



## NOVEMBER 2012 IMMIGRATION UPDATE

*Posted on November 5, 2012 by Cyrus Mehta*

### Headlines:

1. [E-Verify Mandated in Four States in 2013](#) - Georgia, North Carolina, Pennsylvania, and Tennessee have all passed mandatory work authorization verification laws, the final provisions of which take effect in 2013.
2. [EB-2 Priority Dates Become 'Current' in November, Except for China and India](#) - For China in November, the EB-2 priority date cut-off is September 1, 2007; for India, the cut-off date is September 1, 2004.
3. [Justice Dept. Settles With Florida Janitorial Services Company](#) - The agreement resolves allegations that the company violated the antidiscrimination provision of the Immigration and Nationality Act when it failed to fully reinstate an employee in retaliation for asserting her right to work in the United States.
4. [Justice Dept. Intervenes in Suit Against Texas Farm for Discriminating Against U.S. Worker](#) - The Department alleges that the company discriminated against one of two U.S. citizen applicants when it refused to hire him based on his citizenship status.
5. [DHS Partners With Loews Hotels & Resorts](#) - Through the new partnership, Loews Hotels offers its YouFirst Platinum loyalty rewards members complimentary enrollment in the Global Entry program.
6. [Joint U.S.-Canada Entry/Exit Pilot Begins](#) - In October, both agencies began exchanging information so that recording an entry into one country becomes a record of exit from the other country.
7. [USCIS Launches Online I-9 Resources for Employers and Employees in Spanish](#) - The website provides employers and employees one-click access

at no charge to Spanish-language resources, tips, and guidance on properly completing the I-9 and understanding the I-9 process.

8. [Taiwan Joins Visa Waiver Program](#) - In FY 2011, 243,186 visitors from Taiwan traveled to the United States. Eligible Taiwanese will now be able to do so without a visa beginning on November 1.
9. [DHS Extends Haiti TPS, Extends Suspension of Certain Requirements for F-1 Haitian Students](#) - The 60-day re-registration period for current Haiti TPS beneficiaries who wish to maintain their TPS will run through November 30, 2012.
10. [USCIS Announces New Filing Option for Canadian TN Nonimmigrants, Reminds Employers of Canadian L-1 Options](#) - On October 1, USCIS began accepting the Form I-129, Petition for Nonimmigrant Worker, filed on behalf of Canadian citizens outside the United States who seek classification as TN (Trade NAFTA) nonimmigrants.
11. [USCIS Designates Military Physicians as Civil Surgeons To Facilitate Medical Exams](#) - USCIS said the blanket designation will assist members and veterans of the Armed Forces and their eligible dependents in receiving immigration medical examinations in a timely fashion.
12. [USCIS Undercounts H-1B Usage](#) - The data show that the agency has approved approximately 45,000 too few overall between fiscal years 2008 and 2012.
13. [USCIS Releases Latest DACA Statistics](#) -4,591 requests have been approved so far.
14. [ABIL Global \(www.abil.com\): Canada P IT Workers and Work Permits](#) - The IT Worker Program was shut down in all provinces recently, but Canadian work permits for IT workers are still possible in certain circumstances.
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#### **Details:**

##### **1. E-Verify Mandated in Four States in 2013**

Georgia, North Carolina, Pennsylvania, and Tennessee have all passed mandatory E-Verify laws, the final provisions of which take effect in 2013:

- **Georgia:** Larger employers already must use E-Verify, but HB 87 requires all Georgia employers with more than 10 employees to use E-Verify by July 1, 2013.
- **North Carolina:** Similarly, larger employers already must use E-Verify, but HB 36 requires employers that employ between 25 and 100 employees to use E-Verify by July 1, 2013.
- **Pennsylvania:** Effective January 1, 2013, the Public Works Employment Verification Act (SB 637) requires contractors and subcontractors performing public works projects for Pennsylvania worth at least \$25,000 to use E-Verify for newly hired employees.
- **Tennessee:** The Tennessee Lawful Employment Act (HB 1378) requires employers with 6 to 199 employees to use E-Verify (or otherwise verify the work authorization of new hires) by January 1, 2013. Larger employers are already required to do so.

