



# JANUARY 2012 IMMIGRATION UPDATE

*Posted on January 4, 2012 by Cyrus Mehta*

## Headlines:

1. [ETA Announces 2012 Adverse Effect Wage Rates for H-2A Workers](#) - The AEWRs range from a low of \$9.30 per hour in Mississippi and Louisiana to aK high of \$12.26 per hour in Hawaii.
2. [USCIS Changes Stand-Alone I-130 Filing Locations](#) - USCIS announced that effective January 1, 2012, it has changed the filing locations for Form I-130.
3. [California Steel Foundry Fires a Third of Its Workers After I-9 Audit](#) - The audit had identified about 200 employees allegedly working without legal status.
4. [Justice Dept. Accuses Arizona Sheriff of Civil Rights Violations; Federal Judge Issues Ruling](#) - A Civil Rights Division investigation found that the Maricopa County Sheriff's Office engages in racial profiling of Latinos and unlawfully retaliates against individuals who criticize MCSO's policies or practices; and a federal judge ruled that MCSO's deputies may not detain people based solely on the suspicion that they may be in the U.S. illegally.
5. [USCIS Ombudsman Now Requires Form DHS 7001 for EAD Cases](#) - Those who have already submitted an EAD case inquiry do not need to submit the DHS 7001, but the form must be completed for all future inquiries.
6. [State Dept. Implements Fee Increases for Certain Consular Services](#) - Affected services include nonimmigrant visas and border crossing cards.
7. [Sen. Grassley Puts 'Hold' on Per-Country Limits Legislation](#) - Sen. Grassley said that he has "concerns about the impact of this bill on future immigration flows."
8. [Senate Judiciary Committee Holds Hearing on EB-5 Regional Center](#)

**Program** - Sen. Patrick Leahy, noting that current authorization for the program expires at the end of September 2012, advocated a permanent authorization.

9. **[USCIS Seeks Business Experts for 'Entrepreneurs in Residence' Initiative](#)** - The application period ends on December 31, 2011.
10. **[Transition Period for N-Form Processing Changes Ends](#)** - Beginning December 5, affected forms received locally will be returned to the individual with instructions on how to re-file at a designated USCIS Lockbox facility.
11. **[White House Announces U.S.-Canada 'Beyond the Border' and 'Regulatory Cooperation Council' Action Plans](#)** - The BTB Action Plan includes, among other things, enhancing trusted traveler and trader programs and providing applicants with the opportunity to submit one application to be enrolled in multiple programs.
12. **[ICE Issues Memo on Next Steps in Prosecutorial Discretion and Immigration Enforcement](#)** - Over the course of six weeks, an intra-agency team of attorneys will review cases on the non-detained dockets in the Denver and Baltimore immigration courts.
13. **[State Dept. Announces Forward Movement in China-Mainland Born and India EB-2 Categories](#)** - USCIS reported that the rate of new filings is currently far below that which they had anticipated, prompting an aggressive movement of the cut-off date for January and possibly beyond.
14. **[Labor Dept. Issues Round 4 FAQ on H-2A Final Rule](#)** - Among other things, the FAQ notes that the results of a background check or drug test may not be used to automatically reject a U.S. worker for agricultural work.
15. **[Firm Issues Tips for Travelers](#)** - For those who are planning international trips soon, CDMA offers tips.
16. **[Firm in the News...](#)**

### **Also in this issue:**

#### **Details:**

#### **1. ETA Announces 2012 Adverse Effect Wage Rates for H-2A Workers**

On December 22, 2011, the Department of Labor's Employment and Training Administration (ETA) announced the 2012 adverse effect wage rates (AEWRs) for the employment of temporary or seasonal nonimmigrant foreign workers

to perform agricultural labor or services (HP2A workers). AEWRs are the minimum wage rates employers must offer and pay to HP2A workers and workers in corresponding employment for a particular occupation and area so that the wages of similarly employed U.S. workers will not be adversely affected. The Department's HP2A regulations provide that employers must pay their HP2A workers and workers in corresponding employment at least the highest of: (i) the AEWR; (ii) the prevailing wage; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage, if applicable; or (v) the federal or state minimum wage in effect at the time the work is performed.

The AEWRs range from a low of \$9.30 per hour in Mississippi and Louisiana to a high of \$12.26 per hour in Hawaii.

