



## OCTOBER 2013 IMMIGRATION UPDATE

*Posted on October 2, 2013 by Cyrus Mehta*

### Headlines:

1. [Effects of Government Shutdown on Immigration Services Summarized](#) - E-Verify is unavailable, among other effects of the federal government shutdown.
2. [Diversity Visa Registration for 2015 Program Begins; Nigeria No Longer Eligible](#) - Online registration for the DV-2015 Program began on Tuesday, October 1, 2013, at 12 noon EDT (GMT-4), and will conclude on Saturday, November 2, 2013, at 12 noon EDT (GMT-4).
3. [Immigration Reform Languishes in Congress Amid Distractions](#) - Immigration reform legislation lags in the House of Representatives; progress into 2014 is uncertain at best.
4. [U.S. Consulate in Chennai Provides Helpful Tips to ABIL](#) - The Chennai consulate in India processes 25% of the world's H-1B visa applications and 30% of the world's L-1 visa applications.
5. [State Dept. Sends Guidance to Posts on New Electronic Immigrant Visa Application](#) - The Department of State recently sent a cable to all diplomatic and consular posts providing guidance and describing the timeline for deployment of the new electronic DS-260 (Immigrant Visa Application) and DS-261 (Choice of Address and Agent).
6. [USCIS Implements Identity Verification at Field Offices](#) - The new tool allows applicants to submit biometric data (fingerprints and photographs) when appearing at USCIS offices for interviews or to receive evidence of an immigration benefit. USCIS still requires applicants and petitioners requesting immigration or naturalization benefits to visit an Application Support Center to provide biometric data.

7. [DACA Reaches One-Year Mark](#) - 588,725 applications were received as of August. Of those, 567,563 were accepted and 21,162 were rejected.

8. [Thousands Naturalized at Constitution Day and Citizenship Day Ceremonies](#) - More than 18,000 new citizens were naturalized during more than 180 ceremonies between September 16 and September 23.

9. [Senate Reauthorizes Special Immigrant Visa Program for Iraqis](#) - On September 30, 2013, the Senate reauthorized the Special Immigrant Visa program for Iraqi nationals who worked for or on behalf of the United States government in Iraq. It now goes to the House of Representatives.

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## Details

### 1. **Effects of Government Shutdown on Immigration Services Summarized**

The shutdown of the federal government will affect certain components of the U.S. immigration system. For example, the E-Verify system is unavailable. Regulatory developments could also be delayed. The following is an overview of how the shutdown will affect various processes, based on agency statements and news reports.

**U.S. Citizenship and Immigration Services:** Processing of petitions and applications at USCIS is expected to continue uninterrupted because the agency is funded by user fees and does not depend on federal appropriations.

While the shutdown continues, however, E-Verify users will not be able to access their accounts. As a result, they will be unable to:

- Enroll any company in E-Verify
- Verify employment eligibility
- View or take action on any case
- Add, delete, or edit any User ID
- Reset passwords
- Edit company information
- Terminate an account

- Run reports
- View "Essential Resources" (see <http://www.dhs.gov/e-verify>)

In addition, E-Verify Customer Support and related services are closed. As a result:

- Employees will be unable to resolve Tentative Nonconfirmations (TNCs).
- Telephone and e-mail support will be unavailable. Users may send e-mails, but USCIS says it cannot respond until the agency reopens.
- E-Verify webinars and training sessions are cancelled.
- E-Verify Self-Check is not available.

USCIS said it understands that E-Verify's unavailability may have a significant impact on company operations. To minimize the burden on both employers and employees, USCIS has implemented the following policies:

- The "three-day rule" for E-Verify cases is suspended for cases affected by the shutdown. USCIS said it would provide additional guidance once it reopens. USCIS noted that this does not affect the Form I-9 requirement. Employers must still complete the I-9 no later than the third business day after an employee starts work for pay.
- The time period during which employees may resolve TNCs will be extended. Days the federal government is closed will not count toward the eight federal government workdays the employee has to go to the Social Security Administration or contact the Department of Homeland Security. USCIS said it will provide additional time once it reopens.
- Federal contractors complying with the federal contractor rule should contact their contracting officers to ask about extending deadlines.
- Employers may not take any adverse action against an employee because of an E-Verify interim case status, including while the employee's case is in an extended interim case status due to the federal government shutdown. USCIS says employers should consult the *E-Verify User Manual* for more information on interim case statuses.

