



## DECEMBER 2012 IMMIGRATION UPDATE

*Posted on December 4, 2012 by Cyrus Mehta*

### Headlines:

1. [House Passes STEM Bill; 'Achieve Act' Introduced in Senate, Congressional Hispanic Caucus Reacts; Obama, Dems Advocate Comprehensive Immigration Reform](#) - The STEM bill would allocate visas to STEM graduates without increasing overall immigration, by eliminating the diversity visa program. Neither the STEM bill nor the Achieve Act are likely to survive in the Senate.
2. [U.S. Mission in India Expands Interview Waiver Program](#) - The U.S. embassy in New Delhi expects this expansion to affect thousands of visa applicants in India.
3. [DACA Filings/Approvals Soar After Election; USCIS Releases Guidance for Employers, Filing Tips](#) - USCIS has received more than 300,000 requests for DACA. Most applicants are from Mexico (212,514).
4. [USCIS Expands e-Request Services](#) - The Web-based tool allows users to ask about applications and petitions submitted to USCIS.
5. [USCIS Holds Teleconference on I-601 Waivers](#) - Beginning on December 5, 2012, applications for waivers of grounds of inadmissibility must be filed in the United States unless the applicant meets criteria allowing him or her to file at an international USCIS office.
6. [Head of Law Firm Sentenced to Prison for Visa Fraud](#) - Participants in the scheme to file at least 137 fraudulent employment-based visa petitions "buried" a portion of the profits by purchasing cemetery plots and grave monuments.
7. [OFLC, USCIS Issue Guidance on Hurricane Sandy Relief; USCIS Extends RFE Deadlines](#) - The Department of Labor's Office of Foreign Labor Certification

issued a FAQ on Hurricane Sandy-related extensions and accommodations. Also, U.S. Citizenship and Immigration Services issued a reminder on immigration benefits or relief that may be available to those affected.

8. [State Dept. Projects Visa Numbers; Cut-Off Date Likely for China Employment Fifth Preference Later in FY 2013](#) - If it happens, this would be the first time a cut-off date has been established in the China employment fifth preference category.

9. [ABIL Global: Canada - Update on Federal Immigrant Investor Program and Federal Skilled Worker Program](#) - Pauses on new applications under the two programs will continue until further notice.

10. [Firm In The News...](#)

[Back to Top](#)

### **Details:**

#### **1. House Passes STEM Bill; 'Achieve Act' Introduced in Senate, Congressional Hispanic Caucus Reacts; Obama, Dems Advocate Comprehensive Immigration Reform**

The U.S. House of Representatives passed H.R. 6429, the "STEM Jobs Act of 2012," by a 245-139 vote on November 30, 2012. The bill would allocate 55,000 immigrant visas for certain foreign graduates of advanced degree programs in science, technology, engineering, and mathematics (STEM). It would exclude students with degrees in biological and biomedical fields. Among other things, it also would eliminate the diversity visa (DV) program so that there would be no overall increase in the level of immigration.

Rep. Jeff Flake (R-Ariz.), said, "We should staple a green card to diplomas." Rep. Darrell Issa (R-Cal.), who also voted in favor of the bill, said, "We need to break up the elephant into bite-size pieces. I want to break this up into passable bill by passable bill."

H.R. 6429 is considered unlikely to pass in the Senate. Democrats said they support STEM visas but did not think the DV program should be eliminated and believe that STEM legislation should be part of a larger immigration reform package. Similarly, the Obama administration said in a statement that it "strongly supports" legislation to attract and retain foreign students who graduate with advanced STEM degrees, to establish a start-up visa for foreign-

born entrepreneurs "to start businesses and create jobs," and to "reform the employment-based immigration system to better meet the needs of the U.S. economy." However, the administration said it does not support "narrowly tailored proposals that do not meet the President's long-term objectives with respect to comprehensive immigration reform." The statement advocated an approach that would "provide for attracting and retaining highly skilled immigrants and uniting Americans with their family members more quickly, as well as other important priorities such as establishing a pathway for undocumented individuals to earn their citizenship, holding employers accountable for breaking the law, and continuing efforts to strengthen the Nation's robust enforcement system."