The notice is available at

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/pdf/2011-32842.pdf>.

[Back to Top](#)

## **2. USCIS Changes Stand-Alone I-130 Filing Locations**

U.S. Citizenship and Immigration Services (USCIS) announced that effective January 1, 2012, it has changed the filing locations for Form I-130, Petition for Alien Relative. Domestic petitioners should mail their stand-alone I-130 applications to either the Chicago Lockbox or the Phoenix Lockbox, depending on where they reside in the United States. K

There will be no change in filing locations when submitting an I-130 along with Form I-485, Application to Register Permanent Residence or Adjust Status. Individuals filing these forms together should continue to mail them to the Chicago Lockbox facility. Petitioners filing from overseas addresses in countries without USCIS offices should also continue to file at the Chicago Lockbox facility. Petitioners residing in a country with a USCIS office may send their I-130s to the Chicago Lockbox, or may file their I-130s at the international USCIS office having jurisdiction over the area where they live.

Those who submit their I-130 packages to the incorrect Lockbox location may experience a delay in processing. The new filing locations are available on the Form I-130 Direct Filing Locations webpage at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=6583ecb23683a210VgnVCM100000082ca60aRCRD&vgne>

[xtchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD.](#)

[Back to Top](#)

### **3. California Steel Foundry Fires a Third of Its Workers After I-9 Audit**

Pacific Steel Casting Company, based in Berkeley, California, has fired about a third of its workers after U.S. Immigration and Customs Enforcement (ICE) conducted an I-9 work authorization audit in February 2011 and identified about 200 employees allegedly working without legal status.

Elisabeth Jewel, a Pacific Steel spokesperson, said, "It's terribly disruptive. We have highly trained employees and to lose them is very damaging." In some cases, the workers had been with the company for decades and have children in local schools who are growing up in the United States.

The Berkeley City Council passed a resolution in June noting that the targeted workers are skilled and "inject hundreds of thousands of dollars into our local economy each month and support other businesses and families. The company and the workers pay taxes that support local schools and services." The council noted that Pacific Steel's suppliers could also be harmed by the action, and that the audit and consequent firing of the workers will force them "into an underground economy where illegal wages and conditions are prevalent." Pacific Steel is the fourth largest foundry in the United States.

In a related action, the American Civil Liberties Union and several unions filed a Freedom of Information Act (FOIA) request in September 2011 seeking records relating to I-9 audits and "silent raids" such as the one ICE conducted on Pacific Steel. An ICE spokesperson reportedly said that in fiscal year 2011, ICE criminally charged 221 owners, employers, managers, or supervisors; conducted more than 2,496 I-9 audits; and initiated 3,291 worksite enforcement investigations, all up from 2010 numbers.

The Berkeley City Council resolution is available at [http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2011/06Jun/2011-06-28\\_Item\\_41\\_Urging\\_the\\_U.S.\\_Department\\_of\\_Homeland\\_Security.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2011/06Jun/2011-06-28_Item_41_Urging_the_U.S._Department_of_Homeland_Security.pdf). The FOIA request is available at [http://www.aclunc.org/news/press\\_releases/asset\\_upload\\_file731\\_10448.pdf](http://www.aclunc.org/news/press_releases/asset_upload_file731_10448.pdf).

[Back to Top](#)

### **4. Justice Dept. Accuses Arizona Sheriff of Civil Rights Violations; Federal**

## Judge Issues Ruling

Thomas E. Perez, U.S. Assistant Attorney General, sent a letter on December 15, 2011, to the Maricopa County Attorney, Bill Montgomery, accusing the Maricopa County Sheriff's Office (MCSO) in Arizona of engaging in a "pattern or practice of unconstitutional policing."

Meanwhile, a federal judge ruled on December 23, 2011, that Maricopa County's deputies may not detain people based solely on the suspicion that they may be in the United States illegally. U.S. District Judge Murray Snow noted, among other things, that Sheriff Arpaio "has made public statements that a fact-finder could interpret as endorsing racial profiling." A separate federal grand jury investigation of the MCSO related to criminal abuse of power continues.

Mr. Perez's letter notes that a Civil Rights Division investigation found that MCSO engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize MCSO's policies or practices. MCSO's "deputies, supervisory staff, and command staff" perpetrated the alleged violations.