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## **2. EB-2 Priority Dates Become 'Current' in November, Except for China and India**

The Visa Bulletin for November 2012 shows that the employment-based second preference (EB-2) immigrant visa priority dates have become "Current" for all countries except China and India. For China in November, the EB-2 priority date cut-off is September 1, 2007; for India, the cut-off date is September 1, 2004.

The November Visa Bulletin is available at

[http://www.travel.state.gov/visa/bulletin/bulletin\\_5779.html](http://www.travel.state.gov/visa/bulletin/bulletin_5779.html).

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## **3. Justice Dept. Settles With Florida Janitorial Services Company**

The Justice Department has reached an agreement with Diversified Maintenance Systems LLC, a provider of janitorial and facilities maintenance services based in Tampa, Florida. The agreement resolves allegations that the company violated the antidiscrimination provision of the Immigration and Nationality Act (INA) when it failed to fully reinstate an employee in retaliation for asserting her right to work in the United States.

The charging party alleged that the company failed to provide the employee with proper notice and instructions for contesting an initial data mismatch in E-Verify, resulting in E-Verify issuing an erroneous final response that she was not

work-authorized.

Although the employee immediately visited the Social Security Administration (SSA) after receiving verbal notice of the initial data mismatch and instructions from her supervisor, the employee alleged that the supervisor failed to give her the proper E-Verify paperwork that would have enabled the SSA to resolve the mismatch. As a result, the E-Verify program provided an erroneous final response, known as a "final nonconfirmation," to the employer, stating that the charging party was not eligible to work in the United States. The company subsequently terminated the employee, and the employee contacted the E-Verify hotline for help. An E-Verify agent notified the employer that the employee was authorized to work, but the employee's manager refused to reinstate her employment, allegedly because she contacted E-Verify and asserted her right to work under the antidiscrimination provision of the INA. The INA protects employees from discriminatory practices in the employment eligibility verification process, including E-Verify, and prohibits employers from retaliating against individuals who assert their rights or oppose a practice that is illegal under the provision.

Under the terms of the settlement agreement, the company agreed to pay \$6,800 to the employee, which included back pay and interest, along with a \$2,000 civil penalty. The company also agreed to training from the Justice Department on the antidiscrimination provision and training from the Department of Homeland Security on proper E-Verify procedures. The case was settled before the Justice Department filed a complaint.

The announcement is available at

<http://www.justice.gov/opa/pr/2012/September/12-crt-1169.html>.

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#### **4. Justice Dept. Intervenes in Suit Against Texas Farm for Discriminating Against U.S. Worker**

The Justice Department recently filed a motion to intervene in a lawsuit against Jerry Estopy, d/b/a Estopy Farms, a sorghum and soy farm in McAllen, Texas, which also provides equipment and equipment operators for harvests at other farms. The Justice Department seeks to intervene in a lawsuit filed by two U.S. citizens against the farm. The Department alleges that the company discriminated against one of the U.S. citizens when it refused to hire him based on his citizenship status.

According to the department's complaint, a U.S. citizen with over 12 years experience operating cotton combines and tractors applied for a position with Estopy Farms as a cotton picker operator around June 2010. Estopy Farms hired a number of seasonal foreign workers but not the U.S. citizen. The department found reasonable cause to believe that the company did not hire the U.S. citizen because it preferred to hire foreign workers under the H-2A visa program.

Texas Rio Grande Legal Aid filed a lawsuit with the Office of the Chief Administrative Hearing Officer (OCAHO) within the Justice Department's Executive Office for Immigration Review on behalf of the two U.S. citizens on November 14, 2011. Because a complaint has already been filed, the department seeks to intervene in the existing lawsuit.

The announcement is available at

<http://www.justice.gov/opa/pr/2012/September/12-crt-1096.html>.

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## **5. DHS Partners With Loews Hotels & Resorts**

Secretary of Homeland Security Janet Napolitano recently announced a new partnership between the Department of Homeland Security and Loews Hotels & Resorts to promote the Department's expedited traveler programs, which includes CBP's Global Entry and the Transportation Security Administration's (TSA) Pre?€.

Through the new partnership, Loews Hotels offers its YouFirst Platinum loyalty rewards members complimentary enrollment in the Global Entry program. CBP will review the applicant's information; conduct an in-person interview at a CBP enrollment center, including providing fingerprints; and complete a background check.