Also, USCIS's Ombudsman's Office is closed as of October 1, 2013. Additionally, case inquiries submitted online or through emailed/faxed DHS 7001 forms will remain pending until the Ombudsman resumes operations.

Systematic Alien Verification for Eligibility (SAVE) will be operational during the shutdown.

**Department of Labor:** The Office of Foreign Labor Certifications, which has oversight of most immigration-related processes, is effectively closed. Consequently, the Department of Labor (DOL) will not accept or process any applications or materials relating to Labor Condition Applications (LCAs), Prevailing Wage Determinations, or Applications for Permanent Employment Certification (i.e., the PERM system).

The operational status of DOL affects the ability to file petitions with USCIS that require a certified LCA (such as requests for H-1B, H-1B1, and E-3 classification). Historically, in instances where it was not possible to obtain a certified LCA, USCIS temporarily created an exemption to the LCA requirement. To date, however, no such exemption has been announced. Similarly, the DOL's status may affect the timing requirements of PERM applications. Future guidance on these issues is expected.

The DOL notes that "in the event of a government shutdown, processing times in the foreign labor certification programs will be extended, and may cause delays in decisions in applications in those programs." OFLC's web site, including the iCERT Visa Portal System, is unable to process any requests or allow authorized users to access their online accounts.

**Department of State:** The issuance of visas, as well as related consular operations, will remain operational for the present time. However, the Department of State has indicated that if current funds are exhausted, consular services may be reduced or halted. Applicants for visas are advised to monitor the website of the consulate at which they intend to apply for the latest information.

Reports indicate that passport and visa services will continue for the present time, but there is uncertainty in the event the shutdown lasts longer. Consular operations are not currently affected but will be decided on a case-by-case basis in the event of a lapse in appropriations.

**U.S. Customs and Border Protection:** The Border Patrol is not shutting down. Those entering the United States with a valid visa should not encounter any issues at airports or land border crossings, and the electronic I-94 retrieval system is operational. However, individuals who seek to apply for an immigration benefit at a port-of-entry or a pre-clearance facility (such as TN and L-1 applications for Canadian nationals) are advised to confirm the operational status of the location at which they intend to apply for the latest information.

**Executive Office for Immigration Review:** Immigration courts nationwide are continuing to adjudicate detained cases. Court functions that support the detained caseload will continue, but other functions are suspended. For specific information about a particular court, see

<http://www.justice.gov/eoir/ICstatus.htm>.

The Board of Immigration Appeals (BIA) is processing emergency stay requests as well as cases where the alien is detained, including case appeals, motions, federal court remands, and bonds. The stay line is open for emergency stay calls only. All other telephone lines have been switched to closed status. The BIA Clerk's Office staff is accepting all filings and will be open Monday through Friday, from 8:00 a.m. until 4:30 p.m.

During the government shutdown, the Office of the Chief Administrative Hearing Officer will maintain its ability to issue subpoenas and accept for filing any antidiscrimination complaints that must be filed to comply with statutory deadlines.

USCIS's statement about the E-Verify shutdown is available at <http://content.govdelivery.com/bulletins/gd/USDHSCIS-8d7ce1>. A summary of DHS's plans is available at <http://m.whitehouse.gov/sites/default/files/omb/contingencyplans/2013/dhs-lapse-plan-summary-09-27-13.pdf>. The DOL's statement is available at [http://www.dol.gov/opa/media/press/opa/shutdown\\_plan2013.pdf](http://www.dol.gov/opa/media/press/opa/shutdown_plan2013.pdf). Information on the DOL's Employment and Training Administration activities is available at [http://wdr.doleta.gov/directives/attach/TEN/TEN\\_8\\_13.pdf](http://wdr.doleta.gov/directives/attach/TEN/TEN_8_13.pdf). The Department of State's information on the shutdown is available at <http://www.state.gov/m/rls/2013/214862.htm>.

If you have any questions or concerns on how the government shutdown affects an employee's immigration process or employment eligibility verification, please contact your Alliance of Business Immigration Lawyers attorney for further guidance.

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## **2. Diversity Visa Registration for 2015 Program Begins; Nigeria No Longer Eligible**

Online registration for the DV-2015 (Diversity Visa) Program began on Tuesday, October 1, 2013, at 12 noon EDT (GMT-4), and will conclude on Saturday,

November 2, 2013, at 12 noon EDT (GMT-4). The Department of State advises, "Do not wait until the last week of the registration period to enter, as heavy demand may result in website delays."

