



## NOVEMBER 2011 IMMIGRATION UPDATE

*Posted on November 2, 2011 by Cyrus Mehta*

### Headlines:

1. [\*\*H-1B Numbers Dwindling for FY 2012, File Now!\*\*](#) - Once the numbers under the cap are gone, the next opportunity to file will be April 1, 2012, for work to begin in FY 2013.
2. [\*\*EB-2 India, China EB-2 Visa Numbers Jump; Other Visa News\*\*](#) - The November employment-based second preference cut-off date for applicants from China and India is the most favorable since August 2007.
3. [\*\*USCIS To Begin Sending Approval Notices to Attorneys Again Shortly\*\*](#) - The change will take effect in approximately six weeks.
4. [\*\*Reminder: DV Lottery Registration Ends November 5\*\*](#) - The Department of State strongly discourages applicants from waiting until the last minute to enter, because heavy demand may result in website delays and no applications will be accepted after the deadline.
5. [\*\*USCIS Announces 'Entrepreneurs in Residence' Initiative, Discusses EB-5 Enhancements\*\*](#) - The initiative builds upon USCIS's recent efforts to promote startup enterprises and spur job creation, including enhancements to the EB-5 immigrant investor visa program.
6. [\*\*'Fairness for High-Skilled Immigrants Act' Bill Heads to House Floor for Consideration\*\*](#) - The bill would eliminate the per-country numerical limitation for employment-based immigrants and increase it for family-based immigrants.
7. [\*\*Employment Authorization Document, Certificate of Citizenship Redesigned\*\*](#) - The agency anticipates that more than 1 million people will receive the new documents over the next year.

8. [\*\*DHS Secretary Napolitano Testifies on E-Verify, Enforcement Efforts\*\*](#) - In FY 2011, ICE criminally arrested 221 employers accused of violations related to employment, which Secretary Napolitano noted was "an agency record."
9. [\*\*ICE Announces Large Removal Numbers for FY 2011\*\*](#) - In FY 2011, ICE's Office of Enforcement and Removal Operations removed 396,906 individuals, the largest number in the agency's history.
10. [\*\*USCIS Designates South Sudan for TPS, Extends Sudan Designation\*\*](#) - The 180-day registration period for eligible individuals from South Sudan to submit initial TPS applications began on October 13, 2011, and will remain in effect until April 10, 2012.
11. [\*\*California 'Dream Act' Becomes Law\*\*](#) - California's Governor Jerry Brown has signed into law the second portion of the California "Dream Act," AB 131, which allows undocumented students to qualify for state-funded scholarships and financial aid for state universities after other legal resident and U.S. citizen students have applied.
12. [\*\*Federal Court Halts Parts of Alabama Immigration Law\*\*](#) - The U.S. Court of Appeals for the 11th Circuit issued an injunction pending appeal blocking certain provisions of Alabama's new immigration law.
13. [\*\*USCIS Seeks Comments on Proposed EB-5 Immigrant Investor Rule\*\*](#) - The processes outlined in the proposed rule would provide an additional two-year period for certain immigrant investors to meet the EB-5 investment and job-creation requirements.
14. [\*\*Customs and Border Protection Discontinues H-2A/2B Exit Program Pilot\*\*](#) - U.S. Customs and Border Protection has discontinued the H-2A and H-2B Temporary Worker Visa Exit Program Pilot, effective September 29, 2011.
15. [\*\*OCAHO Orders Drywall Company To Pay \\$173,250 in Penalties\*\*](#) - The company was ordered to pay \$770 per violation for failure to ensure that employees completed or signed I-9 forms, among other things.
16. [\*\*Justice Dept. Sues California Healthcare Provider for Discrimination\*\*](#) - DOJ alleged that the company engaged in a pattern or practice of discrimination by imposing unnecessary documentary requirements on naturalized U.S. citizens and non-U.S. citizens to work in the U.S.

**17. [ABIL Global: Italy Requires Fingerprints for North Africans](#)** - Italy now requires fingerprints for short-term visas (business and tourism) for North Africans, as part of a larger European Union effort.

