CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

APRIL 2014 IMMIGRATION UPDATE

Posted on April 1, 2014 by Cyrus Mehta

Headlines

1. **File H-1B Petitions for FY 2015 Now! -** USCIS anticipates receiving more than enough petitions to reach both caps by April 7.

2. **USCIS, Healthcare.gov Provide Highlights of Immigration Status Effects on ACA Eligibility** - Immigration status can affect eligibility for health care benefits under the Affordable Care Act.

3. **USCIS Holds Teleconference With EB-5 Stakeholders** - USCIS discussed targeted employment areas, among other things.

4. **State Dept. Waives Visa Fees for Participants in 2014 Special Olympics Summer Games and 2015 Special Olympics World Summer Games** - Approximately 250 accredited delegation members are expected to attend the 2014 Games, and 6,500 members will attend the 2015 Games.

5. **OCAHO Reduces Employer's Fines for I-9 Violations** - The total penalty sought was $21,598.50, which was reduced to $9,450.

6. **DOL Releases 2014 Allowable Charges for Agricultural Workers** - The notice announces (1) the allowable charges for 2014 that employers seeking H-2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2014.

7. **USCIS Extends TPS for Haitians; ICE Extends Work Authorization for Certain Haitian F-1 Students** - USCIS has extended temporary protected status for eligible nationals of Haiti for an additional 18 months, through January 22, 2016. Also, ICE has extended employment authorization for certain Haitian F-1 students due to ongoing hardship related to the earthquake of 2010.

8. **Supreme Court Denies Certiorari in Local Ordinance Cases** - The U.S. Supreme Court denied certiorari in several recent cases relating to local ordinances aimed at undocumented persons.

9. **Hockeytown-Hockey Country Debacle Heats Up** - Well, now, it does seem to be April 1. Parts of this article are actually true, but we won't say which parts.

10. **ABIL Global: Canada** - Canada plans to close the federal Investor Program.

11. **Firm In The NewsЙ**

Back to Top

1. File H-1B Petitions for FY 2015 Now!

U.S. Citizenship and Immigration Services (USCIS) is accepting H-1B petitions subject to the fiscal year (FY) 2015 cap starting on April 1, 2014. Cases will be considered accepted on the date that USCIS receives a properly filed petition with the correct fee. USCIS will not rely on the date that the petition is postmarked.
The congressionally mandated cap on H-1B visas for FY 2015 is 65,000. The first 20,000 H-1B petitions filed on behalf of individuals with a U.S. master's degree or higher are exempt from the 65,000 cap.

USCIS anticipates receiving more than enough petitions to reach both caps by April 7. The agency said it will use a random selection process to meet the numerical limit. Non-duplicate petitions that are not selected will be rejected and returned with the filing fees. All H-1B Cap cases received by the USCIS between April 1-7, 2014 will receive the same consideration under the random selection process.

Due to the high level of premium processing receipts anticipated, combined with the possibility that the H-1B cap will be met in the first five business days of the filing season, USCIS has temporarily adjusted its current premium processing practice. To facilitate the prioritized intake of cap-subject petitions requesting premium processing, USCIS will begin premium processing for H-1B cap cases no later than April 28, 2014. USCIS guarantees a 15-calendar-day processing time.

USCIS will continue to accept Form I-907, Request for Premium Processing Service, with fee, concurrently with the Form I-129, Petition for Nonimmigrant Worker, while premium processing is unavailable. Petitioners may also upgrade a

pending H-1B cap petition to premium processing once USCIS issues a receipt notice.

While the Form I-797 receipt notice indicates the date USCIS received the premium processing fee, the 15-day processing period will begin no later than April 28, 2014, as noted above. This allows for USCIS to take in the anticipated high number of filings, conduct the lottery to determine which cases meet the cap, and prepare the volume of cases for premium and regular processing.

