



OCTOBER 2012 IMMIGRATION UPDATE

Posted on October 1, 2012 by Cyrus Mehta

HEADLINES:

1. [**Details Released on DV-2014 Lottery Program; DV-2013 Entrants Should Keep Confirmation Numbers**](#) - Online registration for the DV-2014 Program begins on October 2, 2012, at noon EDT, and concludes on November 3, 2012, at noon EDT. The Department of State also said it may select more DV-2013 entries on October 1, 2012, so DV-2013 entrants should keep their confirmation numbers even if they have not been selected yet.
2. [**DOL Delays Effective Date of H-2B Wage Rule, Announces Electronic Filing for H-2A, H-2B Labor Cert Applications**](#) -The Department of Labor expects to publish a final rule extending the effective date of the 2011 H-2B wage rule to March 27, 2013. Also, the Department announced the implementation of electronic filing for nonimmigrant temporary labor certification applications under the H-2A and H-2B visa programs through the iCERT System.
3. [**STEM Bill Fails In House**](#) - On September 20, 2012, the US House of Representatives rejected the STEM Jobs Act (H.R. 6429).
4. [**DHS To Extend Haiti TPS**](#) -The Department of Homeland Security expects to publish a notice in the Federal Register shortly announcing this decision.
5. [**CBP Announces Delays in Processing I-94 Arrival/Departure Records**](#) - CBP is experiencing delays in processing foreign visitors' travel information in the Form I-94 Arrival/Departure Record database.
6. [**Older Versions of Greek Passport Are Invalid**](#) - The government of Greece recently announced that Greek passports are valid for travel only if issued on or after January 1, 2006, regardless of expiration date.

7. [**USCIS Updates FAQs on Deferred Action**](#) - The latest FAQ was updated on September 7, 2012.
8. [**Congress Extends Four Immigration Programs for Three Years**](#) - The extended programs include the EB-5 regional center program, the E-Verify program, the special immigrant religious worker program, and the Conrad State 30 J-1 visa waiver program for certain foreign doctors working in medically underserved areas.
9. [**October Visa Bulletin Shows Backlogs in Some EB Categories**](#) - Several employment-based categories are now backlogged.
10. [**State Dept. Announces 'Historic' Visa Agreement Between United States and Russia**](#) - Among other benefits, the agreement provides for longer visa validity.
11. [**Federal District Court Upholds 'Show Papers' Provision of Arizona Immigration Law**](#) - Judge Susan Bolton said the law must take effect before it can be challenged, but she left the door open to potential future challenges.
12. [**SEVP Notes Driver's License and Social Security Difficulties for Students**](#) - Some F and M students are having difficulties when applying for a [Social Security number](#) or [driver's license](#).
13. [**CBP Opens Global Entry Kiosks at San Antonio International Airport**](#) -The kiosk's features include a camera, touch-screen monitor, fingerprint scanner, document reader, and receipt printer.
14. [**CBP Opens Two Additional Lanes at San Luis, Arizona Port of Entry**](#) - The 15-month expansion project increased the northbound lanes from 8 to 10 at one of the area's most congested land ports of entry. These additional lanes may increase capacity by 25 percent for travelers entering the United States for work and personal reasons.
15. [**Democratic Party Platform Supports Comprehensive Immigration Reform**](#) - The platform touts existing Obama administration efforts, such as deferred action for childhood arrivals in lieu of the DREAM Act and supporting family reunification as a priority.
16. [**ABIL Global: United Kingdom P A Numbers Game**](#) - The United Kingdom has introduced various restrictive immigration policies.

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DETAILS:

1. Details Released on DV-2014 Lottery Program; DV-2013 Entrants Should Keep Confirmation Numbers

Online registration for the DV-2014 Program begins on Tuesday, October 2, 2012, at noon EDT, and concludes on Saturday, November 3, 2012, at noon EDT. Applicants must submit entries electronically during this registration period using the electronic DV entry form (E-DV) at <https://www.dvlottery.state.gov/>. Paper entries will not be accepted. The Department of State strongly encourages applicants not to wait until the last week of the registration period to enter. Heavy demand may result in website delays.

Selectees for the DV program are chosen by a computer-generated, random drawing. The visas are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration to the United States, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the past five years. No single country may receive more than seven percent of the available diversity visas in any one year.

For DV-2014, natives of Guatemala are now eligible to enter the program.