**18. Firm In The News...**

**Also in this issue:**

**1. H-1B Numbers Dwindling for FY 2012, File Now!**

U.S. Citizenship and Immigration Services (USCIS) announced on October 28, 2011, that it has accepted (approved or pending) 49,200 H-1B petitions subject to the 65,000 numerical limitation (cap) for fiscal year (FY) 2011. Up to 6,800 visas are set aside from the 65,000 cap during each fiscal year for the H-1B1 program under the terms of legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements.

Also, the 20,000 cap for those with advanced U.S. degrees has been reached. By contrast, last year as of October 29, 2010, only 16,700 had been used.

The Alliance of Business Immigration Lawyers (ABIL) recommends that employers needing H-1B workers file quickly. Once the numbers under the cap are gone, the next opportunity to file will be April 1, 2012, for work to begin in FY 2013.

More information on the cap count is available at

[http://www.uscis.gov/h-1b\\_count](http://www.uscis.gov/h-1b_count).

[Back to Top](#)

**2. EB-2 India, China EB-2 Visa Numbers Jump; Other Visa News**

The November 2011 Visa Bulletin includes the following information:

The November employment-based second preference cut-off date for applicants from China and India is the most favorable since August 2007. This advancement is expected to generate significant levels of demand based on new filings for adjustment of status at U.S. Citizenship and Immigration Services offices. While significant future cut-off date movements are anticipated, they may not be made on a monthly basis. Readers should not expect such movements to be the norm throughout the fiscal year, and an eventual retrogression of the cut-off at some point during the year is a distinct possibility.

In recent remarks, Charles Oppenheim of the Department of State's Visa Office discussed predictions for employment-based visa numbers. Among other things, Mr. Oppenheim anticipates that in December 2011, the EB-2 priority date for China and India will move to March 1, 2008, and there could be additional movement in January and February. After that movement, these two categories may slow down and possibly retrogress later in the year.

Mr. Oppenheim predicted that the EB-3 category for Mexico, Philippines, and most other countries should move forward one month every month. The EB-3 category for China is expected to advance one to three weeks per month in the near future.

Prospects for India's EB-3 category do not look so promising. There are 54,000 cases pending since 2007, and many more with subsequent priority dates that have not yet been filed. Only 2,800 are allowed per year. Potentially this could mean 225,000 to 300,000 people waiting in line for India EB-3 visa numbers, including dependents. Mr. Oppenheim noted that over 50 percent of H-1Bs are given to Indian nationals every year; he said the majority will apply for permanent residence.

The EB-1 and 2 categories for all countries, Mexico, and Philippines, are expected to remain Current for some time, Mr. Oppenheim said. Last year there were 18,000-20,000 fewer cases filed in the EB-1 category, which allowed more EB-1 China and India petitions to move forward along with some EB-2 adjustments from those countries.

The November Visa Bulletin is available at [http://travel.state.gov/visa/bulletin/bulletin\\_5572.html](http://travel.state.gov/visa/bulletin/bulletin_5572.html).

[Back to Top](#)

### **3. USCIS To Begin Sending Approval Notices to Attorneys Again Shortly**

In mid-September, U.S. Citizenship and Immigration Services (USCIS) began sending the I-797 Notice of Action for employer-based visa petitions directly to the company filing the petition rather than the attorney-of-record. After hearing from both companies and attorneys about the negative consequences of this policy change, the USCIS announced on October 20, 2011, that it will once again begin sending approval notices to attorneys. USCIS stated that the change will take effect in approximately six weeks. Accordingly, employers should still remain vigilant in checking their mail for immigration-related documents from

USCIS for at least the next two months.

Many people complained about USCISX sudden decision to begin sending approval notices directly to employers rather than their attorneys. The potential harm that can result from a misrouted, mishandled, or lost document can be serious. For example, when an I-797 notice is sent to a large employer, the document can be misrouted within the organization, resulting in delays in reaching the foreign national. In a worst-case scenario, the document can be lost. In addition, some attorneys reported that requests for additional evidence were going directly to petitioners and applicants, not to attorneys of record.

The USCIS held a teleconference on October 12, 2011, to hear stakeholdersX concerns about the new I-797 procedures.