Also, on November 27, 2012, Sens. Jon Kyl (R-Ariz.) and Kay Bailey Hutchison (R-Tex.) introduced the "Achieve Act," S. 3639, which would allow certain undocumented youth to attain a visa. They would have to apply for employment authorization after they have completed higher education or served in the military. "We have to get this ball rolling ... and this particular part of immigration reform seemed a logical place to begin," Sen. Kyl said. The bill is more restrictive than the previously proposed DREAM Act and would limit eligibility to those who entered the United States under the age of 14, among other things. Sen. Hutchison also noted that the bill "doesn't allow them to cut in line in front of people who have come and abided by the rules of our laws today. It doesn't keep them from applying under the rules today, but it doesn't give them a special preference." The Achieve Act is also considered unlikely to pass in the Senate.

The Congressional Hispanic Caucus rejected the Achieve Act, outlining nine principles that they said should be part of any effort toward comprehensive immigration reform: (1) requiring the estimated 11 million undocumented persons in the United States to register with the government, among other things, and "earn a path to permanent residency and eventual citizenship"; (2) reducing family backlogs to keep spouses, parents, and children together, including same-sex couples; (3) attracting "investors, innovators, and skilled professionals," including those in STEM fields; (4) building on the DACA program and incorporating "DREAMers"; (5) including a "balanced, workable solution for the agriculture industry" that ensures that agricultural workers have a route to citizenship and employers have the workers they need; (6) providing legal avenues for foreign workers to fill gaps in the workforce,

including labor rights, protection from discrimination, and a "reasonable path to permanency"; (7) ensuring enforcement that both protects the borders and fosters commerce; (8) establishing a "workable" employment verification system; and (9) ensuring that all workers "pay their fair share of taxes, fully integrate into our way of life and bear the same responsibilities as all Americans" and reaffirming "our shared belief that the Citizenship Clause of the Constitution is a fundamental freedom that must be preserved."

The STEM bill text and additional information are available at [http://judiciary.house.gov/issues/issues\\_STEM%20Jobs%20Act.html](http://judiciary.house.gov/issues/issues_STEM%20Jobs%20Act.html). A statement on the STEM Jobs Act from Rep. Lamar Smith (R-Tex.), chairman of the House Judiciary Committee, is available at <http://judiciary.house.gov/issues/STEM/Fact%20Sheet%20STEM%20Bill.pdf>. The Obama administration's statement is available at [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr64\\_20121128.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr64_20121128.pdf). Information on the Achieve Act, including the text of the bill, is available at <http://thomas.loc.gov/cgi-bin/query/D?c112:1:./temp/~c1125BosaL::>. The Congressional Hispanic Caucus' statement is available at [http://gutierrez.house.gov/sites/gutierrez.house.gov/files/One%20Nation\\_Principles%20on%20Immigration%20Reform.pdf](http://gutierrez.house.gov/sites/gutierrez.house.gov/files/One%20Nation_Principles%20on%20Immigration%20Reform.pdf).

[Back to Top](#)

## **2. U.S. Mission in India Expands Interview Waiver Program**

The U.S. Mission in India has announced expansion of the Interview Waiver Program (IWP), launched in March 2012, which allows qualified individuals to apply for additional classes of visas without being interviewed in person by a U.S. consular officer. The U.S. embassy in New Delhi expects this expansion to affect thousands of visa applicants in India.

Under the current IWP, Indian visa applicants who are renewing visas that are still valid or expired within the past 48 months may submit their applications for consideration for streamlined processing, including waiver of a personal interview, within the following visa categories:

- Business/Tourism (B-1 and/or B-2)

- Dependent (J-2, H-4, L-2)
- Transit (C) and/or Crew Member (D) - including C-1/D
- Children applying before their seventh birthday traveling on any visa class
- Applicants applying on or after their 80th birthday traveling on any visa class

Under the expanded IWP, the following Indian applicants may also be considered for streamlined processing:

- Children applying before their 14th birthday traveling on any visa class
- Students returning to attend the same school and same program
- Temporary workers on H-1B visas
- Temporary workers on individual L-1A or individual L-1B visas

The renewal application must be within the same classification as the previous visa. If the previous visa is annotated with "clearance received," however, that applicant is not eligible for a waiver of a personal interview.

Not all applications will be accepted for streamlined processing. As always, consular officers may interview any visa applicant in any category. Applicants who are renewing their visas may still need an appointment for biometrics (fingerprint and photograph) collection. All applicants must submit all required fees and the DS-160 application form.

The U.S. embassy in New Delhi said that this is "one of many steps the Department of State is taking to meet increased visa demand in India." The embassy explained that in 2011, consular officers in India processed nearly 700,000 nonimmigrant visa applications, an increase of more than 11 percent over the previous year. Currently, applicants generally wait fewer than 10 days for visa interview appointments and spend less than one hour at U.S. consular facilities in India. In September 2012, the U.S. Diplomatic Mission to India implemented a new visa processing system throughout India that further standardizes procedures and simplifies fee payment and appointment scheduling through a new website at <http://www.ustraveldocs.com/in>.