Natives of the following countries are not eligible to apply because the countries sent more than 50,000 immigrants to the United States in the previous five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. A "native" ordinarily means someone born within a particular country, regardless of the individual's current country of residence or nationality. Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

For DV-2014, the Department of State once again will implement an online process to notify entrants of their selection and to provide information about the immigrant visa application and interview. Beginning May 1, 2013, DV-2014 entrants will be able to use their confirmation number provided at registration to check online through Entry Status Check at <http://www.dvlottery.state.gov/>. Successful entrants will receive instructions on how to apply for immigrant

visas for themselves and their eligible family members. Confirmation of visa interview appointments will also be made through Entry Status Check.

For detailed information about DV-2014 entry requirements, along with frequently asked questions about the DV program, see the instructions for the DV-2014 Diversity Visa program, available at http://travel.state.gov/visa/immigrants/types/types_1318.html. The related Federal Register notice was published on September 28, 2012, at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-28/pdf/2012-23934.pdf>.

The Department of State also noted that DV-2013 entrants should keep their confirmation numbers until at least September 2013, even if they were not selected on May 1, 2012. The Department said it may select more DV-2013 entries on October 1, 2012. Entrants in the DV-2013 program may check the status of their entries through Entrant Status Check (<https://www.dvlottery.state.gov/ESC/>) through September 30, 2013.

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2. DOL Delays Effective Date of H-2B Wage Rule, Announces Electronic Filing for H-2A, H-2B Labor Cert Applications

In anticipation of the enactment of H.J. Res 117, which prohibits the Department of Labor from expending funds to implement the 2011 H-2B wage rule for the duration of that continuing resolution, the Department expects to publish a final rule extending the effective date of the 2011 wage rule to March 27, 2013. It has not yet been published in the Federal Register but is available at http://www.ofr.gov/OFRUpload/OFRData/2012-24264_PI.pdf.

Also, the Department announced the implementation of electronic filing for nonimmigrant temporary labor certification applications under the H-2A and H-2B visa programs through the iCERT Visa Portal System (iCERT System), at <http://icert.doleta.gov>. Employers or their authorized representatives may submit H-2B applications electronically beginning on October 15, 2012, and H-2A applications beginning on December 10, 2012.

The Department will hold four webinar training sessions (two for filing in the H-2B program and two for filing in the H-2A program) to orient program users to electronic filing through the iCERT System. These sessions will be announced on the OFLC's Web site (<http://www.foreignlaborcert.doleta.gov/>) once dates are finalized. Employers or their authorized representatives choosing not to use

this new filing option must continue to file their H-2A and H-2B applications with the Department using the traditional paper-based filing method.

The electronic filing notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-28/pdf/2012-23884.pdf>.

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3. **STEM Bill Fails in House**

On September 20, 2012, the U.S. House of Representatives rejected the STEM Jobs Act (H.R. 6429), sponsored by Rep. Lamar Smith (R-Tex.) by a vote of 257-158. (288 votes were required to pass under suspension of the rules.) The bill would have provided permanent residence to 55,000 foreign students each year who graduate with advanced degrees in science, technology, engineering, or mathematics from U.S. universities and agree to work for at least five years in the United States in a STEM field. The bill included requirements for an employer to petition on the student's behalf and a labor certification process.

Democrats who voted against the measure signaled that they were in favor of similar legislation but objected to a provision that would have eliminated the diversity visa program. Congress may take up this and similar bills in November, after the presidential election.

For a commentary by Cyrus D. Mehta, see **STEM GREEN LOTTERY V. GREEN CARD LOTTERY**, <http://cyrusmehta.com/perseus/news.aspx?SubIdx=ocyrus2012921212528>.

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4. **DHS To Extend Haiti TPS**

Secretary of Homeland Security Janet Napolitano is extending Haiti's temporary protected status (TPS). The Department of Homeland Security expects to publish a notice in the Federal Register shortly announcing this decision.

The Federal Register notice will provide additional guidance on:

- Who is eligible for TPS;
- How to re-register if you have TPS;
- When to begin filing TPS applications;
- How to request an employment authorization document (EAD);

- Six-month automatic extension of current EADs;
- TPS fees and fee waiver procedures; and
- Other TPS-related information.

The 60-day re-registration period for current Haiti TPS beneficiaries will begin on the day the Federal Register notice is published. Individuals who have not continuously resided in the United States since January 12, 2011, will not be eligible.