The USCIS notice about the I-797 processing change is at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=10db489ad93f2310VgnVCM100000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

[Back to Top](#)

#### **4. Reminder: DV Lottery Registration Ends November 5**

The online registration period for the 2013 diversity visa program (DV-2013), also known as the green card lottery, ends on Saturday, November 5, 2011, at noon (EDT). Entries must be submitted electronically only (no paper applications) with photographs. There are no fees to enter. The Department of State strongly discourages applicants from waiting until the last minute to enter because heavy demand may result in website delays and no applications will be accepted after the deadline. The program makes available 50,000 immigrant visas to eligible persons from countries with historically low rates of immigration to the United States.

For more information or to submit an application, go to <https://www.dvlottery.state.gov/>.

[Back to Top](#)

#### **5. USCIS Announces 'Entrepreneurs in Residence' Initiative, Discusses EB-5 Enhancements**

As part of the Obama administration's "Startup America" efforts to encourage

high-skilled immigration into the U.S. under existing laws, U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas recently announced the "Entrepreneurs in Residence" initiative to use "industry expertise to strengthen USCIS policies and practices surrounding immigrant investors, entrepreneurs and workers with specialized skills, knowledge, or abilities." Director Mayorkas announced the initiative at the High Growth Entrepreneurship Listening and Action Session at AlphaLab in Pittsburgh, before the quarterly meeting of the PresidentXs Council on Jobs and Competitiveness with President Obama.

Director Mayorkas said the introduction of expert views from the private and public sectors "will help us to ensure that our policies and processes fully realize the immigration law's potential to create and protect American jobs."

USCIS will launch the "Entrepreneurs in Residence" initiative with a series of informational summits with industry leaders to gather strategic input. Informed by the summits, the agency will create a tactical team including entrepreneurs and experts, working with USCIS personnel, "to design and implement effective solutions." Director Mayorkas said the initiative "will strengthen USCIS's collaboration with industries at the policy, training, and officer level, while complying with all current Federal statutes and regulations."

The initiative builds upon USCIS's recent efforts to promote startup enterprises and spur job creation, including enhancements to the EB-5 immigrant investor visa program. USCIS said that since August, it has been conducting a review of the EB-5 process, working with business analysts to enhance related adjudications, implementing direct access to adjudicators for EB-5 regional center applicants, and launching new specialized training modules for USCIS officers on the EB-2 visa classification and L-1B nonimmigrant intracompany transferees.

At a related press conference, Director Mayorkas explained that "e as an agency have been focused in the absence of legislative action to create newer broader pathways for the best and brightest from around the world to come to the United States and really take advantage of the opportunities here to enable our economy to grow and to create jobs for American workers." He said that the administration is "reviewing our policies and our processes to ensure that we are capturing the existing laws and the legislative intent behind those laws."

Director Mayorkas said that "Entrepreneurs in Residence" and what it

represents "cuts across all visa lines and is not limited to the EB-5 program by any measure." He said that DHS will be looking at the initiative's applicability in the arts and entertainment arenas, the O and P visa lines, and the H-1 categories.

He also noted that DHS does not plan to bring in a large cadre of experts, but rather "to start tactically and surgically" with a small group of people, some working on strategy and some on tactics. He said that DHS is still working out the details and will release more information on next steps later.

USCIS's statement on "Entrepreneurs in Residence" is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=bd537158910e2310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. A transcript of a related press conference held in October 2011 is available at [http://www.uscis.gov/USCIS/News/2011/October%202011/transcript\\_eir\\_11Oct11.pdf](http://www.uscis.gov/USCIS/News/2011/October%202011/transcript_eir_11Oct11.pdf).

[Back to Top](#)

## **6. 'Fairness for High-Skilled Immigrants Act' Bill Heads to House Floor for Consideration**

Rep. Jason Chaffetz (R-Utah) introduced the "Fairness for High-Skilled Immigrants Act" (H.R. 3012) on September 22, 2011. The House Judiciary Committee approved the bill with changes on October 27. It now goes to the full House of Representatives for a vote. The bill would eliminate the per-country numerical limitation for employment-based immigrants over three years and increase it for family-based immigrants, from 7 percent per country to 15 percent per country. It also would amend the Chinese Student Protection Act of 1992 to eliminate the provision requiring the reduction of annual Chinese (PRC) immigrant visas to offset status adjustments under the Act.