For more details about procedures for submitting a renewal application, see <http://www.ustraveldocs.com/in/in-niv-visarenew.asp>.

In relation to this development, Cyrus Mehta authored an article that was published in *Quartz*, "A Trade War Wages Across U.S. Consulates in India Over

H-1B Visas. Is a Truce in Sight?", available at <http://qz.com/32376/a-trade-war-wages-across-us-consulates-in-india-over-h-1-b-visas-is-a-truce-in-sight/>.

[Back to Top](#)

### **3. DACA Filings/Approvals Soar After Election; USCIS Releases Guidance for Employers, Filing Tips**

Following the results of the presidential election, the Obama administration released statistics showing that 53,273 undocumented persons have received relief as of November 15, 2012, under the deferred action for childhood arrivals (DACA) program. U.S. Citizenship and Immigration Services (USCIS) has received more than 300,000 such requests, of which the largest number by far are from Mexicans (212,514). The Immigration Policy Center estimates that approximately 1.8 million persons may be eligible.

USCIS noted that filing a request for consideration of deferred action for childhood arrivals involves several steps. You need to submit multiple forms, evidence and fees. Small mistakes in preparing your request could lead to it being rejected. USCIS released the following tips below to help avoid having your request rejected or delayed because of common filing errors:

**1. Mail all forms together** **P** You must mail the following forms in one package:

- a. Form I-821D, [Consideration of Deferred Action for Childhood Arrivals](#)
- b. Form I-765, [Application for Employment Authorization](#)
- c. Form I-765WS, [Worksheet](#)

Read the [mailing instructions](#) to see where to mail the forms based on the state you live in. Remember to send it to the P.O. Box address if mailing through the U.S. Postal Service. All forms are available on <http://www.uscis.gov/> for free. Do not pay for blank USCIS forms either in person or over the Internet.

**2. Carefully review age guidelines before filing** **P** If you have never been in removal proceedings, or your proceedings have been terminated, you must be at least 15 years of age or older at the time of filing.

You cannot be 31 or older as of June 15, 2012, to be considered for deferred action for childhood arrivals.

**3. Write your name and date of birth the same way on each form**

**P**Variations in the way information is written can cause delays. For example, you should not write Jane Doe on one form and Jane E. Doe on another form. It is important to read all instructions on the forms carefully.

**4. Sign your forms** **P**You must sign both your Form I-821D and Form I-765. If someone helps you fill out the forms, that person must also sign both Form I-812D and Form I-765 in the designated box below your signature.

**5. Use the correct version of Form I-765** **P**Always make sure you have the most recent form when submitting your request with USCIS. Review the [USCIS Forms page](#) to download the most recent version. You can download all USCIS forms and instructions for free at <http://www.uscis.gov/>.

**6. Use Form I-821D NOT Form I-821** **P** Form I-821D is used to request consideration of deferred action for childhood arrivals. Form I-821 is a different form used to apply for Temporary Protected Status, an entirely different process.

**7. Do NOT e-file Form I-765** **P** Requests for consideration of deferred action cannot be e-filed. You must mail your package (Forms I-821D, I-765, I-765WS, evidence and fees) to the appropriate [USCIS Lockbox](#).

**8. Submit correct fees** **P**The fee to request consideration of deferred action for childhood arrivals is \$465 and cannot be waived. There are [fee exemptions](#) available only in limited circumstances. You may submit separate checks of \$380 and \$85, or one single check of \$465.

**9. Answer all questions completely and accurately** **P**If an item is not applicable or the answer is "none," leave the space blank. But do not leave date fields blank. See Tip #11, below. To ensure your request is accepted for processing, be sure to complete these required form fields:

- **Form I-821D:** Name, Address, Date of Birth
- **Form I-765:** Name, Address, Date of Birth, Eligibility Category

**10. Provide all required supporting documentation and evidence** **P**You must submit all required evidence and supporting documentation. These documents are required for USCIS to make a decision on your request. Please organize and label your evidence by the guideline it meets. USCIS may issue a request for evidence if additional information is needed to make a decision on



your request.

**11. Do not leave date or place of entry responses blank** **P**You must fill in all fields related to dates and places of entry on Form I-821D. You may fill in your closest approximation of the date or place of entry if you do not know the exact information. You must enter dates in MM/DD/YYYY format.