The advance notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a5f4f9fff89e9310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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5. CBP Announces Delays in Processing I-94 Arrival/Departure Records

U.S. Customs and Border Protection (CBP) announced on September 17, 2012, that it is experiencing delays in processing foreign visitors' travel information in the Form I-94 Arrival/Departure Record database. CBP said this does not affect the majority of foreign travelers visiting for business or leisure and will not affect any visitor's record of departure.

CBP is exploring automating the I-94 to allow for the collection of arrival/departure information electronically to streamline the arrival and inspection process for travelers. CBP is coordinating with other agency stakeholders and is considering rulemaking.

The announcement is available at

http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/i94_data_entry.xml.

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6. Older Versions of Greek Passport Are Invalid

The government of Greece recently announced that Greek passports are valid for travel only if issued on or after January 1, 2006, regardless of expiration date. Greece also announced:

- Greek passports issued before January 1, 2006, are invalid for admission

into the United States.

- All versions of Greek official and diplomatic passports are valid for admission until the document expiration date.
- All versions of the Greek passport are valid for return to Greece for Greek nationals.

As of February 1, 2007, U.S. Customs and Border Protection (CBP) began imposing penalties on transportation carriers for bringing anyone who is applying for admission to the United States with a noncompliant Greek passport into the United States.

The announcement is available at

http://www.cbp.gov/xp/cgov/travel/travel_news/old_greek_passport.xml.

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7. USCIS Updates FAQs on Deferred Action

U.S. Citizenship and Immigration Services has updated its frequently asked questions (FAQs) several times on the new deferred action program for childhood arrivals. The latest version was updated on September 7, 2012.

The Department of Homeland Security has advised that its processing goals are one month from issuance of a receipt to the biometric appointment, and four to six months on average for processing the initial batch of deferred action requests. This time could increase as more requests are received.

USCIS said it plans to issue additional FAQs as people work through the process. The latest FAQ, along with other links to relevant information, is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD>.

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8. Congress Extends Four Immigration Programs for Three Years

Congress has extended four immigration programs for three years, to September 30, 2015. The programs are the EB-5 regional center program, the E-Verify program, the special immigrant religious worker program, and the

Conrad State 30 J-1 visa waiver program for certain foreign doctors working in medically underserved areas.

The Senate passed the extenders bill (S. 3245), as it was called, in early August. The House of Representatives passed the bill on September 13 by a vote of 412-3. The bill now goes to the President for signature.

Congress is unlikely to pass any other immigration bills before the November elections. According to one newspaper article, this session of Congress "is on track to be the least productive in modern history." Major immigration reform will have to wait until 2013.

The text of S. 3245 is available at

<http://www.govtrack.us/congress/bills/112/s3245>. The newspaper article about Congress's lack of productivity is at

http://www.rollcall.com/features/Guide-to-Congress_2012/guide/Congress-On-Pace-to-Be-Least-Productive-217538-1.html.

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9. October Visa Bulletin Shows Backlogs in Some EB Categories

The Department of State had expected that the worldwide EB-2 visa numbers would become current once the new fiscal year began on October 1, 2012. However, this has not happened. Similarly, the EB-2 category for India and China, which became unavailable in June, has not budged much. China remains at July 15, 2007, and India advanced but only to September 1, 2004. Additional movement is not expected in this category for India and China for the first half of the new fiscal year.

The EB-3 worldwide, India, China, and Philippines categories are also backlogged. The EB-1, EB-4, and EB-5 categories remain current for October.

The October Visa Bulletin is available at

http://travel.state.gov/visa/bulletin/bulletin_5770.html.

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10. State Dept. Announces 'Historic' Visa Agreement Between United States and Russia

The Department of State announced that a "historic" U.S.-Russia visa agreement entered into force on September 9, 2012. The agreement facilitates

travel between the two countries and "enables us to strengthen ties between our people by benefitting the largest segments of travelers in both our countries P business travelers and tourists," the Department said in a statement. Among other benefits, the agreement provides for longer visa validity.

Nearly 159,000 business and tourism visas were issued in fiscal year 2011 to Russian citizens. Over 75,000 U.S. citizens travel to Russia annually, the majority of whom require Russian visas.

The agreement includes these key provisions:

- Three-year, multiple-entry visas will be issued as the standard "default" visa for U.S. citizens visiting Russia and Russian citizens visiting the United States;
- Diplomatic and official visa holders on temporary assignments will receive one-year, multiple-entry visas;
- The documentation required will be reduced. For example, the Russian government will no longer require U.S. citizens to provide formal, "registered" invitation letters when applying for Russian business visas or visas for private visits, although applicants seeking Russian tourist visas must continue to hold advance lodging reservations and arrangements with a tour operator;
- Both sides have committed to keeping standard visa processing times under 15 days, although the circumstances of individual cases may require additional processing; and
- The \$100 issuance (reciprocity) fee for Russians issued U.S. visas for business or tourism (B-1/B-2) will decrease to \$20.

