



FEBRUARY 2013 IMMIGRATION UPDATE

Posted on February 4, 2013 by Cyrus Mehta

Headlines:

- 1. [President Obama Speaks on Immigration Reform, Senators Announce Bipartisan Agreement](#)** - President Obama spoke on his immigration reform proposal one day after a bipartisan group of senators also proposed principles for comprehensive immigration reform.
- 2. [USCIS Updates FAQ on DACA, Releases Latest Statistics](#)** - USCIS has posted new information on the definition of DACA, accrual of unlawful presence, continuous residence requirements, the effect of traveling outside the United States, violations of status, DACA for those living in the Commonwealth of the Northern Mariana Islands, fee waivers, and other related issues. USCIS approved 154,404 DACA cases as of January 17, 2013.
- 3. [USCIS Discusses New Policy Manual, Upcoming Guidelines for Precedent Decisions at Stakeholder Engagement](#)** - The manual replaces the Adjudicators' Field Manual and policy memoranda that are in place today. Also, the agency plans to publish guidelines for issuing precedent decisions soon.
- 4. [DHS Adds Grenada to List of 59 Eligible Countries for H-2A, H-2B Programs](#)** - USCIS may approve petitions for H-2A and H-2B nonimmigrant status only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the Federal Register. That notice is renewed each year, and countries may be added or deleted.
- 5. [Reminder: New Fee for Permanent Residence Takes Effect February 1](#)** - As of February 1, 2013, USCIS has begun collecting a new immigrant fee of \$165 from foreign nationals seeking permanent residence in the United States.
- 6. [USCIS Final Rule Allows Provisional Unlawful Presence Waivers To](#)**

[Reduce Separations From Immediate Relatives](#) - The final rule establishes a process that allows certain individuals to apply for a provisional unlawful presence waiver before they leave the United States to attend immigrant visa interviews in their countries of origin.

[7. USCIS Revises Guidance on Adjudication of Late Jointly Filed I-751 Petitions for Conditional Permanent Residents](#) - The new guidance supersedes existing guidance for the processing of late jointly filed I-751 petitions submitted without explanation for the late filing.

[8. U.S. Embassies, Consulates in China Will Transition to New Visa Collection System in March](#) - The U.S. embassy strongly advises all visa applicants to use all current CITIC fee receipts before they expire on March 14, 2013.

[9. DHS Announces TPS Redesignation, 18-Month Extension for Sudan and South Sudan](#) - Those who already have TPS must re-register during the 60-day re-registration period that began on January 9, 2013, and runs through March 11, 2013. Those who do not have TPS may apply during a six-month registration period that began on January 9, 2013, and runs through July 8, 2013.

[10. DOL Announces New H-2A Adverse Effect Wage Rates for Each State, Establishes New Prevailing Wage Rates for Certain H-2A Occupations](#) - The Department of Labor said it will publish a separate Federal Register Notice to announce the allowable charges for 2013 that employers seeking H-2A workers may charge for meals as well as the maximum travel subsistence reimbursement that a worker can claim.

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Details:

1. President Obama Speaks on Immigration Reform, Senators Announce Bipartisan Agreement

President Obama spoke in Las Vegas, Nevada, on his immigration reform ideas and released a statement one day after a bipartisan group of senators proposed principles for comprehensive immigration reform, on January 28, 2013.

A fact sheet on President Obama's immigration reform proposal outlines four principles:

First, continue to strengthen our borders. Second, crack down on companies that hire undocumented workers. Third, hold undocumented immigrants accountable before they can earn their citizenship; this means requiring undocumented workers to pay their taxes and a penalty, move to the back of the line, learn English, and pass background checks. Fourth, streamline the legal immigration system for families, workers, and employers.

Among other things, President Obama's proposal includes providing visas to foreign entrepreneurs who want to start businesses in the United States and "helping the most promising foreign graduate students in science and math stay in this country after graduation, rather than take their skills to other countries." He also would provide a legal way for undocumented people to "earn citizenship" by passing national security and criminal background checks, paying taxes and a penalty, "going to the back of the line," and learning English. Young people could earn citizenship more quickly by serving in the military or pursuing higher education.