Nationals of the following countries are **not** eligible for DV-2015: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

"Diversity immigrants" are selected by random lottery from eligible nationals of countries with historically low rates of immigration to the United States. For fiscal year 2015, 50,000 diversity visas will be available. There is no cost to register for the DV Program.

Applicants who are selected in the lottery must meet eligibility requirements to qualify. Diversity visas are distributed among six geographic regions, and no single country may receive more than seven percent of the available diversity green cards in any one year.

Entries must be submitted online only once at <http://www.dvlottery.state.gov>. Incomplete or duplicate entries will be disqualified. Entrants will need to check the status of their entries online at the same website beginning in May 2014. The instructions for the DV-2015 Program, which includes eligibility requirements and frequently asked questions, are available at [http://travel.state.gov/pdf/DV\\_2015\\_Instructions.pdf](http://travel.state.gov/pdf/DV_2015_Instructions.pdf).

DV-2014 entrants may check the status of their entries through [Entrant Status Check \(http://travel.state.gov/visa/immigrants/types/types\\_1322.html#status\)](http://travel.state.gov/visa/immigrants/types/types_1322.html#status) through June 30, 2014.

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### **3. Immigration Reform Languishes in Congress Amid Distractions**

With all the kerfuffle around Syria, the efforts to kill the health care law known as "Obamacare," the partial government shutdown, and the debate over the looming possible refusal to raise the debt ceiling and economic crisis that could produce, immigration reform legislation lags in Congress. Progress has been stymied in the House of Representatives following statements from some

House members that they would prefer a piecemeal approach and others saying they want comprehensive reform. Chances for progress in the near future seem dim.

Not everyone is pessimistic. Some technology insiders are still pushing and hoping for progress on the high-skilled worker front at least. Scott Corley, Compete America's executive director, said, "We're not going to accept the crisis excuse. There is always a crisis. Immigration is a crisis. Being in Congress you have to walk, chew gum, juggle knives and jump through hoops on fire all at once. That's the job." And Mark Zuckerberg of Facebook, a self-described "optimist," recently visited Capitol Hill to advocate in favor of legislation to increase the number of high-skilled workers, noting that "addressing the 11 million undocumented folks is a lot bigger problem than high-skilled workers." Google and Microsoft have previously weighed in, advocating in favor of addressing high-skilled worker shortages in science, technology, engineering, and math (STEM) through legislation. Dan Turrentine, TechNet's vice president of government relations, asserted, "We respect the process to do as fit, but we absolutely think it can get done this year."

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#### **4. U.S. Consulate in Chennai Provides Helpful Tips to ABIL**

On August 13, 2013, Alliance of Business Immigration Lawyers (ABIL) founder and past president, Angelo Paparelli, traveled to the U.S. Consulate in Chennai, India, to exchange views between the post and ABIL. He visited with Michael G. Cathey, Deputy Chief of Consular Services; Susan L. Dunathan, Vice Consul; and others. The following is a summary of the visit.

Mr. Cathey welcomed ABIL as part of extensive outreach conducted over the last two years. That outreach has included the business community, visiting attorneys, Business Executive Program (BEP) meetings, and public meetings with business groups. The purpose of the outreach is to educate stakeholders on how they can "help us to get to yes," he said.

Mr. Cathey noted that the Chennai consulate processes 25% of the world's H-1B visa applications and 30% of the world's L-1 visa applications. The post consolidated adjudication of all Indian blanket L-1s in 2011. Fourteen adjudicators work there daily. They process 1,000 nonimmigrant visa (NIV) applications per day (1,300 per day in high season). Each officer conducts 120



NIV interviews per day in a four-to-five-hour time frame. Consular interviews average three to four minutes each (although Ms. Dunathan noted that easy cases from companies they know well, like Google, can be done in one to two minutes, thereby allowing some tougher cases to take up to six minutes for the interview).

Regarding L-1B specialized knowledge, Ms. Dunathan said it is far easier to say what specialized knowledge is not. She said she divides the applicant world between product makers (easier to find specialized knowledge) and service providers (much harder for specialized knowledge). Working with "proprietary tools" does not necessarily qualify for specialized knowledge, whereas developing such tools might.

