011/09/reflecting-on-911-after-10-years-as.html>. "Going Beyond the Politics of Discretion in the American Immigration

System" is available at

<http://cyrusmehta.blogspot.com/2011/09/going-beyond-politics-of-discretion-in.html>.

**Mr. Mehta** was on a panel at the 5<sup>th</sup> Biennial Global Immigration Conference of the International Bar Association in London on September 23-24, 2011. For more information, see

<http://www.int-bar.org/conferences/conf383/binary/London%20Global%20Immigration%202011%20programme.pdf>. He also spoke on a panel on "Teaching Ethics Across the Curriculum" for Brooklyn Law School faculty on September 21.

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