The announcement is available at

<http://www.state.gov/r/pa/prs/ps/2012/09/197476.htm>.

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11. Federal District Court Upholds 'Show Papers' Provision of Arizona Immigration Law

U.S. District Judge Susan Bolton of Phoenix ruled on September 5, 2012, that the "show me your papers" provision of Arizona's immigration law will stand, at least for now. That provision allows Arizona police officers to question immigration status while carrying out enforcement of other laws.

Judge Bolton said the law must take effect before it can be challenged, but she left the door open to potential future challenges.

Allesandra Soler, executive director of Arizona's American Civil Liberties Union, predicted "rampant racial profiling and prolonged detention for countless Latinos, a majority of whom are U.S. citizens and permanent residents." Jan Brewer, Arizona Governor, said the ruling "will empower state and local law enforcement, as part of a legal stop or detention, to inquire about an individual's immigration status when the officer has reasonable suspicion."

Judge Bolton's September 5 opinion is available at <http://lawprofessors.typepad.com/files/boltonsept5.pdf>.

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12. SEVP Notes Driver's License and Social Security Difficulties for Students

The Student and Exchange Visitor Program (SEVP) noted on September 6, 2012, that some F and M students are having difficulties when applying for a [Social Security number](#) (SSN) or [driver's license](#). SEVP and U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlements (SAVE) Program are working on a solution that they expect to implement shortly.

Currently, there are two options for students:

1. Return to the Department of Motor Vehicles (DMV) or Social Security Administration (SSA) office in the student's state **on or after September 14, 2012**.
2. E-mail <mailto:dmvssa.sevp@ice.dhs.gov> which may take longer than option one. Include the following in the e-mail:
 1. Benefit requested (SSN or driver's license)
 2. Family name
 3. First name
 4. Date of birth
 5. Form I-94, Arrival/Departure Record, admission number (11 digits)
 6. SEVIS ID
 7. Applicant's physical address (required), phone number (required), and e-mail
 8. Address of the office where problem occurred (and the name of the

official, if known)

9. Date of the latest visit to office
10. SAVE case number (if available)
11. Current driver's license/customer number and/or DMV receipt number (for DMV customers, if available)

While SEVP does not process benefits, SEVP says a representative will contact SSA or the student's state DMV on the student's behalf to help with processing.

The student may also contact the SEVP Response Center with further questions at either 703-603-3400 or <mailto:SEVP@ice.dhs.gov>

The SEVP announcement is available at

<http://studyinthestates.dhs.gov/2012/09/social-security-number-and-drivers-license-issues-2>.

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13. CBP Opens Global Entry Kiosks at San Antonio International Airport

U.S. Customs and Border Protection unveiled Global Entry kiosks at the international arrivals area of the San Antonio International Airport on August 29, 2012.

International travelers enrolled in Global Entry who are returning to the United States through the San Antonio airport can bypass passport control lines to use CBP's automated self-service kiosk. The kiosk features include a camera, touch-screen monitor, fingerprint scanner, document reader, and receipt printer. At the kiosk, Global Entry members activate the system by inserting their passports or U.S. permanent resident cards into a document reader. The kiosk directs travelers to provide digital fingerprints and compares that biometric data with the fingerprints on file. Global Entry travelers are also photographed and prompted to answer declaration questions on the kiosk's touch screen. A transaction receipt is issued upon completion, which must be presented to CBP officers before leaving the inspection area.

Applications for enrollment are available through the Global Online Enrollment System (GOES, <https://goes-app.cbp.dhs.gov/main/goes>). An applicant must complete and submit an online application through GOES and pay a non-refundable \$100 fee. CBP will review the applicant's information and a background investigation will be conducted. To finalize the process, the

applicant will be interviewed by a CBP officer at an enrollment center, and have his or her fingerprints captured. Upon approval, membership is valid for five years.

Global Entry is open to U.S. citizens, U.S. legal permanent residents, and Mexican nationals. The program is also available to citizens of the Netherlands who are enrolled in the Dutch Privium program, and citizens of the Republic of Korea enrolled in the Korean SES program. Canadian citizens and residents enrolled in the NEXUS program may also use the Global Entry kiosks. U.S. citizens or lawful permanent residents who are members of the CBP Trusted Traveler program, SENTRI, can also use the Global Entry kiosks.