**12. Personal information to prove economic need** **P** USCIS will consider whether you have an economic need to work by reviewing your personal current annual income, current annual expenses, and the current value of your assets. You do not need to include other household member's financial information to establish your own economic necessity. It is not necessary to submit supporting documentation, though it will be accepted and reviewed if you choose to submit it.

**13. If you make an error on a form, start over with a clean form** **P** USCIS prefers that you type your answers into the form and then print it. If you are filling out your form by hand, use black ink. If you make a mistake, please start over with a new form. Scanners will see through white out or correction tape and this could lead to the form being processed as incorrect, and lead to processing delays or denial.

**14. Review your entire request package** **P** To ensure that your request is accepted for processing, it is important that you review your entire request package before you file with USCIS.

For more information on consideration of deferred action for childhood arrivals, visit [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals). If you have questions about filing a request, please call USCIS at 1-800-375-5283.

USCIS also released guidance for employers on DACA for childhood arrivals, available at

<http://www.uscis.gov/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood>

[%20Arrivals/DACA-Fact-Sheet-I-9\\_Guidance-for-employers\\_nov20\\_2012.pdf](http://www.uscis.gov/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA-Fact-Sheet-I-9_Guidance-for-employers_nov20_2012.pdf). The latest DACA statistics are available at

<http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration>

[%20Forms%20Data/Static\\_files/2012-1116%20DACA%20Monthly%20Report.pdf](http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static_files/2012-1116%20DACA%20Monthly%20Report.pdf)

. The tips are available at



<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4c597039a591b310VgnVCM100000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD>.

[Back to Top](#)

#### **4. USCIS Expands e-Request Services**

U.S. Citizenship and Immigration Services(USCIS) has expanded the services available via its e-Request system. The Web-based tool allows users to ask about applications and petitions submitted to USCIS. Users can now:

- Create a service request for all forms to either inquire about the status of an application or petition if it is outside of the normal processing time or notify USCIS about an administrative error in a notice or document USCIS sent.
- For Forms I-90 and N-400 only, ask about an Application Support Center appointment notice or other notice the user was expecting to receive.
- Access services for individuals with disabilities (508 compliant).

To submit an e-Request, go to the USCIS e-Request home page (<https://egov.uscis.gov/e-request/Intro.do>) and have the receipt number available.

The USCIS notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2f7b7039a591b310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

[Back to Top](#)

#### **5. USCIS Holds Teleconference on I-601 Waivers**

On November 13, 2012, U.S. Citizenship and Immigration Services(USCIS) held a teleconference to discuss the transition to centralized Lockbox filing of Form I-601, Application for Waiver of Grounds of Inadmissibility, filed by applicants outside the United States.

As background, on June 4, 2012, USCIS phased in a new requirement that I-601s

and associated Forms I-212 and I-290B be filed and adjudicated in the United States. An exception was made for applications filed at the U.S. consulate in Ciudad Juarez, Mexico, for six months. Beginning December 5, 2012, I-601s and associated forms must be filed in the United States unless the applicant meets criteria allowing him or her to file at an international USCIS office. The criteria include circumstances such as applicants residing in Cuba, or applicants facing urgent issues such as a medical emergency, a threat to personal safety, being close to aging out of visa eligibility, or having adopted a child locally and needing to depart the country imminently.

The teleconference notice, which includes a link to international USCIS offices, is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3ade4872162ea310VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD>. The memo listing the exceptions is available at

[http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/I601\\_Centralization\\_Exception\\_PM\\_2.pdf](http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/I601_Centralization_Exception_PM_2.pdf).

[http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/I601\\_Centralization\\_Exception\\_PM\\_2.pdf](http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/I601_Centralization_Exception_PM_2.pdf).

This new process is separate from the notice of proposed rulemaking that was announced on March 30, 2012, outlining a proposed process for provisional unlawful presence waivers. A USCIS announcement concerning that notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e784875decf56310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

[Back to Top](#)

## **6. Head of Law Firm Sentenced to Prison for Visa Fraud**

Joseph Wai-Man Wu, the head of East West Law Group, a former law firm in Los Angeles, California, was sentenced to 10 months in prison on November 15, 2012. For approximately 13 years, from 1996 to 2009, he and others in his firm filed at least 137 employment-based visa petitions fraudulently for nearly 100

clients.

