



## MID-MAY 2017 IMMIGRATION UPDATE

*Posted on May 16, 2017 by Cyrus Mehta*

### Headlines:

1. [Spending Bill Extends EB-5 Investor Visa Program to September 30; No Funding for Wall](#) – The Consolidated Appropriations Act of 2017 extends the EB-5 immigrant investor visa program through September 30, 2017. The legislation also provides a large border-security funding increase, but no funding for a border wall.
2. [USCIS Completes Data Entry of FY 2018 H-1B Cap-Subject Petitions](#) – USCIS has completed data entry of all fiscal year 2018 H-1B cap-subject petitions selected in a computer-generated random process and has begun returning all H-1B cap-subject petitions that were not selected.
3. [DACA Recipient Files Suit Over Revoked Status](#) – Jessica Colotl, a DACA recipient whose case has received publicity over the years, has had her DACA status revoked. Her attorney has filed a motion requesting a federal judge in Atlanta, Georgia, to reinstate her DACA protection.
4. [USCIS Implements New Interpreter Policy, Form](#) – The guidance applies to interviews conducted at domestic field offices except in cases where USCIS provides interpreters or has other policies.
5. [State Dept. Announces Continued High Demand for Visa Numbers in Several Employment-Based Categories](#) – The Department of State's Visa Bulletin for the month of June 2017 notes that continued high demand is resulting in cut-off dates being established in several categories.
6. [IT Issues Hamper Tracking of Visa Overstays, DHS OIG Says](#) – It can take months for ICE to determine a visa-holder's status and whether that person may pose a national security threat, which contributes to a backlog of more than 1.2 million visa overstay cases.
7. **Firm In The News...**

## **Details:**

### **1. Spending Bill Extends EB-5 Investor Visa Program to September 30; No Funding for Wall**

The Consolidated Appropriations Act of 2017, passed by Congress and signed May 7, extends the EB-5 immigrant investor visa program through September 30, 2017. The legislation also provides a large border-security funding increase, among other things.

The spending bill was also notable for what it didn't contain. For example, the bill did not include funding to begin construction of the border wall promised by President Trump.

Some observers believe that before that date, legislation could be enacted to change the EB-5 program, such as by raising the minimum investment amount, which currently is \$500,000 in rural and high unemployment areas and \$1 million elsewhere. The EB-5 program has received a lot of attention recently because of a particular EB-5 project in New Jersey being promoted by the Kushner Company. Jared Kushner, President Trump's son-in-law and a senior advisor to the President, stepped down as chief executive of the Kushner Company in January and has sold stakes in several properties to help allay concerns about possible conflicts of interest.

A statement by President Trump on signing the legislation is at <https://www.whitehouse.gov/the-press-office/2017/05/05/statement-president-donald-j-trump-signing-hr-244-law>. For more on this case, see <https://www.nytimes.com/2017/05/08/us/politics/kushner-china-visa-eb-5.html>.

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### **2. USCIS Completes Data Entry of FY 2018 H-1B Cap-Subject Petitions**

U.S. Citizenship and Immigration Services (USCIS) announced on May 3, 2017, that it has completed data entry of all fiscal year 2018 H-1B cap-subject petitions selected in a computer-generated random process. USCIS said it has begun returning all H-1B cap-subject petitions that were not selected. Due to the high volume of filings, USCIS was unable to provide a definite time frame for returning these petitions. USCIS asked petitioners not to inquire about the status of submitted cap-subject petitions until they receive a receipt notice or an unselected petition is returned. USCIS will issue an announcement once all

the unselected petitions have been returned.

Additionally, USCIS is transferring some Form I-129 H-1B cap-subject petitions from the Vermont Service Center to the California Service Center to balance the distribution of cap cases. USCIS will notify by mail those whose cases are transferred.

USCIS also reminded petitioners that it has temporarily suspended premium processing for all H-1B petitions, including cap-subject petitions, for up to six months.

The USCIS announcement is at

<https://www.uscis.gov/news/alerts/uscis-completes-data-entry-fiscal-year-2018-h-1b-cap-subject-petitions>.

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### **3 DACA Recipient Files Suit Over Revoked Status**

Jessica Colotl, a Deferred Action for Childhood Arrivals (DACA) recipient whose case has received publicity over the years, has had her DACA status revoked. Her attorney has filed a motion requesting a federal judge in Atlanta, Georgia, to reinstate her DACA protection.

Ms. Colotl's parents brought her to the United States from Mexico when she was 11. She was granted DACA status in 2013, which was renewed last year. In the intervening years, her parents moved back to Mexico but she stayed in the United States, graduated from college, and has been working as a paralegal with Kuck Immigration Partners, LLC. Last year, she wanted to travel to Mexico to visit her ill mother, but since she had an outstanding removal order, she filed a motion to reopen and administratively close her removal proceedings. An immigration judge denied the request but the Board of Immigration Appeals found in her favor and sent the case back to the immigration judge to administratively close her case. However, the immigration judge asked the government for its position in writing; in a supplemental filing in March 2017, the government said her case shouldn't be closed and she was a priority for removal under a February 2017 Department of Homeland Security memorandum due to her criminal history (she was pulled over on campus for a traffic violation and driving without a license in 2010 and was charged with a felony false statement to a law enforcement officer when her address given didn't match the record. At that time, she was detained for 37 days).