The 15-day processing period for premium processing service for H-1B petitions that are not subject to the cap, or for any other eligible classification, continues to begin on the date the request is received.

USCIS's announcement is available at http://www.uscis.gov/news/uscis-accept-h-1b-petitions-fiscal-year-2015-beginning-april-1-2014. Information on premium processing is available at http://www.uscis.gov/news/alerts/uscis-begin-premium-processing-h-1b-cap-subject-petitions-april-28-2014.

Back to Top

2. USCIS, Healthcare.gov Provide Highlights of Immigration Status Effects on ACA Eligibility

U.S. Citizenship and Immigration Services disseminated a stakeholder alert on March 13, 2014, noting that immigration status can affect eligibility for health care benefits under the Patient Protection and Affordable Care Act (ACA), popularly known as Obamacare. USCIS encourages stakeholders to visit http://www.healthcare.gov to learn more, including the most common immigration documents that may be submitted when applying for health insurance; options for families; how immigration status affects eligibility for insurance; and how to verify citizenship and immigration status.

The ACA website provides a long list of documents that can be used to show immigration status at https://www.healthcare.gov/help/immigration-document-types/.

The website also provides the following list of eligible immigration statuses for health coverage through the "Marketplace":

- Lawful permanent resident (LPR/green card holder)
- Asylee

- Refugee
- Cuban/Haitian entrant
- Paroled into the U.S.
- Conditional entrant granted before 1980
- Battered spouse, child, or parent
- Victim of trafficking and his or her spouse, child, sibling, or parent
- Granted withholding of deportation or withholding of removal, under the immigration laws or under the Convention Against Torture (CAT)
- Individual with nonimmigrant status (including worker visas, student visas, and citizens of Micronesia, the Marshall Islands, and Palau)
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (Deferred Action for Childhood Arrivals (DACA) isnXt an eligible immigration status for applying for health coverage)
- Applicant for:
    - Special Immigrant Juvenile Status
    - Adjustment to LPR status with an approved visa petition
    - Victim of trafficking visa
    - Asylum who has either been granted employment authorization, OR is under 14 and has had an application for asylum pending for at least 180 days)
    - Withholding of deportation or withholding of removal, under the immigration laws or under the Convention Against Torture (CAT) who has either been granted employment authorization, OR is under 14 and has had an application for withholding of deportation or withholding removal under the immigration laws or under the CAT pending for at least 180 days)
- Certain individuals with an employment authorization document:
    - Registry applicants
    - Order of supervision
    - Applicant for cancellation of removal or suspension of deportation
    - Applicant for legalization under IRCA

  - Applicant for TPS
  - Legalization under the LIFE Act

- Lawful temporary resident
- Granted an administrative stay of removal by the Department of Homeland Security
- Member of a federally recognized Indian tribe or American Indian born in Canada
- Resident of American Samoa

The website notes that this information will only be used for determining access to health coverage in the Marketplace and will not be used for immigration enforcement purposes. Also, use of health care services through the Marketplace will not be considered a public charge.

U.S. Residents Living Abroad

The Affordable Care Act requires all "applicable individuals," including lawful permanent residents (LPRs), to maintain minimum essential health care coverage. The "minimum essential coverage" is required on a monthly basis, but only during those months that qualify people as "applicable individuals." The penalties for failing to obtain coverage only apply to required coverage months. Applicable individuals must maintain minimum essential coverage for each month, qualify for an exemption (see https://www.healthcare.gov/exemptions/), or pay a penalty when filing their federal income tax returns, starting with their 2014 returns.

All LPRs living outside the United States are considered "applicable individuals." The Affordable Care Act provides that U.S. tax residents, including LPRs, whose tax home is outside the United States and who are not physically present in the United States for at least 330 full days within a 12-consecutive-month period, are treated as having minimum essential coverage for that 12-month period. In general, such individuals qualify for the foreign earned income exclusion under section 911 of the Internal Revenue Code. We do not know yet whether individuals will be required to elect the foreign earned income exclusion to be deemed as having minimum essential coverage or whether a separate form will be developed for this purpose.