In media releases, Rep. Chaffetz said, "Per-country limits make no sense in the context of employment-based visas. Companies view all highly skilled immigrants as the same regardless of where they are from Cbe it India or Brazil. By removing per-country limits, American companies will be able to access the best talent." He noted that the current percentage cap "has created a backlog

of qualified workers." Rep. Chaffetz pointed out that the legislation will not adversely affect the wages and working conditions of similarly employed workers in the US. but will "encourage high-skilled immigrants who were educated in the U.S. to stay and contribute to our economy, rather than taking the skills they learned and aiding our competitor nations."

Co-sponsors of the bill include Reps. Tim Griffin (R-Ariz.), Zoe Lofgren (D-Cal.), and Lamar Smith (R-Tex.). It is supported by the U.S. Chamber of Commerce; Compete America, a coalition of high-tech companies including Microsoft, Google, and Oracle; various trade groups including the Business Software Alliance, the Semiconductor Industry Association, and the Information Technology Industry Council; and Immigration Voice, a leading coalition of highly skilled foreign professionals.

Rep. Chaffetz's statement is available at

<http://chaffetz.house.gov/press-releases/2011/10/chaffetz-sponsored-immigration-bill-passes>

[-house-judiciary-committee.shtml](http://www.gpo.gov/fdsys/pkg/BILLS-112hr3012ih/pdf/BILLS-112hr3012ih.pdf). The text of the bill is available at

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr3012ih/pdf/BILLS-112hr3012ih.pdf>.

[Back to Top](#)

## **7. Employment Authorization Document, Certificate of Citizenship Redesigned**

U.S. Citizenship and Immigration Services (USCIS) announced a redesigned Employment Authorization Document (EAD) and Certificate of Citizenship (Form N-560) with new security features. USCIS began issuing the new EADs on October 25, 2011, and the new N-560s on October 30. The agency anticipates that more than 1 million people will receive the new documents over the next year.

USCIS will replace EADs already in circulation as individuals apply for their renewal or replacement. All previously issued EADs remain valid until the expiration date printed on the card. Previously issued Certificates of Citizenship remain valid indefinitely.

USCIS said the new features of the EAD will better equip workers, employers, and law enforcement officials to recognize the card as definitive proof of authorization to work in the United States. USCIS said it worked closely with the Immigration and Customs Enforcement Forensic Document Laboratory to



incorporate technology and tactile features to deter counterfeiting, tampering, and fraud, and to facilitate card authentication.

The announcement is available at

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

[?vgnnextoid=338ce8ba05b33310VgnVCM100000082ca60aRCRD&vgnnextchannel=6](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=338ce8ba05b33310VgnVCM100000082ca60aRCRD&vgnnextchannel=6)

[8439c7755cb9010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=19a9e8ba05b33310VgnVCM100000045f3d6a1RCRD). A related fact sheet is available at

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

[vgnnextoid=19a9e8ba05b33310VgnVCM100000082ca60aRCRD&vgnnextchannel=acffa](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=19a9e8ba05b33310VgnVCM100000082ca60aRCRD&vgnnextchannel=acffa)

[ca797e63110VgnVCM1000004718190aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=19a9e8ba05b33310VgnVCM1000004718190aRCRD).

[Back to Top](#)

## **8. DHS Secretary Napolitano Testifies on E-Verify, Enforcement Efforts**

Department of Homeland Security (DHS) Secretary Janet Napolitano testified at an oversight hearing on October 26, 2011, before the House Judiciary Committee on worksite enforcement and the E-Verify program, among other issues. She noted that since fiscal year (FY) 2009, U.S. Immigration and Customs Enforcement (ICE) has audited more than 6,000 employers suspected of hiring unauthorized workers, debarred 441 companies and individuals from receiving federal contracts, and imposed more than \$76 million in financial sanctions, which she said was more than the total number of audits and debarments conducted during the entire previous administration. In FY 2011, ICE also criminally arrested 221 employers accused of violations related to employment, which Secretary Napolitano noted was "an agency record."

As of FY 2011, she noted, more than 292,000 employers have enrolled in E-Verify, representing more than 898,000 locations. More than 1,000 new employers enroll each week, and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In FY 2011 alone, E-Verify processed 17.4 million employment queries, she said.