The President is proposing the following measures, according to the fact sheet:

- **Mandatory, phased-in electronic employment verification.** The President's proposal provides tools for employers to ensure a legal workforce by using federal government databases to verify that the people they hire are eligible to work in the United States. Penalties for hiring undocumented workers are significantly increased, and new penalties are established for committing fraud and identity theft. The new mandatory program ensures the privacy and confidentiality of all workers' personal information and includes important procedural protections. Mandatory electronic employment verification would be phased in over five years with exemptions for certain small businesses.
- **Combat fraud and identity theft.** The proposal also mandates a fraud-resistant, tamper-resistant Social Security card and requires workers to use fraud- and tamper-resistant documents to prove authorization to work in the United States. The proposal also seeks to establish a voluntary pilot program to evaluate new methods to authenticate identity and combat identity theft.
- **Protections for all workers.** The President's proposal protects workers against retaliation for exercising their labor rights. It increases the penalties for employers who hire undocumented workers to skirt the workplace

standards that protect all workers. And it creates a "labor law enforcement fund" to help ensure that industries that employ significant numbers of immigrant workers comply with labor laws.

The proposal also would eliminate annual country caps for employment-sponsored immigration and add visas to the system. It would allow "greater flexibility" to designate countries for participation in the Visa Waiver Program, and would "staple" green cards to advanced STEM (science, technology, engineering, and mathematics) graduates with master's degrees or Ph.D.'s who have found employment in the United States. The proposal would require employers to pay a fee to support education and training "to grow the next generation of American workers in STEM careers."

President Obama's proposal would permanently authorize immigrant visa opportunities for regional center (pooled investment) programs; and provide incentives for visa requestors to invest in programs that support national priorities, including economic development in rural and economically depressed regions. The proposal would create a new visa category for a limited number of highly skilled and specialized employees of federal national security science and technology laboratories who have been in the United States for two years.

Sens. Charles Schumer (D-N.Y.), John McCain (R-Ariz.), Dick Durbin (D-Ill.), Lindsey Graham (R-S.C.), Robert Menendez (D-N.J.), Marco Rubio (R-Fla.), Michael Bennet (D-Colo.), and Jeff Flake (R-Ariz.) proposed the following four "basic legislative pillars":

1. Create a tough but fair path to citizenship for unauthorized immigrants currently living in the United States that is contingent upon securing our borders and tracking whether legal immigrants have left the country when required;
2. Reform our legal immigration system to better recognize the importance of characteristics that will help build the American economy and strengthen American families;
3. Create an effective employment verification system that will prevent identity theft and end the hiring of future unauthorized workers; and
4. Establish an improved process for admitting future workers to serve our nation's workforce needs, while simultaneously protecting all workers.

Among other things, they propose that those who have been working in the U.S. agricultural industry without legal status and who "commit to the long-term stability of our nation's agricultural industries" will be able to "earn a path to citizenship through a different process under our new agricultural worker program."

The senators also lament the "broken" U.S. immigration system that "sadly discourages the world's best and brightest citizens from coming to the United States and remaining in our country to contribute to our economy." This failure, the senators note, makes legal entry into the United States "insurmountably difficult for well-meaning immigrants" and "unarguably discourages innovation and economic growth," in addition to creating substantial visa backlogs that force families to live apart and incentivize undocumented immigration.

To address these challenges, the senators propose a "new immigration system" that recognizes the characteristics that will "help build the American economy and strengthen American families," in addition to reducing backlogs in the family and employment visa categories. Among other things, they propose permanent resident status to immigrants who have received a Ph.D. or master's degree in science, technology, engineering, or mathematics from a U.S. university.

The senators also recommend a mandatory employment verification system with stiff penalties for egregious offenses.

For unauthorized workers, the senators propose legislation that would:

- Allow employers to hire immigrants if it can be demonstrated that they were unsuccessful in recruiting an American to fill an open position and the hiring of an immigrant will not displace American workers;
- Create a workable program to meet the needs of America's agricultural industry, including dairy to find agricultural workers when American workers are not available to fill open positions;
- Allow more lower-skilled immigrants to come here when our economy is creating jobs, and fewer when our economy is not creating jobs;
- Protect workers by ensuring strong labor protections; and
- Permit workers who have succeeded in the workplace and contributed to their communities over many years to earn green cards.