LPRs qualifying as having minimum essential coverage need take no further

action to comply with the minimum essential coverage requirement during the months they qualify. LPRs with a tax home outside the United States who spend less than 330 full days outside the country within a 12-month period must maintain minimum essential coverage for the applicable period or pay the penalty for failing to do so.

LPRs who seek to claim a section 911-type foreign earned income exclusion to get out of the mandate under ACA should beware of adverse consequences on their LPR status. Living outside the United States for 330 days or more in itself could lead to a finding of abandonment if the LPR cannot successfully establish that his or her visit abroad was temporary under court precedents. Even if LPRs assert that their trips abroad were temporary, claiming a section 911 benefit to avoid the health insurance coverage under Obamacare could bolster the government's charges that they abandoned their status. Taking a section 911 exemption can also impair the applicant's ability to show that he or she did not disrupt continuity of residence during the relevant 5- or 3-year period for naturalization purposes. INA ¤ 316(b) states that an absence from the United States of more than 6 months but less than 1 year during the 5-year period immediately preceding the filing of the application may break the continuity of such residence.

Penalty for Failure to Maintain Minimum Essential Coverage

LPRs and other applicable individuals who fail to maintain required minimum essential coverage must pay a penalty, known as the "individual shared responsibility payment." The annual penalty is calculated in one of two ways, and the applicable individual will pay the higher of:

- 1% of the applicable individual's yearly worldwide income up to a maximum amount. Only the amount of income above the tax filing threshold, or $10,150 for an individual, is used to calculate the penalty. The maximum penalty is the national average yearly premium for a "bronze plan," which will be calculated in 2014 at around $4500.
- $95 per person for 2014 ($47.50 per child under 18). The maximum penalty per family using this method is $285.

The applicable individual will owe 1/12th of the annual payment for each month they or their dependents do not have coverage and are not exempt. The payment will be due when LPRs file their 2014 tax returns in 2015.

LPRs and other noncitizens should consult a competent tax professional before making essential decisions regarding their obligations under the Affordable Care Act. LPRs living abroad for significant periods are always at risk of losing their permanent residence status and should contact their ABIL attorney about steps that should be taken to maintain it.

For a commentary on the ACA, and how it impacts LPRs living abroad, see The Impact of Obamacare on Green Card Holders Who Reside Overseas by Gary Endelman and Cyrus D Mehta, http://blog.cyrusmehta.com/2014/03/the-impace-of-obamacare-on-green-card.html

For more information, see https://www.healthcare.gov/help/immigration-status-questions/.

Back to Top

3. **USCIS Holds Teleconference With EB-5 Stakeholders**

U.S. Citizenship and Immigration Services (USCIS) held a teleconference on February 26, 2014, with EB-5 stakeholders. Nicholas Colucci, the new director of USCIS's Immigrant Investor Program Office, led the teleconference.

Among other things, USCIS said that it is now adjudicating I-924 regional center petitions and I-526 alien entrepreneur petitions in the Washington, DC, field office, but that it continues to adjudicate I-829 removal of conditions and I-485 adjustment of status petitions at the California Service Center for the time being.

USCIS also said it is moving toward greater use of its Electronic Immigration System (ELIS) and has implemented it for intake of I-526 petitions. The agency said it plans to offer webinars on the features of the document library, which allows regional centers to provide electronic versions of certain documents.

USCIS noted that regional center geographic area expansion must be contiguous to approved geographic areas. USCIS said it reviews such expansions on a case-by-case basis to determine whether the expansion will promote economic growth, frequently focusing on the supply chain and labor pool.

Targeted employment areas (TEAs) have been a hot topic for EB-5 stakeholders. USCIS noted that a TEA need not be singular and a new commercial enterprise

can be principally located in, doing business in, and creating jobs in a collection of TEAs.

