



## MID-SEPTEMBER 2016 IMMIGRATION UPDATE

*Posted on September 15, 2016 by Cyrus Mehta*

### Headlines:

1. [State Dept. Announces Potential Visa Availability in the Coming Months](#) – The Department of State's Visa Bulletin for October 2016 provided an overview of potential visa number availability.
2. [State Dept. Announces Expiration of Two Employment-Based Visa Categories](#) – The Department of State's Visa Bulletin for October 2016 announced the expiration at the end of September of the employment fourth preference "Certain Religious Workers" category and the I-5 and R-5 employment fifth preference categories.
3. [Sens. Grassley, Leahy Oppose Reauthorization of Unaltered EB-5 Regional Center Program; Rep. Goodlatte Introduces EB-5 Reform Bill](#) – A lot has been happening the last few days in the EB-5 world. Sens. Grassley and Leahy wrote a letter to Senate leadership opposing a straight reauthorization of the EB-5 regional center program without any changes. Also, Rep. Goodlatte introduced an EB-5 reform bill. The 123-page bill would make significant changes to the EB-5 program.
4. [ICE Extends and Adds to Employment Authorization for Certain Syrian F-1 Nonimmigrant Students](#) – The new notice will remain in effect until March 31, 2018.
5. [DHS Announces Annual Limit for CNMI Transitional Workers](#) – The numerical limitation for the CNMI-Only Transitional Worker (CW-1) nonimmigrant classification for FY 2017 is set at 12,998.
6. [DHS Alerts Employers Re Documentation Options in Wake of Flooding](#) – Individuals from affected areas who need to replace lost or damaged documents can consult FEMA fact sheets.
7. [DHS Updates Lists of Officials Authorized to Perform Various Immigration Functions](#) – DHS said the lists are outdated and do not

reflect the current DHS organizational structure, so the agency updated the lists with the specific officials who are authorized to perform various functions.

8. [\*\*United States, Mexico Sign MOU To Combat Employment Discrimination\*\*](#) – The United States and Mexico agree to collaborate to provide Mexican nationals with information, guidance, and access to education and training resources to help them understand their rights.
9. **Firm In the News...**

### **Details:**

1. **State Dept. Announces Potential Visa Availability in the Coming Months**

The Department of State's Visa Bulletin for the month of October 2016 provided an overview of potential visa number availability in the coming months:

EB-1: Current

EB-2: Worldwide: Current China: Up to three months India: Up to four months

EB-3: Worldwide: The rapid forward movement of this final action date during the past year should generate a significant amount of demand for numbers. When such demand begins to materialize, the Visa Bulletin notes, it will be necessary to limit movement of this final action date.

China: Up to three months India: Up to one week Mexico: Will remain at the worldwide date Philippines: Up to three weeks

EB-4: Current for most countries El Salvador, Guatemala, and Honduras: up to two months

EB-5: Current for most countries China-mainland born: Slow forward movement

The Visa Bulletin notes that the above projections indicate what is likely to happen on a monthly basis through January based on current applicant demand patterns. However, determinations of the actual monthly final action dates are subject to fluctuations in applicant demand and a number of other variables, so the Visa Bulletin warns that these dates are not guaranteed.

The Visa Bulletin for October 2016 is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-october-2016.html>.

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## **2. State Dept. Announces Expiration of Two Employment-Based Visa Categories**

The Department of State's Visa Bulletin for the month of October 2016 announced the expiration at the end of September of the employment fourth preference "Certain Religious Workers (SR)" category and the I-5 and R-5 employment fifth preference categories.

Employment fourth preference SR. The non-minister special immigrant program expires on September 30, 2016. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight on September 29, 2016. Visas issued before that date will only be issued with a validity date of September 29, 2016, and all individuals seeking admission as non-minister special immigrants must be *admitted* into the United States by midnight on September 29, 2016.

The final action date for this category has been listed as "Unavailable" for October. The Visa Bulletin notes that if there is legislative action extending this category for FY 2017, the final action date would immediately become "Current" for October for all countries except El Salvador, Guatemala, and Honduras, which would be subject to a June 15, 2015, final action date.

Employment fifth preference I5 and R5. I5 and R5 visas may be issued until the "close of business" on September 30, 2016, and may be issued for the full validity period. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases, after September 30, 2016.

The final action dates for the I5 and R5 categories have been listed as "Unavailable" for October. If there is legislative action extending them for FY 2017, the final action dates would immediately become "Current" for October for all countries except China-mainland born I5 and R5, which would be subject to a February 22, 2014, final action date.

Congress is expected to extend the EB-4 special religious worker and EB-5 immigrant investor categories as part of a bill to fund the federal government temporarily past September 30. The temporary extension is likely to last until

early December. Stay tuned.

The Visa Bulletin for October 2016 is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-october-2016.html>.