President Obama's fact sheet is available at

<http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules>. His speech transcript is available at <http://www.whitehouse.gov/the-press-office/2013/01/29/remarks-president-comprehensive-immigration-reform>. The senators' statement announcing their framework for immigration reform is available at <http://s3.documentcloud.org/documents/562528/reform0128principlessenatefinal.pdf>.

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2. USCIS Updates FAQ on DACA, Releases Latest Statistics

U.S. Citizenship and Immigration Services (USCIS) recently updated its FAQ on deferred action for childhood arrivals (DACA), and released related statistics. The latest version of the FAQ was released on January 18, 2013. USCIS posted new information on the definition of DACA, accrual of unlawful presence, continuous residence requirements, the effect of traveling outside the United States, violations of status, DACA for those living in the Commonwealth of the Northern Mariana Islands, fee waivers, and other issues.

USCIS also released the latest statistics on DACA as of January 17, 2013. As of that date, USCIS had approved 154,404 cases and rejected 13,366, of a total of 407,899 received and 394,533 accepted for review.

The new updates are marked in the latest FAQ, which is available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD>. The statistics are available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA%20Monthly%20Report%20Aver%20II%20PDF.pdf>.

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3. USCIS Discusses New Policy Manual, Upcoming Guidelines for Precedent Decisions at Stakeholder Engagement

U.S. Citizenship and Immigration Services (USCIS) held a stakeholder

engagement on January 15, 2013, at which Director Alejandro Mayorkas discussed the first volume of a comprehensive new online Policy Manual, among other things. He noted that the first volume covers Citizenship and Naturalization and that the transition to a centralized online policy resource is the result of an agency-wide review of all adjudication and customer service policies. He said the manual replaces the Adjudicators' Field Manual and policy memoranda that are in place today. During the engagement, Director Mayorkas also highlighted new citizenship and naturalization-related policies, provided updates on other issues, and took questions.

Director Mayorkas also noted that the agency plans to publish guidelines for issuing precedent decisions soon.

USCIS's notes on the engagement have not yet been released. The new Policy Manual is available at

[http://www.uscis.gov/policymanual/HTML/](http://www.uscis.gov/policymanual/HTML/PolicyManual.html)

[PolicyManual.html](http://www.uscis.gov/policymanual/HTML/PolicyManual.html). An announcement about the new Policy Manual is available at

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

[4d088aa1a110c310VgnVCM100000082ca60aRCRD&vgnnextchannel](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=)

[=994f81c52aa38210VgnVCM100000082ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=). As content becomes

available for each volume, USCIS will notify the public and invite comment on new or substantially changed policies. Public engagement opportunities will be announced on USCIS's Web site. The announcement about the stakeholder engagement is available at

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

[5ac9fe78ac41c310VgnVCM100000082ca60aRCRD&vgnnextchannel=](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=)

[68439c7755cb9010VgnVCM10000045f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=).

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4. DHS Adds Grenada to List of 59 Eligible Countries for H-2A, H-2B Programs

The Department of Homeland Security (DHS) has added Grenada to the list of countries whose nationals are eligible to participate in the H-2A and H-2B programs for the coming year, effective January 18, 2013.

The agency explained that under DHS regulations, U.S. Citizenship and Immigration Services (USCIS) may approve petitions for H-2A and H-2B

nonimmigrant status only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the Federal Register. That notice is renewed each year, and countries may be added or deleted.

The notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is now identifying 59 countries whose nationals are eligible to participate in the H-2A and H-2B programs for the coming year, including Grenada.

The notice, which includes the list of 59 countries, is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/pdf/2013-00908.pdf>.

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5. Reminder: New Fee for Permanent Residence Takes Effect February 1

As of February 1, 2013, U.S. Citizenship and Immigration Services (USCIS) has begun collecting a new immigrant fee of \$165 from foreign nationals seeking permanent residence in the United States. This new fee was established in USCIS's final rule adjusting fees for immigration applications and petitions announced on September 24, 2010. USCIS said the fee will help to recoup costs for staff time to handle, file, and maintain the immigrant visa package, and the cost of producing and delivering the permanent resident card.