USCIS also confirmed that a high unemployment TEA must be established by a letter from an authorized body of the government of the state in which the new commercial enterprise is located, certifying that the geographic or political subdivision of the metropolitan statistical area, or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business, has been designated a high unemployment area.

As of February 1, 2014, USCIS had approved approximately 440 regional centers. The agency said the average processing time for both regional center cases and direct EB-5 cases is 11 months, but that processing may take longer temporarily due to staffing issues. The agency also said it is planning new EB-5 regulations and a policy guidance manual.

The list of EB-5 regional centers by state is available at http://www.uscis.gov/general-keywords/eb-5. This article is based on multiple reports; USCIS has not yet released a summary of the teleconference.

Back to Top

4. **State Dept. Waives Visa Fees for Participants in 2014 Special Olympics Summer Games and 2015 Special Olympics World Summer Games**

The Department of State has waived fees for applications (i.e., machine-readable visa) and visa issuances (i.e., reciprocity) for certain participants in the 2014 Special Olympics Summer Games Invitational taking place in Los Angeles, California, from June 6 to 8, 2014, and the 2015 Special Olympics World Summer Games taking place in Los Angeles from July 25 to August 2, 2015. Approximately 250 accredited delegation members are expected to attend the 2014 Games, and 6,500 members will attend the 2015 Games. The included roles are:

- Athletes and Unified Partners (athletes without an intellectual disability who train and compete on teams with persons with intellectual disabilities);
- Coaches, trainers, referees, and judges;
- Other supporting staff accredited to the Games (e.g., medical doctors, nurses, therapists, Special Olympics staff from regional offices, and

technical delegates to oversee each sport);
- Heads and assistant heads of the delegation;
- Medical doctors participating in the Healthy Athletes Program;
- Global Messengers (former athletes acting as spokespersons during the Games); and
- Police officers who will participate in the final leg of the Torch Run.

The Department has authorized U.S. consular posts worldwide to issue multiple-entry B-1/B-2 visas to qualifying applications. International media are not included in the fee waiver and will need to apply and qualify for I visas. "The same holds true for all petitionable classifications, such as temporary workers, entertainers, and cultural exchange groups," the Department cable states.

The related cable, which includes additional information about applicable dates and other facts, is available at http://travel.state.gov/content/dam/visas/policy_updates/Waiver_of_Visa_Fees_for_2014_Special_Olympics_Summer_Games%20.pdf.

5. **OCAHO Reduces Employer's Fines for I-9 Violations**

The Department of Justice's Office of the Chief Administrative Hearing Officer (OCAHO) recently reduced fines imposed on New Outlook Homecare, LLC, for violations related to the Form I-9, Employment Authorization Verification. The complaint filed by U.S. Immigration and Customs Enforcement (ICE) alleged that New Outlook failed to ensure that employees properly completed section 1 of the I-9 and that the company failed to properly complete sections 2 or 3 of the form for 22 employees. One of the charges was subsequently dropped because it was for the owner of New Outlook, for which no I-9 was required.

The total penalty sought was $21,598.50, which OCAHO reduced to $9,450. New Outlook characterized the violations as minor clerical errors, but OCAHO said there were "serious substantive errors" in the completion of section 2 of the forms. Section 2 for all but three employees was blank. The forms contained no signatures attesting that New Outlook had examined documents to verify the employees' identities and authorization to work in the United States. OCAHO noted that case law confirms that such failures constitute serious violations.

ICE had calculated a baseline penalty in accordance with internal agency guidance that sets a penalty of $935 for each violation when the employer's error rate exceeds 50 percent. An ICE auditor stated that the government

mitigated the penalty by 5 percent based on New Outlook's status as a small business, but aggravated the penalty based on the seriousness of the violations. ICE initially aggravated the fine by 5 percent based on a lack of good faith, but later treated this factor as neutral, as it did the remaining statutory factors: the absence of any history of previous violations and the absence of unauthorized workers.