The Global Entry program began as a pilot program at George Bush Intercontinental, John F. Kennedy International, and Washington Dulles International airports on June 6, 2008. It became a permanent voluntary program on February 6, 2012. As of August 24, 2012, more than 400,000 Global Entry members average about 5,000 kiosk uses per day.

The announcement is available at

http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/09062012_2.xml.

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14. CBP Opens Two Additional Lanes at San Luis, Arizona Port of Entry

The U.S. General Services Administration, U.S. Customs and Border Protection (CBP), and the city of San Luis, Arizona, celebrated the construction of two additional northbound lanes for privately owned vehicles traveling into the United States at the San Luis I Land Port of Entry.

The 15-month expansion project increased the northbound lanes from 8 to 10 at one of the area's most congested land ports of entry. These additional lanes may increase capacity by 25 percent for travelers entering the United States for work and personal reasons.

"This expansion will be a huge benefit for this port of entry, and for the San Luis-Sonora, Mexico border crossing community," said William K. Brooks, CBP Acting Director of Field Operations.

CBP said that one of the driving factors for this expansion project was the desire to complete the construction before the start of this year's agricultural season. The two additional lanes were officially opened on August 23, 2012,

and are expected to help reduce the wait times for travelers during one of the busiest times of year.

The announcement is available at

http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/09062012_5.xml.

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15. Democratic Party Platform Supports Comprehensive Immigration Reform

The Democratic Party's platform for 2012, which was formally approved at the Democratic National Convention held in Charlotte, North Carolina, from September 4 through 6, supports comprehensive immigration reform that "brings undocumented immigrants out of the shadows and requires them to get right with the law, learn English, and pay taxes in order to get on a path to earn citizenship."

The platform states, among other things, that the Department of Homeland Security is "prioritizing the deportation of criminals who endanger our communities over the deportation of immigrants who do not pose a threat." It touts existing Obama administration efforts, such as deferred action for childhood arrivals in lieu of the DREAM Act and supporting family reunification as a priority. The platform states that the word "family" in immigration includes LGBT relationships "to protect bi-national families threatened with deportation."

The full text of the Democratic Party platform for 2012 is available at <http://www.democrats.org/democratic-national-platform>. A summary of the Republican Party platform's immigration provisions is available in the September 1 *ABIL Immigration Insider* at http://www.abil.com/newsletter_details.cfm?NEWSLETTER_ID=134.

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16. ABIL Global: United Kingdom P A Numbers Game

The United Kingdom has introduced various restrictive immigration policies

Since coming to power, the Conservative-led coalition government of the United Kingdom has introduced a number of changes to work, study, and family migration routes in an effort to reduce net migration. In crafting this barrier of restrictive policy, the government has trumpeted each new reform as

a building block toward saving the UK's economy and protecting its people. However, in restricting the routes that permitted many productive and talented migrants to enter and remain, the government is frustrating the country's fiscal health and playing to a culture of alarmism.

Among those adversely affected by this approach have been Non-European Economic Area (non-EEA) migrant employees and the businesses who would seek to hire them. By constructing a wall of red tape in the form of confusing application forms, voluminous guidance, and unreasonable requirements, the UK government has given the distinct impression that the UK is closed for business.

Universities, too, have been hard-hit by the reforms and are faced with potentially losing billions of pounds due to the crackdown on overseas students. These changes limit the time non-EEA students can study in the UK, cut the number of hours they may work, reduce the options for post-graduation employment, and stem the ability of migrants to bring their spouses and children. The changes have caused significant reductions in enrollment.

Most recently, the UK government set its sights on family migration. Among the most criticized of these reforms, which came into force on July 9, 2012, has been the introduction of a minimum income of £18,600 for British citizens and settled persons who wish to sponsor a non-EEA migrant as their partner. Even higher income thresholds are in place for those seeking to sponsor a child or children. Additionally, the government now imposes an unreasonably long probationary period of five years (raised from two years) before non-EEA migrant partners may apply for settlement.

While undocumented immigration and abuses of the system are clearly legitimate concerns for any nation, the present UK government has adopted an exclusionary stance that acts as a barrier to many of the very people the UK should seek to attract. Bright students, productive employees with jobs and sponsors, and the spouses and partners of British citizens are all among those who have been prevented or discouraged from a life in the UK. Sadly, this appears to be a numbers game that we will all lose.

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