Both Mr. Cathey and Ms. Dunathan said they don't consider whether their decisions impact American job opportunities, with Mr. Cathey adding that their mission is to facilitate legitimate personal and business travel to the United States. He offered that for blanket L-1s, his officers operate under the "clearly approvable" standard, which is "way higher than the USCIS's preponderance of the evidence" test.

Ms. Dunathan noted that "cover letters read like advertising materials" and that consular officers "don't have time to read a sheaf of papers." All agreed that the visa applicant's answers to their "infinitesimally small universe of questions" is what must demonstrate visa eligibility. Mr. Cathey noted that applicants sometimes come woefully unprepared for interviews.

Mr. Cathey explained that in his view the Indian IT consulting companies land a project and then subordinates find human resources to staff it. The visa applicants often know nothing about how or why the project was procured. Mr. Cathey said that companies should focus their interview preparation on educating the applicant on the project. They should ask themselves: "Did our company get this project because we had some articulable value to contribute that was unique in the marketplace and the industry, or because we were the low bidder?" If the former, then specialized knowledge might be feasible; if the latter, then don't use the L-1 as a substitute for a quota-depleted H-1B. Thus, he urged, a company should focus less on the number of years of the applicant's experience, and more on why the project was procured. Ms. Dunathan observed that the quality of L-1 submissions plummets each time the H-1B annual cap is reached.



Turning briefly to L-1As, Mr. Cathey asserted that there is no minimum number of subordinates managed (such as 10) to qualify. But he maintained that the blanket L-1's "clearly approvable" standard made it suitable only for "senior managers."

Ms. Dunathan stated that she routinely denies L-1A for technology leads who oversee three programmers. In her view, the tech lead does the same work as the subordinates but merely has a scheduling function in addition, which is not management. Mr. Paparelli noted that first-line supervisors of professionals are L-1A managers under the USCIS regulations and that the authority to "recommend personnel decisions" is an indication of manager standing. He also noted, and Mr. Cathey agreed, that the consular officer's role is not lawmaking or policy but law implementation. Mr. Cathey said his team only follows instructions from State and guidance from USCIS, and "if those change in a way that more folks are eligible, then our visa approvals will correspondingly increase."

In subsequent comments, Mr. Cathey noted that "we do not adjudicate companies, we adjudicate applicants. True, some companies may have higher approval rates than others, but that means their employees correctly fit and qualify for their respective visa categories."

With respect to the Business Express Program (BEP), Mr. Cathey said the requirement of at least 50 cases per year is stringently applied. If the overall number dips below 50, he said, the company is dropped from the BEP.

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## **5. State Dept. Sends Guidance to Posts on New Electronic Immigrant Visa Application**

The Department of State recently sent a cable to all diplomatic and consular posts providing guidance and describing the timeline for deployment of the new electronic DS-260 (Immigrant Visa Application) and DS-261 (Choice of Address and Agent), which replaces the paper-based DS-230 (Application for Immigrant Visa Registration, parts I and II) and the DS-3032 (Choice of Address and Agent). Worldwide use of the DS-260/261 took effect for new cases on September 1, 2013.

The cable notes, among other things, the availability of software that includes a "biometric oath module" allowing posts to record an electronic fingerprint in

lieu of a written signature attesting to the oath administered before every immigrant visa interview.

The cable states that the Department intends to deploy the DS-260/261 as follows:

- Beneficiaries submitting new cases that arrive at the National Visa Center (NVC) from U.S. Citizenship and Immigration Services (USCIS) on or after September 1 will be instructed to complete the DS-260/261 in lieu of the DS-230/3032. The State Department will update [travel.state.gov](http://travel.state.gov) to reflect this guidance and will remove the PDF versions of Forms DS-230 and DS-3032 from public circulation. If a beneficiary submits a DS-230, NVC will instruct him or her to re-submit a DS-260.
- The State Department will not require DS-260s for beneficiaries of "pipeline" cases already in process at NVC on September 1 if: 1) the case has already been documentarily qualified and sent to scheduling, or 2) NVC receives a single submission of documents that makes a case documentarily qualified. For all other pipeline cases where NVC has occasion to send a "checklist" of missing documents after September 1, NVC will instruct petitioners/agents/beneficiaries to submit the DS-260 along with those missing documents, even if a DS-230 was already on file.
- Those filing petitions locally overseas (with either USCIS or a consular section) on or after September 1 must submit a DS-260 once the petition is approved. Posts should instruct beneficiaries to enter the principal applicant's DOB in YYYYMMDD format in lieu of an "Invoice ID" on the DS-260 login page.
- For cases filed locally overseas before September 1, if beneficiaries have already submitted a DS-230 or received instruction to do so, the consular post should accept the DS-230. If a consular post has not yet provided beneficiaries instructions on how to submit their applications, the post must require the DS-260. The consular post should not, as a general rule, require the submission of a DS-260 if a valid, signed, unexpired DS-230 is already on file and requiring the DS-260 would result in a 221(g) refusal for an otherwise issuable case.
- For Havana Only: Cuban Family Reunification Parole (CFRP) cases are the lone exception to the scenarios described above. The DS-260 will not allow an applicant whose case is not current to access the DS-260. For now, NVC will continue to solicit and accept Form DS-230 from applicants