The Civil Rights Division also found reasonable cause to believe that MCSO operates its jails in a manner that discriminates against limited English proficient (LEP) Latino inmates, who it said are punished "routinely" for failing to understand commands given in English and are denied critical services provided to other inmates.

The investigation uncovered a number of instances in which MCSO initiated immigration-related crime suppression activities in the community after receiving complaints that described no criminal activity, but rather referred to circumstances such as individuals with "dark skin" congregating in one area, or individuals speaking Spanish at a local business. "The use of these types of bias-infected indicators as a basis for conducting enforcement activity contributes to the high number of stops and detentions lacking in legal justification," Mr. Perez said.

Mr. Perez noted that the bias affects MCSO from the top down. Maricopa County Sheriff Arpaio, for example, labeled as "intelligence" a letter explicitly equating skin color with law-breaking and instructed a subordinate to address it. Such instances "are striking examples of how Sheriff Arpaio has promoted a

culture of bias in his organization and clearly communicated to his officers that biased policing would not only be tolerated, but encouraged."

The Civil Rights Division also found that MCSO deputies are encouraged to make high-volume pretextual traffic stops in targeted locations. "We have identified and interviewed Latinos who, though legally present in the United States, were arrested or detained without cause as a consequence of these operations." Further, MCSO's Criminal Employment Squad (CES) deputies, tasked with interdicting undocumented persons by enforcing state forgery and identity theft statutes, "routinely raid businesses in a manner that harms innocent Latino workers. Specifically, CES's deputies typically detain and investigate the immigration status of all employees at a raided worksite, whether or not the employees are listed in the warrant authorizing the raid. The CES targets worksites where most, if not all, of the employees are Latino," the letter states.

MCSO officials also have resorted to official harassment to silence critics, the letter says. For example, former Chief Deputy David Hendershott filed "unfounded complaints" with the Arizona State Bar against five attorneys, alleging ethical violations. The attorneys had publicly criticized MCSO's tactics. Similarly, Mr. Hendershott, acting in his official capacity, filed complaints with the Arizona Commission on Judicial Conduct against judges who had publicly criticized MCSO and Sheriff Arpaio or had rendered decisions deemed detrimental to MCSO's interests. All of the bar and judicial complaints were dismissed as insufficient to warrant an investigation, the letter notes, adding that Sheriff Arpaio participated as a named plaintiff in a civil federal racketeering suit filed against the same targeted judges and a number of other county officials. The claims against the judges echoed the complaints Hendershott had filed; the suit eventually was abandoned. "The arrests and harassment undertaken by MCSO have been authorized at the highest levels of the agency and constitute a pattern of retaliatory actions intended to silence MCSO's critics," Mr. Perez noted.

These violations, along with the absence of clear policies and procedures to ensure effective and constitutional policing and oversight, "have contributed to a chronic culture of disregard for basic legal and constitutional obligations," Mr. Perez said, adding that the Civil Rights Division found "additional areas of serious concern," including MCSO deputies using excessive force against Latinos, and MCSO's implementing its immigration enforcement program in a

way that has created a "wall of distrust" between MCSO officers and Maricopa County's Latino residents, and that "has significantly compromised MCSO's ability to provide police protection" to residents.

Mr. Perez told Maricopa County that effective resolution of these issues will require a comprehensive written agreement along with federal judicial oversight. "We prefer to resolve this matter without resort to further litigation, although we will not hesitate to file suit, if necessary," the letter states, setting a deadline of January 4, 2012, for a response to an invitation for "constructive dialogue." Mr. Perez noted that the Civil Rights Division's investigation was delayed when MCSO "repeatedly refused to provide the United States with access to pertinent material and personnel," which was resolved by means of a lawsuit.

MCSO released Sheriff Arpaio's response implying that political motivations of the Obama administration and Congressional Democrats are behind the actions and noting, among other things, that "2 Democrat Latino US Congress men from Arizona, joined by several other Latino Legislatures want me to resign my office. All of these same Democratic elected officials, throughout the years, have been criticizing my enforcement of State and Federal Illegal immigration laws." Conversely, Sheriff Arpaio noted, "Candidates for President of the United States - Herman Cain and Michelle Bachmann recently visited me in my office, Texas Governor Rick Perry and Mitt Romney also called me P all interested in my successful enforcement of illegal immigration and asked for my endorsement. Recently in New Hampshire, I endorsed Texas Governor Rick Perry for President of the United States." (Typographical errors in original.)