To improve E-Verify's accuracy, USCIS reduced mismatches for naturalized and derivative U.S. citizens by adding naturalization data and U.S. passport data to

E-Verify, Secretary Napolitano said. Because of this enhancement, in FY 2011, "more than 80,000 queries that previously would have received an initial mismatch requiring correction at the secondary verification stage were automatically verified as work-authorized," she said. USCIS also has added 80 staff positions to support monitoring and compliance since the beginning of FY 2010. Also, to counter identity theft, USCIS now allows for the verification of passport photos through the E-Verify system.

Judiciary Committee Chairman Lamar Smith (R-Tex). said it was true that DHS has increased the number of audits of companiesX employment eligibility verification forms. However, he said, "these audits are of questionable benefit," citing a U.S. Government Accountability Office report stating that ICE officials have said that fine amounts are so low that they are not a meaningful deterrent and Employers view the fines as a cost of doing business, making the fines an ineffective deterrent.Y He called for more worksite enforcement actions, stating that when ICE does not arrest undocumented workers, They go down the street and knock on the door of the next employer, and take jobs away from American workers.Y

Secretary NapolitanoXs written testimony is available at <http://judiciary.house.gov/hearings/pdf/Napolitano%2010262011.pdf>. Rep. SmithXs statement is available at <http://judiciary.house.gov/news/Statement%20DHS%20Oversight%20Hearing.html>.

[Back to Top](#)

## **9. ICE Announces Record Removal Numbers for FY 2011**

U.S. Immigration and Customs Enforcement (ICE) recently announced the agency's fiscal year (FY) 2011 year-end removal numbers. Overall, in FY 2011, ICE's Office of Enforcement and Removal Operations removed 396,906 individuals, the largest number in the agency's history. Of these, nearly 55 percent, or 216,698 of the people removed, were convicted of felonies or misdemeanors, an 89 percent increase in criminal removals since FY 2008. This includes 1,119 people convicted of homicide; 5,848 people convicted of sexual offenses; 44,653 people convicted of drug-related crimes; and 35,927 people convicted of driving under the influence.

The ICE announcement is available at

<http://www.ice.gov/news/releases/1110/111018washingtondc.htm>.

[Back to Top](#)

## **10. USCIS Designates South Sudan for TPS, Extends Sudan Designation**

The Department of Homeland Security (DHS) has designated the Republic of South Sudan for temporary protected status (TPS) for 18 months, effective November 3, 2011, through May 2, 2013. The 180-day registration period for eligible individuals to submit initial TPS applications began on October 13, 2011, and will remain in effect until April 10, 2012.

This designation allows eligible South Sudan nationals (and those having no nationality who last habitually resided in the region that is now South Sudan) who have continuously resided in the United States since October 7, 2004, to obtain TPS. In addition to demonstrating continuous residence in the United States since October 7, 2004, applicants must demonstrate that they have been continuously physically present in the United States since November 3, 2011.

DHS said this designation is unique because on July 9, 2011, South Sudan became a new nation and independent from the Republic of Sudan, which has been designated for TPS since 1997. Some individuals who are TPS beneficiaries under the current designation of Sudan may now be nationals of South Sudan, calling into question their continued eligibility for TPS under the Sudan designation. These individuals may, however, now qualify for TPS under the South Sudan designation. The 18-month designation of South Sudan coincides with the 18-month extension period of TPS for Sudan, which was also announced on October 13, 2011.

DHS said it recognizes that individuals who have employment authorization documents (EADs) under Sudan TPS that expire on November 2, 2011, may not receive new EADs under South Sudan TPS until after their current EADs expire. Accordingly, the validity of EADs issued under the TPS designation of Sudan has been automatically extended for six months, through May 2, 2012. This automatic extension includes individuals who are now applying for TPS under the designation of South Sudan but were granted TPS and were issued an EAD under the Sudan designation.

The notice designating the Republic of South Sudan is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-10-13/pdf/2011-26537.pdf>. The notice announcing the extension of the designation of Sudan for TPS and automatic

extension of EADs for Sudanese TPS beneficiaries is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-10-13/pdf/2011-26538.pdf>.