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### **3. Sens. Grassley, Leahy Oppose Reauthorization of Unaltered EB-5 Regional Center Program; Rep. Goodlatte Introduces EB-5 Reform Bill**

A lot has been happening the last few days in the EB-5 world. The regional center part of the EB-5 immigrant investor green card program is scheduled to expire on September 30, 2016. On September 8, Sens. Chuck Grassley (R-Iowa) and Patrick Leahy (D-Vt.), chair and ranking member of the Senate Judiciary Committee, respectively, wrote a letter to Senate leadership opposing a straight reauthorization of the EB-5 regional center program without any changes. According to the letter, the EB-5 regional center program "has become plagued with fraud and abuse, and if not reformed it should be allowed to expire on September 30th." Then, late Friday afternoon, September 9, Rep. Bob Goodlatte (R-Va.), chair of the House Judiciary Committee, released a draft of an EB-5 reform bill. The 123-page bill would make significant changes to the EB-5 program, such as increasing the minimum investment amount from the current \$500,000 to \$800,000, and adding anti-fraud and securities law oversight provisions. The bill was re-released on September 12 with Rep. John Conyers (D-Mich.) as a co-sponsor. The revised bill contains a two-page addition for good faith defrauded investors. The revised bill was introduced as H.R. 5992. Among other things, the bill would:

- Reauthorize the EB-5 regional center program for five years, until September 30, 2021
- Set aside 4,000 EB-5 visas for rural and "priority urban investment" areas to take effect October 1, 2016
- Allow investors 180 days after a regional center is terminated or debarred to associate the new commercial enterprise (NCE) with a new regional center or to invest in a new NCE
- Require investors to be at least 18 years old, effective after enactment
- Require an EB-5 investor's tax returns for the last seven years

The Grassley-Leahy letter is at

<http://www.grassley.senate.gov/news/news-releases/grassley-leahy-senate-lead-ership-reform-investor-visa-program-now-or-let-it>. A section-by-section summary of the draft Goodlatte bill is at <http://millermayer.com/immigration-lawyers/eb-5/observer/initial-analysis-and-summary-goodlatte-eb-5-bill-91216>.

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#### **4. ICE Extends and Adds to Employment Authorization for Certain Syrian F-1 Nonimmigrant Students**

In an earlier notice, the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) suspended certain requirements for F-1 nonimmigrant students whose country of citizenship is Syria and who have been experiencing severe economic hardship as a direct result of the civil war in Syria since March 2011. A new notice extends the effective date of that notice and expands the application of such suspension to students whose country of citizenship is Syria and who lawfully obtained F-1 nonimmigrant student status between the date of the original notice and September 9, 2016. The new notice was effective September 9, 2016, and will remain in effect until March 31, 2018.

F-1 nonimmigrant students granted employment authorization through the notice will continue to be deemed to be engaged in a "full course of study" for the duration of their employment authorization if they satisfy the minimum course load requirement. This notice applies exclusively to F-1 nonimmigrant students whose country of citizenship is Syria and who were lawfully present in the United States in F-1 nonimmigrant status on or after April 3, 2012, through September 9, 2016, under INA § 101(a)(15)(F)(i), 8 USC § 1101(a)(15)(F)(i); and are:

1. Enrolled in an institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F-1 students,
2. Currently maintaining F-1 status, and
3. Experiencing severe economic hardship as a direct result of the ongoing civil unrest in Syria since March 2011.

ICE records show that as of August 2016, approximately 700 Syrian F-1 visa holders in active status are covered by this notice.

The notice is at

<https://www.gpo.gov/fdsys/pkg/FR-2016-09-09/pdf/2016-21525.pdf>.

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## **5. DHS Announces Annual Limit for CNMI Transitional Workers**

The Department of Homeland Security (DHS) announced on September 2, 2016, that the numerical limitation for the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) nonimmigrant classification for fiscal year (FY) 2017 (October 1, 2016, through September 30, 2017) is set at 12,998.

The notice announces the mandated annual reduction of the CW-1 numerical limitation and provides additional information about the new CW-1 numerical limit. Under the CW-1 program, employers in the CNMI can apply for temporary permission to employ foreign nationals who are ineligible for any existing employment-based nonimmigrant category under the Immigration and Nationality Act. The CW program is in effect until December 31, 2019.

DHS said it reduced the FY 2017 CW-1 cap by one to meet the CNMI's existing labor market needs and provide opportunity for potential growth, while meeting a statutory requirement to reduce the cap each year. Because the cap was reached for FY 2016 on May 5, 2016, DHS decided "to preserve the status quo, or current conditions, rather than aggressively reduce CW-1 numbers for FY 2017." The agency encourages CW-1 employers to file a petition for a CW-1 nonimmigrant worker as early as possible within 6 months of the proposed start date of employment. USCIS said it will reject a petition if it is filed more than 6 months in advance.