OCAHO found that although the violations were serious, penalties at or near the maximum permissible "should be reserved for more egregious violations than have been demonstrated here." Penalties should be sufficiently meaningful to deter future violations but should not be "unduly punitive" in light of the respondent's resources, OCAHO said. Given the nature of the business and considering the record as a whole "in light of the general public policy of leniency toward small entities," OCAHO adjusted the penalties "closer to the midrange of permissible penalties," setting the fines at $450 per violation, for a total of $9,450.

The decision is available at http://www.justice.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume10/1210.pdf.

Back to Top

6. DOL Releases 2014 Allowable Charges for Agricultural Workers

The Department of Labor's Employment and Training Administration (ETA) issued a notice in the Federal Register on March 5, 2014, to announce (1) the allowable charges for 2014 that employers seeking H-2A temporary agricultural workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2014. The notice includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H-2A workers are three meals a day or free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. The maximum allowable charge is $11.58 per day, unless the Office of Foreign Labor Certification (OFLC) Certifying Officer approves a higher

charge. The OFLC Certifying Officer may permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer.

The Continental United States (CONUS) minimum meals component remains $46.00 per day for 2014. Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of $34.50, as provided for in the General Services Administration per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum.

ETA said it interprets the applicable regulation as requiring the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs, ETA noted. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the United States to the employer's worksite.

The notice is available at http://www.gpo.gov/fdsys/pkg/FR-2014-03-05/pdf/2014-04895.pdf.

Back to Top

7. USCIS Extends TPS for Haitians; ICE Extends Work Authorization for Certain Haitian F-1 Students

U.S. Citizenship and Immigration Services (USCIS) has extended temporary protected status (TPS) for eligible nationals of Haiti for an additional 18 months, effective July 23, 2014, through January 22, 2016. Also, U.S. Immigration and Customs Enforcement (ICE) has extended employment authorization for certain

Haitian F-1 students due to ongoing hardship related to the 2010 earthquake in Haiti. Highlights of these two developments follow.

Haitian TPS. Current Haitian beneficiaries seeking to extend their TPS status must re-register during a 60-day period that began on March 3, 2014, and runs through May 2, 2014. USCIS encourages beneficiaries to re-register as soon as possible.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Haitian TPS beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of January 22, 2016. USCIS recognizes that some re-registrants may not receive their new EADs until after their current EADs expire. Therefore, USCIS is automatically extending current TPS Haiti EADs bearing a July 22, 2014, expiration date for an additional 6 months. These existing EADs are now valid through January 22, 2015.

To re-register, current TPS beneficiaries must submit Form I-821, Application for Temporary Protected Status. Re-registrants do not need to pay the I-821 application fee, but they must submit the biometric services fee, or a fee waiver request, if they are 14 or older. All TPS re-registrants must also submit Form I-765, Application for Employment Authorization. TPS re-registrants requesting an EAD must submit the I-765 application fee, or a fee waiver request. If the re-registrant does not want an EAD, no application fee is required.

Applicants may ask that USCIS waive the I-765 application fee or biometrics fee based on an inability to pay by filing Form I-912, Request for Fee Waiver, or by submitting a written request. Fee waiver requests must be accompanied by supporting documentation. Failure to submit the required filing fees or a properly documented fee waiver request will result in rejection of the TPS application, USCIS said.

Extension of work authorization for Haitian F-1 students. ICE announced on March 3, 2014, that it would extend the suspension of certain requirements for F-1 nonimmigrant Haitian students who are experiencing severe economic hardship as a direct result of the January 12, 2010, earthquake in Haiti. This relief applies only to students whose country of citizenship is Haiti and who were lawfully present in the United States in F-1 status on January 12, 2010, and enrolled in an institution certified by ICE's Student and Exchange Visitor Program (SEVP).