[Back to Top](#)

## **11. California 'Dream Act' Becomes Law**

California's Governor Jerry Brown has signed into law the second portion of the California "Dream Act," AB 131, which allows undocumented students to qualify for state-funded scholarships and financial aid for state universities after other legal resident and U.S. citizen students have applied. Gov. Brown said it would enable top students to have "a chance to improve their lives and the lives of all of us." He signed the first portion, AB 130, in July, which allows such students to apply for private scholarships and loans. Currently, undocumented California high school graduates can apply for in-state tuition rates, as can those in 12 other states, including New York, Texas, and Washington.

Assemblyman Gil Cedillo (D-Los Angeles) said the legislation will increase California's competitiveness in the global economy and that California "is prepared to lead the country with a positive and productive vision for how we approach challenging issues related to immigration." Los Angeles Mayor Antonio Villaraigosa said the new law "invests in the dreams of talented undocumented students and in the economic future of our state."

Not everyone in California is on board with the new law, however. Assemblyman Tim Donnelly (R-Hesperia), wants to put an initiative on the ballot to overturn it, calling the new law "absolutely, fundamentally wrong and unfair and...an insult to people who have worked and played by the rules, including those who have come to this country legally." Stay tuned.

The text of AB 131 (as enrolled) is available at <http://e-lobbyist.com/gaits/text/351864>.

[Back to Top](#)

## **12. Federal Court Halts Parts of Alabama Immigration Law**

The U.S. Court of Appeals for the 11th Circuit issued an injunction pending appeal on October 14, 2011, blocking certain provisions of Alabama's new immigration law, HB 56. The provisions blocked included requiring the immigration status of students to be checked in public schools and making failure to complete or carry an alien registration card a misdemeanor for

immigrants. The court allowed Alabama to enforce other controversial provisions, such as requiring that police attempt to determine the immigration status of people stopped who they suspect are unauthorized; barring state courts from enforcing contracts with undocumented individuals if the hiring party knew that the person was in the U.S. unlawfully; and making it a felony for undocumented people to enter into business transactions in Alabama, including applying for a driver's license or business license.

The Department of Justice had filed an appeal with the 11th Circuit because of potential negative consequences of the new state law both domestically and internationally, including conflicts with federal responsibilities, discrimination against those legally in the U.S., driving undocumented persons underground or to other states, and affecting diplomatic relations. Advocacy groups, including the American Civil Liberties Union, had filed a separate motion against Alabama's new law.

The law is already having an impact in Alabama. For example, reportedly a quarter of commercial building workers have left the state, several thousand students have stopped going to school, and church attendance has dropped. Anecdotal evidence is piling up. The Alabama-based Southern Poverty Law Center, which set up a hotline, received about 2,000 calls so far from people with problems such as being afraid to drive their sick family members to the doctor, being unable to set up water service because water companies were requiring them to prove their legal status, or whose children were being bullied at school. The Department of Justice has also set up a hotline for complaints about the Alabama law, telephone: 1-855-353-1010; e-mail: [Hb56@usdoj.gov](mailto:Hb56@usdoj.gov).

Tomato farmer Jamie Boatwright reported that he has a large crop of tomatoes ripe and ready for picking, but most of his workers have left Alabama. Similarly, the owners of Smith & Smith Farms were struggling with three trucks of workers for harvesting instead of 12. Both farms reported that U.S. workers were mostly either not interested or started working but then quit after a few hours. Meanwhile, contractors are taking longer to rebuild after the spring tornadoes that devastated the Tuscaloosa area. "We're seeing smaller crews and seeing work take longer to accomplish," said Jimmy Latham, president of Alabama Associated General Contractors and a Tuscaloosa contractor.

Alabama state Senator Scott Beason, who sponsored the legislation, said he is receiving similar complaints from local businesses experiencing difficulties in

finding workers and keeping their businesses going. He asserted that there are sufficient numbers of Americans willing to do the jobs abandoned by undocumented workers, and that the adjustment to the new law will take time. Mr. Boatwright begs to differ, noting that he hasn't been able to attract or retain American workers to his tomato farm and that if he were to raise his wages in an attempt to do so, he would also have to hike the price of his tomatoes and would lose business to neighboring states.