CBP has also worked with American Express and United Airlines, which provide reimbursements for their top-tier customers, and continues to partner with other private-sector entities to expand the network of Global Entry members.

Currently available at 30 U.S. airports, Global Entry streamlines the screening process for trusted travelers through biometric identification and reduces average wait times by 70 percent, according to DHS, with more than 75 percent of travelers using Global Entry processed in under five minutes. More than a million people are enrolled in Global Entry, and these travelers have used its

automated kiosks more than three million times.

The TSA Pre?€ pre-screening initiative allows eligible passengers to volunteer information about themselves to expedite their screening. Eligible passengers enter a separate security lane where they undergo expedited screening, and may pass through screening technology without removing shoes, light outerwear, belts, laptops, or 3-1-1 compliant liquids/gels from their carry-on. To be eligible, participants must be U.S. citizens traveling through one of the 25 participating U.S. airports and members of CBP Trusted Traveler programs or select frequent flyers of participating airlines. More than 2.8 million passengers have received expedited screening through TSA Pre?€ security lanes since the initiative began in October 2011, DHS said.

The announcement is available at

<http://www.dhs.gov/news/2012/09/24/napolitano-announces-partnership-loews-hotels>.

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## **6. Joint U.S.-Canada Entry/Exit Pilot Begins**

The Department of Homeland Security (DHS) and the Canada Border Services Agency (CBSA) have begun the Phase I pilot of the Entry/Exit program, as outlined in the Beyond the Border Action Plan.

Routine biographic information will be collected under the pilot until January 31, 2013. In October, both agencies began exchanging this information so that recording an entry into one country becomes a record of exit from the other country. The pilot will not affect regular port operations in any way.

As part of the pilot, DHS and CBSA will exchange routinely collected data on third-country nationals (those who are citizens of neither Canada nor the United States), permanent residents of Canada, and lawful permanent residents of the United States at the following four ports of entry:

- Pacific Highway, Blaine, Washington/Pacific Highway, British Columbia;
- Peace Arch, Blaine, Washington/Douglas (Peace Arch), British Columbia;
- Lewiston-Queenston Bridge, Lewiston, New York/Queenston-Lewiston Bridge, Ontario;and
- Rainbow Bridge, Niagara Falls, New York/Niagara Falls Rainbow Bridge, Niagara Falls, Ontario.

DHS said the coordinated entry/exit system will help the U.S. and Canada identify persons who overstay their lawful periods of admission; better monitor the departure of persons subject to removal orders; and verify that residence requirements are being met by applicants for continued eligibility in immigration programs.

DHS noted that the process of sharing personal information will be in accordance with each country's privacy laws and policies. It will also be consistent with the Beyond the Border Action Plan's Joint Statement of Privacy Principles and a Letter of Intent agreed to by DHS and CBSA.

The announcement is available at

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/09282012.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/09282012.xml).

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## **7. USCIS Launches Online I-9 Resources for Employers and Employees in Spanish**

On October 4, 2012, U.S. Citizenship and Immigration Services (USCIS) launched a Spanish-language version of I-9 Central, an online resource center providing information and assistance related to the Form I-9 (Employee Eligibility Verification), which is the most frequently accessed form on USCIS.gov. The website provides employers and employees one-click access at no charge to Spanish-language resources, tips, and guidance on properly completing the I-9 and understanding the I-9 process.

The launch of the Spanish I-9 Central is the most recent in a series of resource guides related to USCIS employment-related forms and processes. These resources include E-Verify Self-Check, a service that allows workers and job seekers in the United States to check their own employment eligibility status online, and an updated Handbook for Employers: Instructions for Completing Form I-9 (M-274). Both are offered in Spanish.

I-9 Central includes sections about employer and employee rights and responsibilities, step-by-step instructions for completing the form, and information on acceptable documents for establishing identity and employment authorization. The site also includes a discussion of common mistakes to avoid when completing the form, guidance on how to correct errors, and answers to employers' recent questions about the I-9 process.

Spanish I-9 Central is available at <http://www.uscis.gov/portal/site/uscis-es/>



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The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8ad2fa0020d2a310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

Spanish I-9 links are available at

<http://www.uscis.gov/portal/site/uscis-es/menuitem.88b9a0d53f10bd18d52fae1074a191a0/?vgnextoid=a714e800f4eb3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=e13c687ca5180210VgnVCM100000471a190aRCRD>.