The current extension will enable eligible F-1 students to continue to obtain employment authorization, work an increased number of hours during the school term, and, if necessary, reduce their course load while continuing to maintain their F-1 student status. The suspension of the regulatory requirements will remain in effect through January 22, 2016.

ICE noted that the ongoing devastation and unstable conditions caused by the earthquake in Haiti increased the financial burden on many of these students, who previously relied on assistance from the Haitian government or family members in Haiti to meet basic living expenses. "While the government of Haiti has made progress in improving security and quality of life of its citizens following the January 2010 earthquake, Haiti continues to lack the adequate infrastructure, employment and educational opportunities, and basic services," ICE said. As of February 3, there were 820 active F-1 Haitian students enrolled in SEVP-certified schools in the United States.

Additional information on TPS for Haiti, including guidance on eligibility, the application process, and where to file, is available online at http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status. Further details on this extension of Haiti for TPS, including application requirements and procedures, are available in the Federal Register notice published at http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/html/2014-04593.htm. USCIS's announcement is available at http://www.uscis.gov/news/temporary-protected-status-extended-haitians-0.

The ICE F-1 work authorization extension notice is available at http://www.ice.gov/news/releases/1403/140303washingtondc.htm.

Back to Top

8. **Supreme Court Denies Certiorari in Local Ordinance Cases**

The U.S. Supreme Court denied certiorari on March 3, 2014, in several recent cases relating to local ordinances aimed at undocumented persons.

In *City of Hazleton v. Lozano*, the U.S. Court of Appeals for the Third Circuit had held that local ordinances in the city of Hazleton, Pennsylvania, prohibiting the knowing harboring of undocumented persons in rental housing or hiring them, was unconstitutional.

In *City of Farmers Branch v. Villas at Parkside Partners*, the U.S. Court of Appeals for the Fifth Circuit had held that local ordinances in the city of Farmers Branch, Texas, prohibiting the knowing harboring of undocumented persons in renting housing in the city, was unconstitutional.

Information about *Hazleton* is available at http://www.scotusblog.com/case-files/cases/city-of-hazleton-v-lozano/. Information about *Farmers Branch* is available at http://www.scotusblog.com/case-files/cases/city-of-farmers-branch-v-villas-at-parkside-partners/.

Back to Top

9. **Hockeytown-Hockey Country Debacle Heats Up**

Following Governor Rick Snyder of Michigan's proposal to attract 50,000 immigrants with advanced degrees or exceptional abilities in the sciences, arts, or business to Detroit to help revive the depressed economy there, on April 1 traffic was suddenly diverted at the Detroit-Windsor Tunnel and Ambassador Bridge by unnamed forces. Orange traffic cones blocked vehicles attempting to enter the United States. Fishy e-mails turned up stating, "Time for some traffic problems at Detroit-Windsor!" "Got it!" A shadowy anti-immigrant group subsequently took credit while pulling a trout off one of the e-mails, stating that, "Our city is overrun by Canadians! We should rename it the Shamebassador Bridge, eh?!"

Meanwhile, a new bridge proposal for Detroit-Windsor was stymied due to a lack of funds from Washington, DC, for a mandatory $250 million U.S. Customs plaza, required any time a bridge is built at a U.S. border. Nobody took credit for that. When pressed at a press conference for answers about financing the plaza, a rogue Department of Homeland Security spokesperson simply said, "Who you lookin' at? Are you lookin' at me?" He then cut the journalist's microphone and threatened to deport everyone in the room if they didn't leave immediately. Asked later about the advisability of the optics of that scene, this being a democracy with freedom of speech, the spokesperson said, "If it's good enough for Darrell Issa, it's good enough for me. If I get mad enough, I may send out a scathing letter too." In response, Kirk Hockey of the state's Department of Transportation blurted, "Puck that!" He acknowledged that the whole thing was a "sticky issue" but was "moving forward." Fingers were

pointed and subpoenaes were issued all around, in passive yet impassioned voices. The Michigan legislature vowed to get to the bottom of what's now being called the "Hockeytown-Hockey Country Debacle."