The text of the Alabama law is available at

<http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm>. The latest opinion from the 11th Circuit is at

<http://www.ca11.uscourts.gov/unpub/ops/201114532ord.pdf>. The most recent previous court action on the law, enjoining certain provisions but upholding others, is available at

[http://irli.org/system/files/US%20v%20Alabama%2011-2746%20PInj%20Order\\_9-28-11.pdf](http://irli.org/system/files/US%20v%20Alabama%2011-2746%20PInj%20Order_9-28-11.pdf).

[Back to Top](#)

### **13. USCIS Seeks Comments on Proposed EB-5 Immigrant Investor Rule**

U.S. Citizenship and Immigration Services (USCIS) seeks public comments on a proposed rule published on September 28, 2011, that would enable the agency to process certain applications approved between 1995 and 1998 by immigrant investors under the fifth preference employment-based (EB-5) immigrant visa classification.

The proposed rule would implement provisions of the 21st Century Department of Justice Appropriations Authorization Act that apply to a group of immigrant investors who had a Form I-526, Immigrant Petition by Alien Entrepreneur, approved between January 1, 1995, and August 31, 1998. Specifically, the rule would enable USCIS to process cases for approximately 580 principal immigrant investors and their dependents whose I-526 petitions were approved during that period and who, before November 2, 2002, sought to:

- Register for permanent residence or adjust their status (using Form I-485); or
- Remove conditions on permanent residence obtained as an entrepreneur (using Form I-829).

The processes outlined in the proposed rule would provide an additional two-year period for most of these immigrant investors to meet the EB-5 investment and job-creation requirements. This rule would not impact any other applications or petitions filed under the EB-5 program.

Comments will be accepted until November 28, 2011, and should be submitted via one of the methods listed in the proposed rule, which is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-24619.pdf>. USCIS corrected the docket number for the proposed rule on October 4, 2011; see <http://www.gpo.gov/fdsys/pkg/FR-2011-10-04/pdf/2011-25463.pdf>.

[Back to Top](#)

#### **14. Customs and Border Protection Discontinues H-2A/2B Exit Program Pilot**

U.S. Customs and Border Protection has discontinued the H-2A and H-2B Temporary Worker Visa Exit Program Pilot, effective September 29, 2011. The pilot began on December 8, 2009. It required temporary workers in H-2A or H-2B nonimmigrant classifications who enter the United States at the port of San Luis, Arizona, or the port of Douglas, Arizona, to depart (at the time of their final departure) from these respective ports and to submit certain biographical and biometric information at one of the kiosks established for that purpose.

The notice is available at

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-29/pdf/2011-24716.pdf>.

[Back to Top](#)

#### **15. OCAHO Orders Drywall Company To Pay \$173,250 in Penalties**

The Executive Office for Immigration Review's Office of the Chief Administrative Hearing Officer (OCAHO) has ordered Ketchikan Drywall Services, Inc., of the Puget Sound area of Washington, to pay penalties for various I-9 violations. Ketchikan was ordered to pay \$770 per violation, for a total of \$173,250, for violations such as failure to ensure that employees completed or signed I-9 forms.

Among other things, the decision noted that failure to complete an I-9 form is not a mere technical or procedural failure but "is substantive in nature and defeats the purpose of the law." Such substantive violations include, among other things, failing to collect an employee signature; listing the wrong

documents to establish identity or employment eligibility; failing to complete the I-9 within three days of hire; and failing to fully complete the form, including the employee attestation that he or she is authorized for employment in the U.S., and regardless of what other documents may have been copied or retained. The decision noted that "copying the documents may well serve to insulate an employer from errors in transcribing the information, but nothing . . . purports to excuse an employer who fails to transcribe any information at all." The decision noted that specific instances of omission when a copy of a document is retained with the form will be considered on a case-by-case basis, but "there is no general rule that omissions are cured by copying documents."

The decision, which includes additional details about Ketchikan's various violations, is available at

<http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1139.pdf>.