Mr. Perez's letter includes a description of the findings, a legal discussion, and remedial measures required, such as training for deputies; establishment of policies and procedures; data collection and risk management; developing and implementing a complaint, investigation, and disciplinary system; a comprehensive language access program for LEP individuals in jail and in the community; and community outreach. The letter is available at

[http://www.justice.gov/crt/about/spl/documents/mcso\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf).

Sheriff Arpaio's response is available at

<http://www.mcso.org/MultiMedia/PressRelease/DOJ%20presser%20response%20121511.pdf>.

[Back to Top](#)

## **5. USCIS Ombudsman Now Requires Form DHS 7001 for EAD Cases**

U.S. Citizenship and Immigration Services' Ombudsman's Office requests that those submitting case inquiries complete Form DHS 7001, Case Problem Submission Worksheet, for all cases, including those related to applications for an employment authorization document (EAD). The Ombudsman is requiring completion of the DHS 7001 to comply with applicable privacy rules. In the past, the Ombudsman allowed case inquiries without the DHS 7001 regarding EAD applications falling outside normal processing times. For same-day submission in urgent cases, the Ombudsman encourages people to use Ombudsman Online Case Assistance when submitting inquiries. Those who have already submitted an EAD case inquiry do not need to submit the DHS 7001, but must complete the form for all future inquiries.

The DHS 7001 is available at

[http://www.dhs.gov/xlibrary/assets/cisomb\\_dhsform7001.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_dhsform7001.pdf) or may be completed online at <https://cisombvos.dhs.gov/vos/form7001.aspx> (Ombudsman Online Case Assistance).

[Back to Top](#)

## **6. State Dept. Implements Fee Increases for Certain Consular Services**

On December 6, 2011, the Department of State will implement changes to the Schedule of Fees for Consular Services. Affected services include nonimmigrant visas and border crossing cards.

The final rule on fees changes from \$131 to \$140 the fee charged for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new tiers of the application fee for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas. Finally, the rule increases the BCC fee charged to Mexican citizens under age 15 who apply in Mexico and whose parent or guardian already has a BCC or is applying for one, from \$13 to \$14.

The final rule is available at

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-06/pdf/2011-31175.pdf>.

[Back to Top](#)

## **7. Sen. Grassley Puts 'Hold' on Per-Country Limits Legislation**

Despite the fact that on November 29, 2011, the U.S. House of Representatives



voted 389-15 in favor of ending per-country numerical limits (caps) on employment-based visas and the Senate was expected to take action also, Sen. Charles Grassley (R-Iowa) has placed a hold on the bill.

Sen. Grassley said that he has "concerns about the impact of this bill on future immigration flows, and am concerned that it does nothing to better protect Americans at home who seek high-skilled jobs during this time of record high unemployment." The bill would eliminate a current provision stating that employment-based visas issued cannot exceed seven percent of the total for any one country. The measure was expected to benefit skilled Indian and Chinese workers and high-tech companies in the United States.

A hold is an informal practice and the majority leader need not follow it, but a hold indicates that the opposing senator may filibuster any motion to proceed.

For the text of the House-passed bill, H.R. 3012, see <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3012rh/pdf/BILLS-112hr3012rh.pdf>. The companion Senate bill, introduced by Sen. Mike Lee (R-Utah), is S. 1857.

[Back to Top](#)

## **8. Senate Judiciary Committee Holds Hearing on EB-5 Regional Center Program**

The Senate Judiciary Committee held a hearing on December 7, 2011, on "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities." Witnesses included Bill Stenger, President and CEO, Jay Peak Resort; David North, Fellow, Center for Immigration Studies; and Robert C. Divine, Shareholder, Baker, Donelson, Bearman Caldwell & Berkowitz, P.C. Sens. Patrick Leahy (D-VT) and Charles Schumer (D-NY) issued related statements.

