Siskind's Immigration Bulletin – August 11th, 2010

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-Memo outlines potential administrative alternatives to legislative immigration reform
-Graham does about-face on immigration
-GOP calls for homeland security hearing on immigration memo
-Feingold nixes GOP request for hearing into 14th amendment

8. Notes from the Visalaw.com Blogs

9. State Department Visa Bulletin: August 2010

10. Commentary: Ten Reasons to Oppose the Repeal of Birthright Citizenship

11. HHS Releases New Poverty Guidelines

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1. Openers

Dear Readers:

I am not shocked very easily when it comes to the immigration debate, but that was certainly the case last week when I learned that Senator Lindsey Graham (R-SC) told a reporter that he was seriously considering introducing a bill to substantially alter the 14th Amendment to the Constitution as it pertains to birthright citizenship. Extremists on the far right have argued for years that time has come to end automatic citizenship for all children born in the United States. That this has been the cornerstone of civil rights protections in the US for nearly 150 years and most mainstream politicians would not even mention scrapping birthright citizenship – that is until this week.

Graham's comment was especially surprising given that he has been one of the few voices in the Republican Party supporting comprehensive immigration reform. Graham was quickly joined by a number of other Republicans which effectively signified the end of any hope that the GOP will participate in negotiating on an immigration bill. It also means that the GOP has effectively written off the Hispanic vote for decades in the hope of appealing to the Tea Party wing of their party. Of course, this is a group that was already voting Republican.

All that this position may do is energize some of these voters to turn out in November. That may even help the GOP regain control of the House of Republicans. But it spells doom in the long run. A party that appeals primarily to white southerners and westerners can perhaps do well when the economy is mired in recession and the election is a referendum on the Democrats' performance. But when the economy recovers, they will be in serious trouble.

I've written a piece in this issue on why we should be worried about repealing the 14th Amendment. The article was originally run on the American Immigration Lawyers Association web site on their leadership blog (I'm on the board of governors). Hopefully, the GOP will get some common sense and start moving again back to the center. Right now, it seems like the ship is rudderless.

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There have been other important developments as well since our last issue. One was the leaking of a USCIS memorandum outlining how the Administration can accomplishment many goals of comprehensive immigration reform without depending on legislation. Republican lawmakers were naturally furious given how effectively they've blocked reform in Congress. The White House was basically silent – as was probably wise – and is keeping it's plans to itself.

The other news was the passage of a $600 million border enforcement bill by both houses of Congress. In a shameless attempt to show the measure is budget neutral, Democratic legislators claim that a large increase in H-1B fees to be imposed on the largest Indian IT staffing companies will cover the costs. First, why H-1B applicants should have to underwrite sending money to the Mexican border is beyond me. Second, even if this is justified, the dollars that will be raised are not going to be nearly enough to cover the bill. Politics at its worst.

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This week I'm off to speak at ImmigrationWorksUSA's national conference in Seattle where I'll be joining my friend Lou Moffa on a panel discussing developments in state immigration lawmaking. We'll talk about the Arizona law as well as immigration laws popping up in other states.

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Readers are reminded that they are welcome to contact my law office if they would like to schedule a telephone or in person consultation with me or one of my colleagues. If you are interested, please call my office at 901-682-6455.

Regards,

Greg Siskind

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2. ABCs of Immigration Law: E-1 and E-2 Visas

What is an E-1/E-2 visa?

The Immigration and Nationality Act provides treaty trader/investor nonimmigrant status for a national of any of the countries with which an appropriate treaty of commerce and navigation exists.

An individual who wishes to go to the US to carry on substantial trade, principally between the US and his/her own country, may apply for a treaty trader visa (E1). Someone who is going to the United States to develop and direct the operations of an enterprise in which he/she has invested, or is actively in the process of investing, a substantial amount of capital is welcome to apply for a treaty investor visa (E2). The category is popular because unlike the L-1 category, it is not necessary to

maintain a business outside the US and also because unlike L-1 status, E-1 and E-2 visas can be renewed every five years without limits.

What documents are required to apply?

- **E-1 Treaty Traders** must submit a comprehensive letter from the principal alien's company or employer identifying the applicant and describing in detail the nature and function of the business and the applicant's position. The letter must be on the current business/employer's letterhead, with an original signature from an authorized company representative, and must be addressed to the Visa Office, Department of State. The letter should demonstrate the applicant's entitlement to E-1 status based on the continued trade between the US and the country of the applicant's nationality. The letter must contain a statement of unequivocal intent that the applicant will depart the US when E-1 status ends. If the visa applicant is the sole company employee in the US , submit the latest copy of the company's FICA and IRS forms with the applicant's letter of explanation. Please include the company's fax number.