who opt in to the CFRP program.

Frequently asked questions are available at [http://travel.state.gov/visa/immigrants/info/info\\_5248.html](http://travel.state.gov/visa/immigrants/info/info_5248.html). Instructions are available at [http://www.travel.state.gov/visa/immigrants/info/info\\_5164.html](http://www.travel.state.gov/visa/immigrants/info/info_5164.html).

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## **6. USCIS Implements Identity Verification at Field Offices**

U.S. Citizenship and Immigration Services (USCIS) has begun employing "Customer Identity Verification" (CIV) in its domestic field offices. The tool allows applicants to submit biometric data (fingerprints and photographs) when appearing at USCIS offices for interviews or to receive evidence of an immigration benefit. It will be phased in by October 21, 2013.

After an applicant arrives at a field office, clears security, and is called to the counter, USCIS will electronically scan two fingerprints and take a picture to verify identity. The process takes a few minutes and applies only to those who have an interview or are receiving evidence of an immigration benefit. Those who come to a USCIS office for InfoPass appointments or to accompany an applicant will not undergo this process.

Currently, USCIS requires applicants and petitioners requesting immigration or naturalization benefits to visit an Application Support Center (ASC) to provide biometric data. "This requirement, along with providing a government-issued document for examination, will not change," USCIS said.

CIV connects instantly to the United States Visitor and Immigrant Status Indicator Technology's (US-VISIT) Secondary Inspections Tool (SIT). SIT is a Web-based application that processes, displays, and retrieves biometric and biographic data. US-VISIT also links databases associated with border inspections and security.

The announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4a4b167b1a3f0410VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

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## **7. DACA Reaches One-Year Mark**

The Deferred Action for Childhood Arrivals (DACA) started on August 15, 2013. One year later, the numbers for August 2013 showed that a total of 588,725 applications had been received. Of those, 567,563 were accepted and 21,162 were rejected. The average number of applications accepted per day as of August was 2,158.

The report for August 2013 is available at

<http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca-13-9-13.pdf>.

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## **8. Thousands Naturalized at Constitution Day and Citizenship Day Ceremonies**

U.S. Citizenship and Immigration Services naturalized more than 8,000 candidates on September 17, 2013, which was Constitution Day and Citizenship Day. More than 18,000 new citizens were naturalized during more than 180 ceremonies between September 16 and September 23. The event commemorated the signing of the U.S. Constitution in 1787.

A list of the ceremony locations and dates is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2d1c6056a0211410VgnVCM100000082ca60aRCRD&vgnnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD>.

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## **9. Senate Reauthorizes Special Immigrant Visa Program for Iraqis**

On September 30, 2013, the Special Immigrant Visa (SIV) program for Iraqi nationals who worked for or on behalf of the United States government in Iraq was set to expire. The Senate unanimously reauthorized it that night. It now goes to the House of Representatives, which has voted to reauthorize the program in the past.

The program covers Iraqi nationals who have been employed by or on behalf of the United States government in Iraq for at least one year, from March 20, 2003, to the present. The expiration date does not apply to spouses and unmarried children who are following to join a principal applicant.

The earlier announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a5376056a0211410VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>. A related statement by Sens. John

McCain (R-Ariz.) and Jeanne Shaheen (D-N.H.) following the Senate

reauthorization is available at

[http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4).

[http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4).

[http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4).

[http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4).

[http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=74da8f4f-d5b9-c7c0-28c2-75d8e98727c4).