The USCIS notice is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ad70f58f7529b310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The related Federal Register notice is available at https://www.federalregister.gov/articles/2012/12/14/2012-30226/implementation-of-immigrant-visa-dhs-domestic-processing-fee?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

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6. USCIS Final Rule Allows Provisional Unlawful Presence Waivers To Reduce Separations From Immediate Relatives

U.S. Citizenship and Immigration Services has published a final rule that reduces the time U.S. citizens are separated from their immediate relatives (defined as including a spouse, children, and parents) who are in the process of obtaining visas to become lawful permanent residents of the United States, under certain circumstances. The final rule establishes a process that allows certain individuals to apply for a provisional unlawful presence waiver before they leave the United States to attend immigrant visa interviews in their countries of origin. The process takes effect March 4, 2013.

To obtain a provisional unlawful presence waiver, the applicant must be an immediate relative of a U.S. citizen, inadmissible only on account of unlawful presence, and demonstrate that denial of the waiver would result in extreme hardship to his or her U.S. citizen spouse or parent. USCIS will publish a new form, Form I-601A, Application for a Provisional Unlawful Presence Waiver, for individuals to use when applying for a provisional unlawful presence waiver under the new process.

Under the new provisional waiver process, immediate relatives must still depart the United States for the consular immigrant visa process; however, they can apply for a provisional waiver before they depart for their immigrant visa interview abroad. Individuals who file the Form I-601A must notify the Department of State's National Visa Center that they are or will be seeking a provisional waiver from USCIS.

"This final rule facilitates the legal immigration process and reduces the amount of time that U.S. citizens are separated from their immediate relatives who are in the process of obtaining an immigrant visa," said Secretary of Homeland Security Janet Napolitano in an announcement on January 2, 2013. USCIS Director Alejandro Mayorkas said, "The law is designed to avoid extreme hardship to U.S. citizens, which is precisely what this rule achieves. The change will have a significant impact on American families by greatly reducing the time family members are separated from those they rely upon."

USCIS said it received more than 4,000 comments in response to the April 2, 2012, proposed rule and considered all of them in preparing the final rule.

Under current law, immediate relatives of U.S. citizens who are not eligible to adjust status in the United States to become lawful permanent residents must leave the country and obtain an immigrant visa abroad. Individuals who have accrued more than six months of unlawful presence while in the United States

must obtain a waiver to overcome the unlawful presence inadmissibility bar before they can return to the United States after departing to obtain an immigrant visa. Under the existing waiver process, which remains available to those who do not qualify for the new process, immediate relatives cannot file a waiver application until after they have appeared for an immigrant visa interview abroad and the Department of State has determined that they are inadmissible.

USCIS said more information about the filing process will be made available in the coming weeks. The announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=dc9af51016bfb310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The final rule, which was published on January 3, 2013, is available at <https://www.federalregister.gov/articles/2013/01/03/2012-31268/provisional-unlawful-presence-waivers-of-inadmissibility-for-certain-immediate-relatives>. Secretary Napolitano's statement is available at <http://www.dhs.gov/news/2013/01/02/secretary-napolitano-announces-final-rule-support-family-unity-during-waiver-process>. A related FAQ is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD&vgnextoid=b874875decf56310VgnVCM100000082ca60aRCRD>.

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7. USCIS Revises Guidance on Adjudication of Late Jointly Filed I-751 Petitions for Conditional Permanent Residents

A new U.S. Citizenship and Immigration Services (USCIS) policy memorandum revises and clarifies guidance issued on October 9, 2009, relating to late filing of a joint Form I-751, Petition to Remove the Conditions of Residence, and authorizes immigration services officers (ISOs) to issue Requests for Evidence (RFEs) for untimely filed joint I-751s. The new guidance supersedes existing guidance for the processing of late jointly filed I-751 petitions submitted without explanation for the late filing.

USCIS noted that the conditional permanent resident (CPR) and the petitioning spouse must jointly file an I-751 during the 90-day period immediately preceding the second anniversary of the date the CPR acquired conditional resident status.

USCIS may accept I-751 joint petitions filed after this 90-day period if the CPR establishes good cause and extenuating circumstances for the failure to timely file.