Sen. Leahy noted that current authorization for the EB-5 regional center pilot program, which has been in existence for 18 years, expires at the end of September 2012. He advocated enactment of permanent authorization legislation that he introduced in March 2011 (S. 642). Sen. Leahy noted that in 2011, the EB-5 program is expected to have created an estimated 25,000 jobs and provided direct investments in U.S. communities of \$1.25 billion. He said that if the full number of visas allocated to the program are used, based on investment and job creation requirements, the program "has the potential to create or preserve 100,000 jobs per year, with contributions of \$5 billion in

foreign capital investment. And these benefits come at no cost to American taxpayers."

Sen. Leahy noted that in addition to administrative efforts by U.S. Citizenship and Immigration Services (USCIS), he has been working for months with interested parties and USCIS "to put together a legislative framework to make significant improvements to the overall program." He said the framework would "provide USCIS with additional authorities to ensure that this important program maintains the highest level of integrity and efficiency." He added, "It is time for a permanent authorization to provide investors with the certainty and predictability they need to invest and conduct business with confidence."

Sen. Schumer outlined several examples of USCIS-approved "job-creating" regional center projects in New York:

- Steiner Studios, a film production studio in Brooklyn, which received \$65 million in EB-5 funding to assist with expansion;
- Global Vascular Institute, on the Buffalo Niagara Medical Campus, where EB-5 funding helped support development of the new institute, creating jobs and improving health care access for the people of Buffalo;
- Acadia Realty Trust, which received \$200 million in EB-5 funding to assist with the construction of the City Point project in downtown Brooklyn;
- SJM Company, which received \$72 million in EB-5 funding to assist with the redevelopment of the George Washington Bridge Bus Station; and
- Dermot Company and Harry's Restaurant, which received \$96 million in EB-5 funding to assist with the redevelopment of the Battery Maritime Building and Pier A in Lower Manhattan.

Sen. Schumer said he was proud to co-sponsor S. 642 with Sen. Leahy to permanently authorize the program.

Mr. Stenger testified that the region where Jay Peak Resort is located has the most significant unemployment and economic challenge of any region in Vermont. He said that since 2005, Jay Peak has developed several EB-5 projects, creating over 2,000 jobs in the region, and that the EB-5 investments are expected to create that many jobs again over the next two years. "We are seeing this employment creation at Jay Peak and our surrounding communities in this terribly troubled economy solely because of the EB-5 foreign investor program," he said.

The statements of Sens. Leahy and Schumer, along with the witnesses' written testimony, are available at

[http://www.judiciary.senate.gov/hearings/testimony.cfm?id=9b6937d5e931a0b792d258d9b365f21d&wit\\_id=9b6937d5e931a0b792d258d9b365f21d-0-5](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=9b6937d5e931a0b792d258d9b365f21d&wit_id=9b6937d5e931a0b792d258d9b365f21d-0-5).

[Back to Top](#)

## **9. USCIS Seeks Business Experts for 'Entrepreneurs in Residence' Initiative**

U.S. Citizenship and Immigration Services (USCIS) has begun accepting applications from business experts to serve on its "Entrepreneurs in Residence" tactical team. The purpose of the tactical team, USCIS said, is "to bring business experts in-house to work alongside USCIS staff to ensure that current immigration laws' potential to attract foreign entrepreneurial talent is fully realized. The tactical team will help us develop policy guidance and training tools that support our decision-makers."

USCIS said it will hire business experts via the Department of Homeland Security's Loaned Executive Program. The application period ends on December 31, 2011.

The job announcement is available at

<http://www.dhs.gov/xabout/careers/loaned-executive-business-expert-uscis.shtm>. Information on Entrepreneurs in Residence is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=bd537158910e2310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. Information on the Loaned Executive Program is available at [http://www.dhs.gov/xabout/careers/gc\\_1298902132679.shtm](http://www.dhs.gov/xabout/careers/gc_1298902132679.shtm).

[Back to Top](#)

## **10. Transition Period for N-Form Processing Changes Ends**

U.S. Citizenship and Immigration Services (USCIS) has centralized intake of Forms N-336, N-600, and N-600K to the Phoenix Lockbox facility. The Dallas Lockbox facility will handle the Form N-300. USCIS said this change "streamlines the way forms are processed, accelerates the collection and deposit of fees and improves the consistency of our intake process."