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## 10. ABIL Global: Canada

*Significant new changes are effective for the Québec Skilled Worker Program and the Labour Market Opinion application process; other news.*

### New Québec Skilled Worker Program Requirements

On August 1, 2013, several important legislative changes took effect to the Québec Regular Skilled Worker Program and the Québec Experience Program for Temporary Workers. These changes will remain effective until March 31, 2014. The Québec Regular Skilled Worker Program requires applicants to attain a sufficient number of points to be issued Québec Selection Certificates enabling applications for Canadian permanent residence. The Québec Experience Program for Temporary Workers and for graduating students is an accelerated program that permits qualifying workers who hold full-time skilled jobs in Québec for at least one year, and certain graduating college and university students, to be issued Québec Selection Certificates for permanent residence.

One major change to the Québec Regular Skilled Worker Program is the elimination of the educational requirement for applicants under the List of Areas of Training of the Québec Ministry of Immigration and Cultural Communities (MICC). While applicants will continue to be attributed points if their education is on the list, it is no longer required to qualify for the Québec Regular Skilled Worker Program. A maximum number of 20,000 skilled worker applications will be accepted.

A new order of priority for application processing has been established.

Applications are processed in the following priority order: (1) applications to the Québec Experience Program; (2) applications to the Québec Regular Skilled Worker Program that include a validated employment offer; (3) applications to the Québec Regular Skilled Worker Program from applicants who are attributed points for their area of education; and (4) all other applications submitted under the Québec Regular Skilled Worker Program.

The French language requirements have increased for the Québec Regular Skilled Worker Program and the Québec Experience Program. For the Québec Regular Skilled Worker Program, points are now awarded for both oral and written knowledge of French, instead of the previous requirement of exclusively oral knowledge of French. Applicants are only attributed points for their knowledge of French if they demonstrate an advanced intermediate level. For the Québec Experience Program, applicants can only qualify now if they demonstrate an advanced intermediate-level oral knowledge of French, instead of the previous requirement of an intermediate-level oral knowledge of French.

More information on these changes and answers to frequently asked questions are available at the Québec MICC website at

<http://www.immigration-quebec.gouv.qc.ca/en/informations/rules-procedures.html>.

### **New Changes to the Work Permit Labour Market Opinion Application Process**

Effective July 31, 2013, Service Canada introduced a number of significant changes to the labour market opinion (LMO) in addition to the many changes introduced since April 2011. These latest amendments to the Immigration and Refugee Protection Regulations have introduced a new language assessment factor. As a result, only English and French may be identified as a job requirement in advertisements and LMO requests, unless it can be demonstrated that another language is essential for the position.

Additionally, employers now must make greater efforts to hire Canadians before they will be eligible to apply for temporary foreign workers. Employers must advertise an available position for at least four weeks before applying for an LMO, and must continue to actively seek qualified Canadians to fill the position until the LMO has been issued. Employers must also advertise on the national Service Canada Job Bank website and use at least two other recruitment methods consistent with the advertising practices for the

occupation.

A new LMO application form has also been released, including additional questions intended to assist program officers in assessing the impact on the Canadian labor market and curbing the practice of using foreign workers in Canada temporarily to facilitate the outsourcing of Canadian jobs.

Another change is that an application fee of CAD \$275.00 must be paid for each position requested to cover processing.

### **Immigrant and Non-Immigrant Applicants (and Their Lawyers) Relieved As Foreign Service Workers To Return To Full-Time Work At Canadian Visa Offices**

Canada's foreign service has reached a deal on a new contract with the Canadian federal government, ending a lengthy dispute, including strikes, that have created an extensive backlog to visa processing and other consular services abroad. The government agreed to increase base pay for senior ranks of the foreign service, bringing it more in line with what the union had argued were comparable positions elsewhere in government. The government had previously resisted salary increases by taking the position that the jobs were already well-paid.

### **The Federal Skilled Trades Program—Expedited Immigration Processing**

The government of Canada launched the Federal Skilled Trades Program (FSTP) in January 2013 to facilitate the immigration of skilled tradespeople who meet Canada's current and evolving trade needs. Applicants are assessed on relevant criteria such as language ability, practical training, and work experience, rather than on formal academic education.

The FSTP was also created in response to requests from Canadian employers for skilled workers to fill labor shortages, particularly in the natural resources and construction sectors. Eligible applicants include carpenters, plumbers, contractors and supervisors of electrical trades, construction trades, installers, repairers and servicers, supervisors of logging and forestry or mining and quarrying, contractors and supervisors of oil and gas drilling services, and logging machinery operators, among various other trades.