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## **8. Taiwan Joins Visa Waiver Program**

On October 2, 2012, the Department of Homeland Security announced the designation of Taiwan for participation in the Visa Waiver Program (VWP). Taiwan thus joins 36 other countries in the VWP, which permits visa-free travel to the United States for eligible travelers coming for 90 or fewer days for business or tourism. In fiscal year 2011, the VWP accounted for 18.3 million visits to the United States, or more than 60 percent of tourist and business travelers entering the United States by air, the Department noted.

Key security and information-sharing requirements for the VWP include enhanced law enforcement and security-related data-sharing, timely reporting of lost or stolen passports, and maintaining high counterterrorism, law enforcement, border control, aviation, and document security standards.

Eligible Taiwan passport holders must apply for advance authorization for the VWP through the Electronic System for Travel Authorization (ESTA). Eligible Taiwan passport holders approved via ESTA may visit the United States without visas beginning on November 1, 2012. In FY 2011, 243,186 visitors from Taiwan traveled to the United States.

The announcement is available at

<http://www.dhs.gov/news/2012/10/02/dhs-announces-taiwan%E2%80%99s-designation-visa-waiver-program>.



ESTA is available at <https://esta.cbp.dhs.gov/esta/>.

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## **9. DHS Extends Haiti TPS, Extends Suspension of Certain Requirements for F-1 Haitian Students**

The Department of Homeland Security has published a notice in the Federal Register extending Haitian temporary protected status (TPS) for an additional 18 months, ending on July 22, 2014.

The 60-day re-registration period for current Haiti TPS beneficiaries who wish to maintain their TPS began on October 1, 2012, and will run through November 30, 2012. Individuals who have not continuously resided in the United States since January 12, 2011, are not eligible.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Haitian TPS beneficiaries who timely re-register will receive a new EAD, if requested, with an expiration date of July 22, 2014. USCIS recognizes that all re-registrants may not receive their new EADs until after their current EADs expire. Therefore, USCIS is extending currently valid TPS Haiti EADs bearing a January 22, 2013, expiration date for an additional six months, through July 22, 2013.

In addition, DHS is extending the suspension of certain requirements for F-1 nonimmigrant Haitian students. The extension will enable these F-1 students to continue to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while maintaining their F-1 student status. The suspension of the regulatory requirements will remain in effect for an additional 18 months, through July 22, 2014.

The announcement is available at

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

[?vgnnextoid=29a2c566e8c1a310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=29a2c566e8c1a310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD). The Haitian TPS extension

notice was published in the Federal Register at

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-01/pdf/2012-23826.pdf>. The F-1

extension notice was published at

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-01/pdf/2012-23825.pdf>.

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## **10. USCIS Announces New Filing Option for Canadian TN Nonimmigrants, Reminds Employers of Canadian L-1 Options**

On October 1, 2012, U.S. Citizenship and Immigration Services (USCIS) began accepting the Form I-129, Petition for Nonimmigrant Worker, filed on behalf of Canadian citizens outside the United States who seek classification as TN (Trade NAFTA) nonimmigrants.

With respect to the TN classification, USCIS currently only accepts the I-129 in connection with a request to extend a TN nonimmigrant's stay or to change a nonimmigrant's status to TN. Canadian citizens continue to have the option of applying to U.S. Customs and Border Protection (CBP) for TN classification in conjunction with an application for TN admission to the United States.

USCIS also issued a reminder that an employer has the option of filing an I-129 individual petition with USCIS on behalf of a Canadian L-1 nonimmigrant. A U.S. employer that has an approved L-1 blanket petition also has the option to file a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, along with supporting documentation, with the USCIS service center that approved the L-1 blanket petition, on behalf of a Canadian citizen (or any visa-exempt beneficiary) who is outside the United States. As before, Canadian citizens may apply for L-1 classification in conjunction with an application for L-1 admission to the United States by presenting the I-129 (individual petition) or I-129S (under an approved blanket petition) and supporting documentation to CBP.