Under the new guidance, when an ISO adjudicates a late jointly filed I-751 petition, the ISO will check for a written explanation of the late filing. If the I-751 petition is submitted with an explanation for the late filing, the ISO will review the explanation for the untimely filing in relation to the length of time the application was untimely filed, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing. If the CPR did not include a written explanation for the late filing, the ISO will issue an RFE, requesting a reasonable explanation for the late filing and corroborating evidence. If the ISO receives a response to the RFE, the ISO will evaluate the explanation, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing. Corroborating evidence is not necessary if the explanation is acceptable on its face. After receiving a response to the RFE, the ISO may transfer the I-751 file for an interview if the documentary evidence leads to an inconclusive result and the determination of good cause for the late filing would benefit from a live interview. If the ISO does not receive a response to the RFE, the ISO will deny the I-751 for failure to comply with the filing requirements.

The interim policy memorandum is available at

<http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/I-751-LateFiling-PM.pdf>.

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8. U.S. Embassies, Consulates in China Will Transition to New Visa Collection System in March

The U.S. embassy and consulates general in China will transition to a "new and improved" visa fee collection system for Chinese applicants in mid-March 2013. As a result of this new system, the U.S. visa fee receipts that applicants currently purchase from select CITIC Bank branches will be phased out and will not be valid after March 14, 2013. There will be no fee increase associated with these changes. The U.S. embassy strongly advises all visa applicants to use all current CITIC fee receipts before they expire on March 14, 2013. "After the expiration date, we will be unable to accept receipts issued before March 14 and refunds for expired receipts will not be available. Visa applicants who plan

to apply close to or after March 14 should wait to pay their visa fees until after this date." The U.S. embassy in Beijing said that specific details on this new way for applicants to pay their visa fees will be announced closer to the transition date.

The announcement is available at

http://beijing.usembassy-china.org.cn/niv_info.html.

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9. DHS Announces TPS Redesignation, 18-Month Extension for Sudan and South Sudan

The Department of Homeland Security has redesignated Sudan and South Sudan for temporary protected status (TPS) and extended their existing TPS designations from May 3, 2013, through November 2, 2014. Those who already have TPS must re-register during the 60-day re-registration period that began on January 9, 2013, and runs through March 11, 2013. Those who do not have TPS may apply during a six-month registration period that began on January 9, 2013, and runs through July 8, 2013.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4cf3c4762df1c310VgnVCM100000082ca60aRCRD&vgnnextchannel=17dcb6f2cae63110VgnVCM1000004718190aRCRD>. The Federal Register

notice for Sudan is available at

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2013-00049.pdf>. The Federal

Register notice for South Sudan is available at

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2013-00051.pdf>.

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10. DOL Announces New H-2A Adverse Effect Wage Rates for Each State, Establishes New Prevailing Wage Rates for Certain H-2A Occupations

The Department of Labor (DOL) has announced new adverse effect wage rates (AEWRs) for each state based on the Farm Labor Survey conducted by the U.S. Department of Agriculture. The AEWRs are the minimum hourly wage rates the DOL has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular agricultural job and area so that the wages of similarly employed U.S. workers will not be adversely

affected.

The DOL said it will publish a separate Federal Register Notice to announce the allowable charges for 2013 that employers seeking H-2A workers may charge for meals as well as the maximum travel subsistence reimbursement that a worker can claim. Until that Federal Register notice is published, the agency said that employers should continue to use the current meal charges and maximum travel subsistence at

http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm. The Federal Register notice announcing the new AEWRs is at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/pdf/2013-00117.pdf>.

The DOL also has published a notice establishing new prevailing wage rates for certain occupations processed under H-2A special procedures. The wage rates established by this Federal Register notice apply only to open range production of livestock, itinerant animal shearing, sheepherding and goatherding, and custom combine operations. The notice is published at

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/pdf/2013-00115.pdf>.

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11. Firm In The News...

Cyrus Mehta will participate in a panel discussion on immigration policy and entrepreneurship at Brooklyn Law School on February 13, 2013, at 7 p.m. The panel discussion will be hosted by the Brooklyn Law Incubator and Policy Clinic (BLIP) and New York Legal Hackers. Topics include how immigration can promote entrepreneurship and economic growth, and how federal immigration policy affects New York's thriving startup scene, which is at the intersection of law, technology, and business. RSVP at <http://www.meetup.com/legalhackers/>. For more information, visit <http://Blipclinic.org> or email alexander.osullivan@brooklaw.edu.

Mr. Mehta was a Speaker on *Representation of Entrepreneurs: Fitting Square Pegs In Round Holes*, at the AILA 2013 Midyear Conference, Panama City, Panama, January 25, 2013.

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