They also set up almost a dozen shell companies as part of the scheme, and laundered a portion of the profits by purchasing cemetery plots and grave monuments. The clients paid from \$6,000 to \$50,000 each. "Our agents encounter a lot of unusual money laundering schemes, but this is the first time we've come across a case where the suspects sought to bury their profits by buying cemetery plots," said Claude Arnold, special agent in charge for HSI Los Angeles.

The press release is available at

<http://www.ice.gov/news/releases/1211/121115losangeles.htm>.

[Back to Top](#)

## **7. OFLC, USCIS Issue Guidance on Hurricane Sandy Relief; USCIS Extends RFE Deadlines**

The Department of Labor's Office of Foreign Labor Certification (OFLC) issued a FAQ on extensions and reasonable-case accommodations in light of the damage done to certain East Coast areas in the United States as a result of Hurricane Sandy. Also, U.S. Citizenship and Immigration Services (USCIS) issued a reminder on immigration benefits or relief that may be available to those affected.

### **OFLC**

The OFLC FAQ notes that the agency recognizes that some employers may not be able to respond in a timely manner to requests for information or documentation. Accordingly, OFLC said it will review storm-related requests for extensions individually.

OFLC provided the following contact information:

For questions or requests for extensions in replying to audits from the OFLC Chicago National Processing Center related to the programs listed below, e-mail [TLC.chicago@dol.gov](mailto:TLC.chicago@dol.gov); Subject: Hurricane Sandy; or telephone the Center at (312) 886-8000.

- H-2A Temporary Agricultural Program
- H-2B Temporary Nonagricultural Program
- H-1B Specialty Occupations Program

For questions or requests for extensions related to the issuance of a prevailing wage determination from OFLCXs National Prevailing Wage Center, e-mail [FLC.PWD@dol.gov](mailto:FLC.PWD@dol.gov), Subject: Hurricane Sandy; or telephone the Center at (202) 693-8200.

For permanent labor certification (PERM) program-related questions or requests for extensions related to responding to audits or supervised recruitment instructions, including draft advertisements, e-mail [PermSandy@dol.gov](mailto:PermSandy@dol.gov); Subject: Hurricane Sandy; or telephone the Center at (404) 893-0101.

The OFLC FAQ is available at

[http://www.foreignlaborcert.doleta.gov/pdf/Sandy\\_Extension\\_FAQ11-8-2012.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Sandy_Extension_FAQ11-8-2012.pdf).

## USCIS

USCIS reminded those affected by Hurricane Sandy of certain U.S. immigration benefits or relief that may be available to them.

USCIS said it understands that a natural disaster can affect an individual's ability to maintain lawful immigration status or obtain certain other immigration benefits. Eligible individuals may request or apply for temporary relief measures, including:

- a change or extension of nonimmigrant status for an individual currently in the United States, even when the request is filed after the authorized period of admission has expired;
- extension or re-parole of individuals previously granted parole by USCIS;
- expedited adjudication of off-campus employment authorization applications for F-1 students experiencing severe economic hardship;
- expedited adjudication of employment authorization applications; and
- assistance to legal permanent residents (LPR) stranded overseas without immigration or travel documents, such as permanent resident cards (green cards). USCIS said it and the Department of State will coordinate on these matters when LPRs are stranded in places that do not have a local USCIS office.

Where appropriate, USCIS said it may exercise its discretion to allow for delays in filing resulting from the hurricane. This may include, for example:

- assistance to those who have not appeared for an interview or submitted

required forms of evidence. The affected person may show how the disrupting event affected his or her connection to USCIS and the ability to appear or submit documents as required; and

- assistance to those who have not been able to respond to Requests For Evidence (RFEs) or Notices of Intent to Deny (NOID). USCIS said it "will extend the deadline for individuals to respond to RFEs or NOIDs by 30 days. This will apply to all RFEs and NOIDs with a deadline of October 26 through November 26, 2012. During this time, USCIS will not issue denials based on abandonment of an application or petition."

Visitors traveling under the Visa Waiver Program may visit a local USCIS office for assistance. USCIS asks that affected visitors check whether their local USCIS office is open before going. Individuals affected by the hurricane who are at a U.S. airport may contact the nearest U.S. Customs and Border Protection office for assistance.

Lists of local USCIS offices are available at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=e39c0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=e39c0b89284a3210VgnVCM100000b92ca60aRCRD>. Office closures are updated at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=fb385723f88aa310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

USCIS's announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4a2c5cb3071ca310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

[Back to Top](#)

## **8. State Dept. Projects Visa Numbers; Cut-Off Date Likely for China Employment Fifth Preference Later in FY 2013**

The Department of State's Visa Office released projections for the next several months in its Visa Bulletin for December 2012.