[Back to Top](#)

## **16. Justice Dept. Sues California Healthcare Provider for Discrimination**

The Department of Justice (DOJ) filed a lawsuit on September 30, 2011, against Generations Healthcare, a provider with skilled nursing facilities throughout California, alleging that it engaged in a pattern or practice of discrimination by imposing unnecessary documentary requirements on naturalized U.S. citizens and non-U.S. citizens to work in the U.S. The Department noted that employers are prohibited by law from placing additional burdens on work-authorized employees during the process of hiring or when verifying their employment eligibility based on their citizenship status or national origin.

The DOJ's investigation found that the company demanded that a work-authorized applicant produce a permanent resident card, also known as a "green card." The applicant did not have a green card and instead presented an employment authorization document. The company rejected her valid documentation because it had a future expiration date and told her that it could not hire her to work at its St. Francis Pavilion facility unless she presented a green card. As a result, the applicant was unable to obtain employment with the company.

The department's investigation also revealed that Generations Healthcare required all newly hired non-U.S. citizens and naturalized U.S. citizens at its St.



Francis Pavilion facility to present specific and extra work authorization documents beyond those required by federal law to prove their status, a burden that was not placed on native-born U.S. citizens.

"Employers are not allowed to impose more burdensome employment eligibility verification procedures on certain workers based on their citizenship status," noted Thomas E. Perez, Assistant Attorney General for the Civil Rights Division.

The DOJ's media release announcing the lawsuit is available at <http://www.justice.gov/opa/pr/2011/September/11-crt-1301.html>.

[Back to Top](#)

## **17. ABIL Global: Italy Requires Fingerprints for North Africans**

*Italy now requires fingerprints for short-term visas (business and tourism) for North Africans, as part of a larger European Union effort.*

As of October 11, 2011, the Italian consulates in Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia now require fingerprints for individuals applying for short-term Schengen visas (maximum of 90 days for business and tourism). This is intended to improve border control and to expedite the issuance of future visas to those already registered in the Schengen Visa Information System (VIS).

It is expected that this requirement will be enforced in other Italian consulates in the Schengen Area within the next two years. Other European Union (EU) consulates are following suit, as part of a larger EU effort to include fingerprints of visa applicants from North African countries in a database that connects all 25 countries in the Schengen "border-free" zone.

[Back to Top](#)

## **18. Firm In The News...**

**Cyrus Mehta** authored "Due Diligence Considerations for Companies Contracting With Vendor Service Providers," which was published in the October 2011 edition of *New Jersey Lawyer*. The article is available at <http://www.scribd.com/doc/70961358/Due-Diligence-Considerations-for-Companies-Contracting-With-Vendor-Service-Providers>.

**Mr. Mehta** spoke on a panel for Brooklyn Law School faculty on September 21.

The topic was "Teaching Ethics Across the Curriculum."

**U.S. News-Best Lawyers Selects Cyrus D. Mehta & Associates, PLLC Among "Best Law Firms" for Immigration.** Cyrus D. Mehta & Associates, PLLC has been selected for inclusion in the 2011-2012 "Best Law Firms" rankings issued by U.S. News Media Group and Best Lawyers®. The firm has been awarded a Tier 1 ranking in the field of immigration law for the New York City metropolitan area. The annual "Best Law Firms" rankings provide a comprehensive view of the U.S. legal profession that is unprecedented both in the range of firms represented and in the range of qualitative and quantitative data used to develop the rankings. Achieving a high ranking is a special distinction that signals a unique combination of excellence and breadth of expertise.

The mission of "Best Law Firms" from the start has been to help guide referring lawyers and clients--from the country's largest companies needing corporate legal advice to individuals needing skilled guidance--on issues that have a "bet-the-company" implication (in the case of a corporation) or a potentially life-changing result (in the case of an individual).

U.S. News has more than two decades of experience in providing the public with the most accurate and in-depth rankings of a wide range of institutions, including our Best Law Schools rankings," says Tim Smart, Executive Editor of U.S. News & World Report. "Law firms are an integral part of our rankings and a natural accompaniment to the law schools rankings."

Best Lawyers was very pleased with the reaction from the legal profession and from legal clients to the first edition of the "Best Law Firms" rankings," says Steven Naifeh, President of Best Lawyers. "By combining hard data with peer reviews, and client assessments, we continue to believe that we are providing clients with the most thorough, accurate, and helpful rankings of law firms ever developed."

[Back to Top](#)