USCIS issued a reminder noting that affected forms received at local and district offices after December 2, 2011, will no longer be forwarded to the appropriate USCIS Lockbox facility. Beginning December 5, affected forms received locally will be returned to the individual with instructions on how to re-file at a designated USCIS Lockbox facility.

The reminder is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b895ced0371f3310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

[Back to Top](#)

## **11. White House Announces U.S.-Canada 'Beyond the Border' and 'Regulatory Cooperation Council' Action Plans**

On December 7, 2011, the White House announced details of the Beyond the Border (BTB) and Regulatory Cooperation Council (RCC) Action Plans. The BTB Action plan sets joint priorities between the United States and Canada for achieving a new long-term security partnership, including (1) addressing threats early; (2) promoting trade facilitation, economic growth, and jobs; (3) strengthening cross-border law enforcement; and (4) protecting shared critical infrastructure. K

The BTB Executive Steering Committee (ESC) will hold annual meetings to advance shared border management efforts and identify areas for further progress. To ensure continued transparency and accountability, the BTB ESC will generate a joint, public "Beyond the Border Implementation Report" to summarize BTB cooperation annually. Implementation of the BTB Action Plan will be carried out in close consultation with interested stakeholders through appropriate lead agencies and will be subject to normal regulatory, legislative, and appropriations processes.

The BTB Action Plan includes, among other things, developing harmonized commercial passenger and cargo screening processes that will expedite the secure passage of people and goods; enhancing trusted traveler and trader programs "by aligning requirements, enhancing member benefits, and providing applicants with the opportunity to submit one application to be enrolled in multiple programs." The White House said the U.S. and Canada

"strive to facilitate business travel across our border, provide a single TwindowY for importers to submit information needed to comply with customs and other regulations, promote supply chain connectivity by harmonizing low-value shipment processes, and increase public transparency regarding application of border fees, with a view to providing greater accountability for costs to businesses and promoting trade competitiveness."

The White House also said it "will enhance and expand the work of the twenty land border Binational Port Operations Committees established in 2011, coordinate our border infrastructure investment at key border crossings and at small and remote ports of entry to, where possible, align hours of operation and co-manage facilities."

Regarding the RCC Action Plan, the White House said that "greater alignment and better mutual reliance on our regulatory approaches will lead to lower costs for consumers and businesses, create more efficient supply chains, increase trade and investment, generate new export opportunities, and create jobs on both sides of the border."

The announcement is available at

<http://www.whitehouse.gov/the-press-office/2011/12/07/fact-sheet-us-canada-beyond-border-and-regulatory-cooperation-council-in>. The BTB Action Plan is

available at

[http://www.whitehouse.gov/sites/default/files/us-canada\\_btb\\_action\\_plan3.pdf](http://www.whitehouse.gov/sites/default/files/us-canada_btb_action_plan3.pdf).

The RCC Action Plan is available at

[http://www.whitehouse.gov/sites/default/files/us-canada\\_rcc\\_joint\\_action\\_plan\\_3.pdf](http://www.whitehouse.gov/sites/default/files/us-canada_rcc_joint_action_plan_3.pdf).

[Back to Top](#)

## **12. ICE Issues Memo on Next Steps in Prosecutorial Discretion and Immigration Enforcement**

U.S. Immigration and Customs Enforcement (ICE) recently released a memorandum on next steps in the implementation of prosecutorial discretion and immigration enforcement priorities.

ICE said it has launched a comprehensive training program on the appropriate use of the June 2011 Prosecutorial Discretion Memorandum. Also, beginning in November, ICE agents nationwide are reviewing all incoming cases in immigration courts. ICE said that the reviews are designed to identify the cases

most clearly eligible or ineligible for a favorable exercise of discretion and are focused on cases appearing on the master calendar and cases that have not yet been filed in immigration court. The initial "test run" of this review of cases will end on January 13, 2012.

Also, beginning on December 4, 2011, ICE and the Department of Justice (DOJ) will launch pilot programs in two jurisdictions to test-run a process for reviewing all cases pending in immigration courts. Over the course of six weeks, an intra-agency team of attorneys from ICE, U.S. Citizenship and Immigration Services, and U.S. Customs and Border Patrol will review the cases on the non-detained dockets in the Denver and Baltimore immigration courts based on the Prosecutorial Discretion Memorandum and guided by a set of more focused criteria. During that time, DOJ's Executive Office for Immigration Review (EOIR) has agreed to shift judges from the non-detained docket in those jurisdictions to hear detained cases, to enhance processing of the latter.