Kuck Immigration Partners filed a complaint on May 9, 2017, in Atlanta for declaratory and injunctive relief. "Trump promised that DACA kids were fine. Nothing's changed in Jessica's case....They are simply in bad faith punishing her for exercising her rights under the policies enacted by the government," said Charles Kuck. Now 28, Ms. Colotl said in her lawsuit that the government is using her as "a test case to revoke DACA, exceeding its discretionary authority in an arbitrary and capricious manner." Calling the government's action "completely outrageous," she said she "felt shock because I didn't know this could happen."

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#### **4. USCIS Implements New Interpreter Policy, Form**

U.S. Citizenship and Immigration Services (USCIS) announced the May 1, 2017, implementation of a policy memorandum issued on January 17, 2017. The guidance applies to interviews conducted at domestic field offices except in cases where USCIS provides interpreters or has other policies, such as asylum and refugee interviews; credible fear and reasonable fear screening interviews; interviews to determine eligibility for relief under provisions of the Nicaraguan Adjustment and Central American Relief Act; and naturalization interviews, unless the interviewee qualifies for an exception to demonstrating adequate proficiency in reading, writing, and speaking English. The standards also do not apply to document translations or to interviews conducted at international field offices.

The guidance states that interpreters must be sufficiently fluent in both English and the interviewee's language, able to interpret competently between English and the interviewee's language, and able to interpret impartially and without bias. Those restricted from serving as interpreters include minors under age 18 (an exception for good cause may be granted for those age 14-17); attorneys and accredited representatives of the interviewee; and witnesses (unless an exception for good cause is granted). A witness is anyone who gives a personal account, orally or in writing, of something seen, heard, or experienced.

USCIS has introduced the new Form G-1256, Declaration for Interpreted USCIS Interview, as part of implementation of this guidance. Both the interviewee and the interpreter must sign the form at the beginning of the interview in the presence of a USCIS officer. The form includes a declaration stating that the

interpreter must accurately, literally, and fully interpret for both the interviewee and interviewing officer, and requires the interpreter to agree not to disclose any personal information learned in the interview.

USCIS officers will receive training to implement the new policy.

The announcement is at

<https://www.uscis.gov/news/alerts/role-and-use-interpreters-domestic-field-office-interviews>. The policy memorandum is at

<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-17-1-RoleUseInterpreters-PM-602-0125-1.pdf>. A related Web alert is at

<https://www.uscis.gov/news/alerts/role-and-use-interpreters-domestic-field-office-interviews>.

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## **5. State Dept. Announces Continued High Demand for Visa Numbers in Several Employment-Based Categories**

The Department of State's Visa Bulletin for the month of June 2017 notes, among other things:

- Continued high level of demand for the China and India employment-based first preference (EB-1) categories has required the establishment of a cut-off date for June. The EB-1 date for these two countries will once again become Current for October, the first month of fiscal year 2018.
- There has been an extremely large increase in China employment third preference applicant demand during the past month, due to the "downgrading" of status by applicants who had originally filed in the employment second preference. This has resulted in the third preference final action date being held for the month of June. Continued heavy demand for numbers will require a retrogression of this date no later than August.
- There also is continued high demand in the India EB-4 and special religious worker categories, which is likely to result in the India EB-4 per-country limit being reached in June. Therefore, implementation of July EB-4 and special religious worker final action dates for India is expected. The India EB-4 and special religious worker dates should once again become Current for October.

The Visa Bulletin for June 2017 is at

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

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## 6. IT Issues Hamper Tracking of Visa Overstays, DHS OIG Says

The Department of Homeland Security's (DHS) Office of Inspector General (OIG) recently found that U.S. Immigration and Customs Enforcement (ICE) relies on information technology (IT) systems that are "fragmented" and "ineffective," lacking in integration and information-sharing capabilities. As a result, OIG said, ICE personnel are forced to "laboriously piece together vital information from up to 27 distinct DHS information systems and databases to accurately determine an individual's overstay status." It can take months for ICE to determine a visa-holder's status and whether that person may pose a national security threat, OIG said, which contributes to a backlog of more than 1.2 million visa overstay cases.

Further complicating ICE's efforts to track visa overstays is DHS's lack of a comprehensive biometric exit system at U.S. ports of departure to capture information on nonimmigrant visitors. In the absence of such a system, OIG reported, ICE must rely on third-party departure data, such as commercial carrier passenger manifests, which do not include biometric land departure information reflecting those who cross the border on foot or using their own vehicles.

OIG made several recommendations to the DHS and ICE Chief Information Officers (CIOs) to improve information sharing, provide training and guidance, evaluate data reliability, and implement a biometric exit solution.

A related press release is at

<https://www.oig.dhs.gov/assets/pr/2017/oigpr-050417.pdf>. The full report is at <https://www.oig.dhs.gov/assets/Mgmt/2017/OIG-17-56-May17.pdf>.

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## 7. Firm In the News

**Cyrus D. Mehta** authored the article *Representation of the Joint Sponsor on an I-864 is Both Permissible and Prudent* that was published in Bender's Immigration Bulletin, May 1, 2017.

**Cyrus D. Mehta** was a Panelist on two panels - *Ethics - Falsus in Uno* and *Family Immigration*, at the Immigration Law Conference, organized by the Federal Bar Association, in Denver, CO, on May 12-13, 2017.

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