The announcement, which includes links to additional information, is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=c130f4c88ad0a310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

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## **11. USCIS Designates Military Physicians as Civil Surgeons To Facilitate Medical Exams**

U.S. Citizenship and Immigration Services (USCIS) has granted military physicians a blanket designation as civil surgeons to facilitate the medical exam required for members and veterans of the U.S. Armed Forces and certain

dependents. USCIS said the blanket designation will assist members and veterans of the Armed Forces and their eligible dependents in receiving immigration medical examinations in a timely fashion.

USCIS noted that if medical officers of the U.S. Public Health Services are not available when persons arrive for admission to the United States, USCIS may designate civil surgeons to perform the tests. Physicians qualify for civil surgeon designation if they are licensed and have at least four years of professional experience. The licensing requirement, which defines "licensed physicians" as those licensed to practice medicine in the state where they render medical services, may discourage medical officers of the Armed Forces (military physicians) from becoming designated civil surgeons, USCIS observed. As a result, Armed Forces members and their dependents must pay for the immigration medical examination even though the services could easily be provided by military physicians at no cost. Additionally, the logistics to arrange for a medical exam by a non-military designated civil surgeon can sometimes be a burden to military members and their dependents, and distract from a military member's readiness. To ease these difficulties, USCIS decided to issue the blanket designation. Participation is voluntary and at the discretion of each military medical facility, USCIS said.

Additional details are included in USCIS's policy memorandum issued on September 26, 2012, and available at

<http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/MilitaryPhysicians-PM.pdf>.

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## **12. USCIS Undercounts H-1B Usage**

Reports have surfaced that U.S. Citizenship and Immigration Services (USCIS) has undercounted H-1B usage by almost 15 percent over the past five years. USCIS must approve 65,000 H-1B visas per year but the data show that the agency has approved approximately 45,000 too few overall between fiscal years 2008 and 2012. Sources attribute the discrepancy to inaccurate estimates of denial rates.

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## **13. USCIS Releases Latest DACA Statistics**

U.S. Citizenship and Immigration Services' Office of Performance and Quality has released the latest statistics on the Deferred Action for Childhood Arrivals (DACA) process as of October 10, 2012, showing that 179,794 requests have been accepted for processing; 158,408 biometric service appointments have been scheduled; 6,416 requests are under review; and 4,591 requests have been approved.

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#### **14. ABIL Global (www.abil.com): Canada P IT Workers and Work Permits**

Although Canada does not have an equivalent work visa to that of the U.S. H-1B temporary work visa, for years information technology workers could rather easily secure a Canadian Work Permit on obtaining a Canadian job offer under what was known as the Information Technology Worker Program. The IT Worker Program existed from 1997 until recently when it was shut down in all provinces.

Canadian work permits for IT workers are still possible if a Human Resources and Skills Development Canada (HRSDC) Service Canada Labour Market Opinion is obtained:

1. if the employment is in the province of Quᕼbec under a February 2012 Memorandum of Understanding between Citizenship and Immigration Canada and the provincial Quᕼbec government if the worker will be employed in one of 44 occupations (which include, among others, IT Consultants, Software Engineers and Designers, Computer Programmers, and Interactive Media Developers);
2. if the employment is in the provinces of Ontario or British Columbia and in the video gaming and digital animation/visual effects industries and requires a Software Engineer and Designer or a Graphic Designer and Illustrator; or
3. if the first two possibilities do not apply, then if the Minimum Advertising Requirements of HRSDC have been met and a determination made by HRSDC that the employment of the foreign national is likely to have a neutral or positive effect on the labor market in Canada.

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#### **15. Firm In The News**

**Cyrus D. Mehta** participated in the USCIS Ombudsman's conference

on October 18, 2012, at the National Archives, 700 Pennsylvania Avenue, NW, Washington, DC 20408. Mr. Mehta spoke on a panel about the administrative rulemaking process beginning at 3:15 p.m., and commented on regulatory and legal issues. His power point presentation can be found at <http://www.scribd.com/doc/111748255/Issues-Ripe-for-Rulemaking>.

**Mr. Mehta** spoke on ethics at the American Immigration Lawyers Association's Upstate New York Chapter Fall CLE Conference on October 12. For more information, see <http://www.aila.org/content/default.aspx?docid=41076>.

**Mr. Mehta** will speak on ethics at PLI's 45th Annual Immigration & Naturalization Institute on November 19-20, 2012, in New York.

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