At the end of the period, DHS will promptly review that data and other implementation outcomes and, where appropriate, consult with DOJ to determine, on an expedited basis, the best methods to implement these processes on an ongoing basis nationwide.

The announcement is available at

<http://www.ice.gov/doclib/about/offices/ero/pdf/pros-discretion-next-steps.pdf>.

The June 2011 Prosecutorial Discretion Memorandum is available at

<http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

[Back to Top](#)

### **13. State Dept. Announces Forward Movement in China-Mainland Born and India EB-2 Categories**

The Department of State's Visa Bulletin for January 2012 notes that the China and India employment second preference cut-off date has advanced at a rapid rate in recent months. The bulletin says this action was intended to generate significant levels of new filings for adjustment of status at U.S. Citizenship and Immigration Services (USCIS) offices. The bulletin notes that USCIS has reported that the rate of new filings "is currently far below that which they had anticipated, prompting an even more aggressive movement of the cut-off date for January and possibly beyond." While this action increases the potential for

an eventual retrogression of the cut-off at some point during the year, it also provides the best opportunity to use all numbers available under the annual limit, the bulletin says.

The bulletin for January 2012 is available at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5630.html](http://www.travel.state.gov/visa/bulletin/bulletin_5630.html).

[Back to Top](#)

#### **14. Labor Dept. Issues Round 4 FAQ on H-2A Final Rule**

The Department of Labor's Office of Foreign Labor Certification (OFLC) has released Round 4 of frequently asked questions (FAQ) on the H-2A temporary agricultural foreign labor certification program, based on the 2010 final rule.

Topics include job offers, assurances, and obligations, including job qualifications and requirements, and the contract impossibility provision; and H-2A labor contractors and surety bonds.

Among other things, the FAQ notes that employers may not use the results of a background check or drug test to automatically reject a U.S. worker for agricultural work. Rather, the results of the background check or drug test may be used to reject a worker only if the employer provides a lawful job-related reason to do so. For example, while a sex offense conviction may be a lawful job-related reason to reject a worker who is applying to work at a "pick-your-own" fruit farm, a Driving Under the Influence (DUI) conviction is very unlikely to be, the FAQ states. An employer requiring a background check or drug test should be prepared to provide documentation, if requested by the State Workforce Agency or the OFLC Certifying Officer, establishing the nexus between the background check or drug test to be conducted and the nature of the job opportunity.

The FAQ further notes that if an employer chooses to disclose in the job order that it will be conducting a criminal background check, the employer's job order must also identify the specific criminal issue(s) for which the employer could lawfully reject an applicant due to the nature of the job opportunity. "A general statement about conducting a criminal background check without any further explanation is unacceptable, as it fails to adequately apprise U.S. workers of the job opportunity and applicable conditions of employment," the FAQ states.

The FAQ is available at

[http://www.foreignlaborcert.doleta.gov/pdf/h-2a\\_faq\\_round4.pdf](http://www.foreignlaborcert.doleta.gov/pdf/h-2a_faq_round4.pdf).

[Back to Top](#)

## 15. **Cyrus D. Mehta & Associates, PLLC ("CDMA") Issues Tips for Travelers**

For those who are planning international trips soon, CDMA offers the following tips:

- Review travel documentation to ensure that re-entry to the United States will go smoothly
- Plan in advance for visa application appointments; prepare all necessary documentation; apply early
- Obtain advance parole (for adjustment of status applicants) but check with your ABIL attorney in advance of applying to ensure that international travel does not bar readmission
- Apply ASAP via the Electronic System for Travel Authorization (for Visa Waiver Program travelers)

Contact CDMA for advice in specific situations.

[Back to Top](#)

## 16. **Firm In The News**

**Cyrus Mehta** spoke on ethics on an American Immigration Lawyers Association webinar, "Advising Your Clients Without 'Aiding and Abetting' " on December 13, 2011. A recording of the webinar may be purchased at

<http://www.aila.org/content/default.aspx?docid=36746>.

[Back to Top](#)