Governor Snyder retorted, "This is all nonsense. Everybody knows Canadians are welcome here!" Meanwhile, Canadians continued to sneak in via checkpoints at Washington, Idaho, Maine, Montana, North Dakota, Minnesota, New Hampshire, New York, Vermont, various airports, and on the backs of snowbirds headed to Florida.

Parts of this article are actually true, but we won't say which parts. Happy April Fool's Day!

Back to Top

10. **ABIL Global: Canada**

Canada plans to close the federal Investor Program.

On February 11, 2014, Canada's Economic Action Plan (EAP) announced the government's intent to terminate both the Federal Immigrant Investor Program (IIP) and Federal Entrepreneur Program (EN). In doing so, it plans to eliminate several thousand backlogged applications.

The IIP and EN programs have been cornerstones of Canada's business-oriented immigration programs. In 2011, approximately 10,000 immigrants entered Canada through the IIP, while almost 1,000 entered through the EN.

Although the programs have been longstanding business immigration programs, in recent years they suffered from significant backlogs in processing. Investors, for instance, had to wait at least 54 months for visa issuance, while many entrepreneurs faced even longer processing times.

The current inventory of backlogged applications for the IIP stands at 65,000. Citizenship and Immigration Canada (CIC) anticipates that it would take more than six years to process these cases. To move forward with programs that will more accurately capture the types of investors needed in Canada, CIC has decided to eliminate many of the files currently in the backlog.

However, to date, no official announcement has been made as to which applications will be processed and which applications will be returned to the applicants.

CIC pointed out in its press release that the minimum investment amount for IIP applicants, which is $800,000, is significantly lower than that of investor programs in countries such as the United Kingdom, Australia, and New Zealand. It also noted that investors who arrive in Canada are likely to pay lower taxes than immigrants who come to Canada through programs such as the Federal Skilled Worker Program.

In its backgrounder, CIC explained:

> The existing IIP is of limited economic benefit to Canada. There is very little "new" money coming into Canada. Almost all initial investments made through the program come from loans from Canadian banks to provincial governments.
>
> The amount of IIP capital actively invested in economic development initiatives has been disappointing. The requirement for provinces to guarantee repayment of IIP investments after five years limits their ability to invest funds into more high-risk initiatives that tend to reap greater rewards for Canada in terms of true innovation and job creation. Fifteen years after provinces and territories were factored into the equation, less than half of the funds are actively invested.

By doing away with the current IIP and EN programs, the government will "pave the way for new pilot programs that will actually meet Canada's labour market and economic needs." These pilot programs will enable Canada to remain competitive in the global economy.

CIC mentioned that the pilot programs will complement the Start-Up Visa program, a former pilot program that is now a permanent part of Canada's immigration system. Two programs have already been mentioned as replacements for the IIP and EN streams. One will be a new Immigrant Investor Venture Capital Fund and the other a new Business Skills Program.

Details of the new pilots will be announced in the coming months.

The Canadian province of Québec manages its own Investor Program, which requires net assets of at least CAD $1.6 million legally acquired, management experience, and a no-interest loan of CAD $800,000 made to Québec for a five-year period. The Québec Investor Program remains open to French-speaking applicants who have an advanced intermediate level of French as evidenced by a recognized French test.

Back to Top

11. **Firm In The News**

Cyrus Mehta chaired the PLI Immigration Basics 2014 seminar on March 13, 2014. The webcast is available at http://www.pli.edu/Content/Seminar/Basic_Immigration_Law_2014/_/N-4kZ1z12eu2?ID=178427.

David Isaacson was a panelist at the same PLO Seminar where he spole on "Inadmissibility and Removal Grounds and Procedures."

Back to Top