Among other things, it appears likely that a cut-off date will need to be established for the China employment fifth preference category during the second half of fiscal year 2013, the Visa Office said, noting that "such action

would be delayed as long as possible, since while number use may be excessive over a 1 to 5 month period, it could average out to an acceptable level over a longer (e.g., 4 to 9 month) period." This would be the first time a cut-off date has been established in this category, the Visa Office noted, explaining that this is why "readers are being provided with the maximum amount of advance notice regarding the possibility." The Visa Office noted that this advisory is based strictly on the current demand situation, and that demand patterns can change over time. Therefore, "this should be considered a worst case scenario at this point," the Visa Office said.

The Visa Office said that categories with a "Current" projection "will remain so for the foreseeable future," with the possible exception of the China employment fifth preference category mentioned above.

The following is the projected monthly forward progress for the employment-based categories (monthly):

Employment First: Current Employment Second: Worldwide: Current China: five to eight weeks/month India: no movement Employment Third:

Worldwide: three to five weeks/month

China: one to two months/month

India: up to two weeks/month

Mexico: three to five weeks/month

Philippines: one to three weeks/month

Employment Fourth: Current Employment Fifth: Current

The Visa Bulletin for December 2012 is available at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5803.html](http://www.travel.state.gov/visa/bulletin/bulletin_5803.html).

[Back to Top](#)

## **9. ABIL Global: Canada - Update on Federal Immigrant Investor Program and Federal Skilled Worker Program**

### **Federal Immigrant Investor Program**

On July 1, 2012, Citizenship and Immigration Canada (CIC) imposed a moratorium on the Federal Immigrant Investor Program (FIIP) to reduce the existing large number of applications while the program is reviewed. This pause on new applications will continue until further notice from CIC.

In August 2012, CIC invited various stakeholders and the public to participate in an online consultation on improving the FIIP, including how such a program can best support Canadian economic priorities.

By way of background, the Economic Action Plan 2012 included reforms of business immigration programs to target more active investment for Canadian growth companies. In April 2012, the Minister of Citizenship, Immigration and Multiculturalism announced that CIC was considering whether it should use its authority under the amended Immigration and Refugee Protection Act (IRPA) to create small short-term programs that may have a great impact on Canada's economy.

In response, until September 2012, CIC received numerous submissions from stakeholders and the public on how the Department could:

- increase the economic benefit that immigrant investment capital brings to Canada;
- attract experienced international investors with the skills and resources needed to ensure they integrate into Canada's economy; and
- develop efficient and cost-effective ways of delivering an investment program.

A summary of the results of the policy papers and recommendations is expected to be published on the CIC website in early 2013.

### **Federal Skilled Worker Program**

On July 1, 2012, CIC also temporarily stopped accepting applications for the Federal Skilled Worker Program (FSWP). This temporary pause did not apply to those with a qualifying job offer or applying under the PhD stream. CIC will likely start accepting applications again when the revised FSWP selection criteria take effect. Proposed FSWP changes should come into force in early 2013.

For an application to be eligible for processing under FSWP, the applicant must include the results of his or her official language proficiency test and must fall into one of these categories:

1. Skilled workers with a valid offer of arranged employment; or
2. International students enrolled in a PhD program at a provincially or territorially recognized private or public post-secondary educational institution in Canada who:



- have completed at least two years of study toward a PhD
  - are in good academic standing at the time they apply
  - are not recipients of an award requiring them to return to their home country to apply their knowledge and skills, or
1. International students who graduated from a PhD program at a provincially or territorially recognized private or public post-secondary educational institution in Canada who:
    - graduated no more than 12 months before the date their application was received
    - did not receive an award that required them to return to their home country to apply their knowledge and skills (or did, but have satisfied the terms of the award).

A maximum of 1,000 applications from this category will be considered for processing each year. This will not be included in the total for any other cap. Applications will be considered in order they are received. The first cap year for the PhD stream began on November 5, 2011.

[Back to Top](#)

## 10. Firm In The News

**Cyrus Mehta** and **Cora-Ann V. Pestaina** were featured speakers at the 15<sup>th</sup> Annual AILA New York Chapter Immigration Law Symposium on December 3, 2012. Ms. Pestaina was the Discussion Leader of a panel entitled "Jumping Through The Ever Changing Hoops – The Acrobatics Of Compliance With PERM." Cyrus Mehta was the Discussion Leader of a panel entitled "Lion Taming – Visas For Entrepreneurs."

[Back to Top](#)