DHS reminded CNMI employers that the CW-1 program requires that the foreign worker be ineligible for any other employment-based nonimmigrant visa classification under U.S. immigration law, such as the H-2B classification for temporary or seasonal workers and the H-1B classification for workers in a specialty occupation. DHS urged CNMI employers to reevaluate whether their employees are eligible for any other existing employment-based nonimmigrant category and, if so, to use other U.S. nonimmigrant classifications when appropriate. For workers employed in the CNMI, there is no cap on H-2B or H-1B visas during the transition period ending December 31, 2019.

The announcement does not affect the status of current CW-1 workers unless

their employer files for an extension of their current authorized period of stay. Approved petitions with an employment start date between October 1, 2016, and September 30, 2017, will generally count toward the 12,998 cap. The cap applies only to CW-1 principals. It does not directly affect anyone currently holding CW-2 status, which is for spouses and minor children of CW-1 nonimmigrants. However, CW-2 nonimmigrants may be indirectly affected because their status depends upon that of the principal CW-1.

The notice is at

<https://www.gpo.gov/fdsys/pkg/FR-2016-09-02/pdf/2016-21325.pdf>. A related announcement is at

<https://www.uscis.gov/news/news-releases/fiscal-year-2017-cap-set-cnmi-only-transitional-workers>.

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## **6. DHS Alerts Employers Re Documentation Options in Wake of Flooding**

The Department of Homeland Security (DHS) issued a notice on September 9, 2016, stating that the agency "is aware of the hardship and ongoing recovery efforts resulting from the recent flooding in areas such as Louisiana and Texas." DHS noted that individuals from these affected areas who need to replace lost or damaged documents can consult Federal Emergency Management Agency (FEMA) fact sheets for information on replacing lost or damaged documents in Louisiana

([http://www.fema.gov/media-library-data/1461689325185-69ea3fe5a8b4db5b89dc2fb74f6bc6d0/FS006\\_Replace\\_Lost\\_Docs.pdf](http://www.fema.gov/media-library-data/1461689325185-69ea3fe5a8b4db5b89dc2fb74f6bc6d0/FS006_Replace_Lost_Docs.pdf)) or Texas

(<http://www.fema.gov/news-release/2015/06/19/after-disaster-replacing-lost-or-damaged-documents>).

DHS reminded employers that they must complete Form I-9, Employment Eligibility Verification and, if enrolled in E-Verify, must create a case in E-Verify for all newly hired employees, including those affected by the flooding. DHS also reminded employers that they must accept receipts from employees who choose to present them when completing the I-9.

Details are at

<https://www.uscis.gov/i-9-central/e-verify-and-form-i-9-requirements-flooding-louisiana-and-texas>.

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## **7. DHS Updates Lists of Officials Authorized to Perform Various Immigration Functions**

The Department of Homeland Security (DHS) amended its regulations on September 9, 2016, to update provisions that list specific immigration officials authorized to perform various immigration functions, including the issuance of notices to appear, warrants of removal, and arrest warrants. DHS said the lists are outdated and do not reflect the current DHS organizational structure, so the agency updated the lists with the specific officials who are currently authorized to perform these various functions. DHS is also making some technical corrections to update nomenclature and outdated references in the affected provisions.

The notice is at

<https://www.gpo.gov/fdsys/pkg/FR-2016-09-09/pdf/2016-21526.pdf>.

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## **8. United States, Mexico Sign MOU To Combat Employment Discrimination**

The U.S. Department of Justice (DOJ) and Mexico's Ministry for Foreign Affairs have established a formal partnership to protect workers from discrimination based on citizenship, immigration status, and national origin. On September 1, 2016, Principal Deputy Assistant Attorney General Vanita Gupta, head of DOJ's Civil Rights Division, and Mexican Ambassador Carlos Sada signed a memorandum of understanding (MOU) between the embassy and its consulates and the Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

The MOU states the objective as "recogniz the collaborative relationship between the Participants to protect Mexican workers in the United States of America from employment discrimination in hiring, firing and recruiting or referring for a fee, based on their citizenship, immigration status, and national origin; unfair documentary practices; and retaliation." To achieve this objective, the United States and Mexico agree to collaborate to provide Mexican nationals with information, guidance, and access to education and training resources to help them understand their rights under the antidiscrimination provision of the Immigration and Nationality Act, and to facilitate the referral of appropriate allegations of discrimination, unfair documentary practices, and retaliation to



OSC for investigation.

Among other things, OSC agrees to conduct training sessions on the application and enforcement of the antidiscrimination provision at a mutually determined time and place to appropriate consular staff identified by each Mexican consulate; attend and participate in appropriate forums organized by the Mexican consulates for Mexican nationals and employers involving topics under OSC's jurisdiction; disseminate compliance and educational materials through the embassy to the Mexican consulates and Mexico's stakeholders in other locations; and publicize the MOU to interested parties.

The MOU is available in English

(<https://www.justice.gov/opa/file/889381/download>) and Spanish

(<https://www.justice.gov/espanol/file/889436/download>).

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## 9. Firm In The News

**Cyrus D. Mehta** was a panelist at a seminar entitled *Ethics in Immigration Law* organized by Legal Services NYC on September 12, 2016.

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