To attract and retain qualified, in-demand candidates, Citizenship and Immigration Canada's (CIC) goal is to process applications in this category as



quickly as possible. Current processing time for FSTP applications is three to four months. While this outcome is excellent for Canada's trade industry, it is unfortunate that business owners and skilled, top-tier management employees essential to some of the largest companies in Canada continue to await receipt of permanent residence in queues of up to three years.

### **Parent and Grandparent Super Visas—How Super is this Visa?**

Parents and grandparents of Canadian citizens and permanent residents, whether visa exempt or not, can apply for a Parent and Grandparent Super Visa to visit their children and grandchildren in Canada.

The benefit of applying for this visa is that it is valid for up to 10 years and allows an applicant to remain in Canada for up to 24 months at a time without the need to renew their status. The process for getting a Super Visa is not simple, however. Applicants must provide proof that the host child or grandchild meets a minimum income level, demonstrate that they have purchased comprehensive Canadian medical insurance (which can cost \$20,000), and undergo immigration medical examinations. Moreover, extensive background, residence, travel, and security information is required.

Although the government is issuing more than 1,000 Super Visas monthly, this new application process has created an extraordinarily expensive mandatory medical insurance requirement for parents and grandparents who are not visa exempt or, if visa exempt, for parents or grandparents wishing to remain in Canada for more than six months. It has created a lucrative new insurance market for Canadian insurance companies. The new Super Visa has also resulted in high refusal levels for traditional visa applications as well as visitor record renewals.

### **Citizenship Law Changes**

#### *Citizenship Testing Procedures Amended*

Citizenship applicants in Canada who fail their first citizenship test will now have the opportunity to rewrite the test rather than wait for an appointment with a citizenship judge. In the past, individuals who failed their knowledge test had to wait several months for an appointment with a citizenship judge, who would then make a final decision on their case. Under the new procedure, applicants will be informed of their results immediately following their test. Individuals who fail but who have met all other criteria will be provided with a

date to rewrite the test a few weeks later. Those who pass their test will be scheduled for a citizenship ceremony. Additionally, individuals who are currently waiting to see a citizenship judge because they had previously failed the test will also be invited to rewrite the test.

### *Citizenship Applications to be Separated for Approval*

All family members listed on one application no longer must be approved at the same time. Previously, there were cases where all family members who had applied together were held up in obtaining citizenship when only one family member had failed a knowledge or language test. Successful applicants will now be informed that they may have their applications processed independently of other family members. This means that fewer people will need to wait for their applications to be processed and can proceed directly to being granted citizenship.

### *Government Hires More Citizenship Judges*

In an attempt to reduce the growing citizenship backlog, the government of Canada announced an investment of \$44 million over two years toward improving citizenship processing. It is hoped that these funds will assist the government to address the growing backlog on straightforward citizenship applications that are currently in a queue of 25 months or more. The government is also increasing the number of citizenship judges in Canada so they can make more decisions on citizenship applications and hold more citizenship ceremonies.

### *New Citizenship Test Preparation Resource*

The citizenship eligibility test study guide, *Discover Canada: The Rights and Responsibilities of Citizenship*, has now been made available as an integrated audio eBook download, for a more efficient way to learn about Canada's history, values, symbols, and important institutions. The audio eBook allows people to hear the text of the guide being read aloud as they follow along on their e-readers, smart phones, or tablets. CIC was the first Canadian government department to produce an eBook. It has been downloaded almost 60,000 times in the past year and a half. Well-known Canadians have lent their voices for portions of the eBooks in English and French.

### *Canadian Government is Aggressively Prosecuting Residence Fraud in Citizenship Cases*

Compliance enforcement on applications for Canadian citizenship has increased dramatically. Applicants who are found to have made false representations or fraudulent claims, or to have knowingly concealing material circumstances in the citizenship process—for example, pretending to be present in Canada to meet the residence requirements for obtaining citizenship—could face charges under the Immigration and Refugee Protection Act or the Criminal Code, and/or have their citizenship revoked. The government of Canada offers a tip line through the CIC Call Centre where tips on suspected citizenship fraud cases may be reported.

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## **11. Firm In the News...**

**Cyrus Mehta** spoke on "Ethics and Professional Responsibility—When You Leave Your Comfort Zone" at the Northern Border Immigration Fall Conference in Albany, New York, on September 20, 2013, sponsored by the American Immigration Lawyers Association's Upstate New York Chapter and the Albany County Bar Association.

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