- **E-2 Treaty Investors** must submit a copy of the company's most recent financial statement. E-2 Treaty Investors must also submit a comprehensive letter from the principal alien's company or employer identifying the applicant and describing in detail the nature and function of the investment and the extent of the principal alien's participation in the investment. The letter must be on the current company/employer's letterhead, with an original signature from an authorized company representative, and must be addressed to the Visa Office, Department of State. The letter should contain a statement of unequivocal intent that the applicant will depart the US when E-2 status ends.

Both E-1 and E-2 applicants must submit

- Online Forms DS-156 and DS-156E.

- One Supplemental Nonimmigrant Visa Application, Form DS-157, for all male applicants between the ages of 16 and 45, regardless of nationality, in addition to the DS-156. The DS-157 must be typed or printed. All questions on the DS-157 must be answered. Applicants whose native language is not written in the English alphabet should print their names in their native language in item 3 of the DS-157. An online version of this form is available at http://travel.state.gov/DS-0157.pdf.

- One two inch by two inch photograph

- A passport valid for at least six months beyond the visa application date (including Visa Office processing time). If more than one person is included in the passport, each person applying for a visa must submit a visa application. You must present the passport bearing your most recent E visa. Each applicant receives an individual visa, and each Machine Readable Visa (MRV) covers a full passport page. Therefore, passports must contain a blank, unmarked visa page for each US visa to be placed in the passport. Remove extraneous pieces of paper (slips of paper with phone numbers, old airline

boarding passes, etc.) from the passport. You may submit a passport in a protective cover.

- The original or a certified copy of Form I-94, Arrival-Departure Record annotated by the Department of Homeland Security (formerly INS) inspector from your most recent admission to the US .

- If the spouse and/or dependent children are applying for visas separately from the principal alien, submit certified copies of the principal alien's valid visa and valid I-94 (front and back) in addition to the other listed requirements.

- Visa fee of $100.

Note that both E-1 and E-2 applicants can submit a variety of other documents demonstrating that an investment or trade between the US and treaty country is substantial. Your immigration lawyer should be able to provide you with a document checklist, but expect to have to produce documents that concern

- the incorporation of the business in the US

- the ownership of the company

- the capitalization of the business

- the business plan

- information on business activities such as marketing documentation, sales contracts, customer lists, etc.

- lease or property ownership documentation

- financial statements and tax returns for the US business

- if the company has business abroad, information on the business and finances of the foreign operation

- information on the proposed position in the US and background information on the proposed executive, owner, manager or essential employee

Which countries have E-1 Treaty Trader Status?

The following countries have E-1 Treaty Trader Status: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia & Herzegovina, Brunei, Canada, Chile, China (Taiwan), Colombia, Costa Rica, Croatia, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Iran, Ireland, Israel, Italy, Japan, Jordan, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Singapore, Slovenia, South Korea, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom and Yugoslavia.

Which countries have E-2 Treaty Investor Status?

The following countries have E-2 Treaty Investor Status: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bolivia, Bosnia & Herzegovina, Bulgaria, Cameroon, Canada, Chile, China (Taiwan), Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Honduras, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Liberia, Lithuania, Luxembourg, Macedonia, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom and Yugoslavia.

Can spouses or E-1 and E-2 visa holders work?

Yes. A spouse of an E-1 or E-2 visa holder can work with an employment authorization document. Spouses must file an I-765 application with a regional service center along with proof of the spouse's visa status.

Can one change to E-1 or E-2 status from within the US ?

Yes, the USCIS has the authority to approve a change to E-1 or E-2 status from another non-immigrant visa. However, once an applicant leaves the US , the applicant must apply for E Visa status at a consulate. Because the consulate can reject the application, one risks being put in a position where a substantial investment is made in a business in the US and then the applicant is unable to return to the US to run the business. Consequently, applicants are urged to exercise caution when first attempting to apply for E status in the US .

International Update

The Department of State Liaison Committee reminds members that the United States has a treaty with Denmark authorizing E-2 investor visas, in addition to E-1 treaty trader visas. Confusion was caused as the DOS Reciprocity Schedule stated there was "no treaty" in the E-2 category for Denmark, although the exhibit in the Foreign Affairs Manual (9 FAM 41.51 Exhibit I) indicates both E-1 and E-2 visas are available. The State Department has confirmed that it will update the DOS Reciprocity Schedule to reflect the E-2 treaty that went into force on December 10, 2008.

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3. Ask Visalaw.com

In our Ask Visalaw.com section of the SIB attorney Ari Sauer answers immigration law questions sent in by our readers. If you enjoy reading this section, we encourage you to visit Ari's blog, The Immigration Answer Man, where he provides more answers to your immigration questions. You can also follow The Immigration Answer Man on Facebook and Twitter.

If you have a question on immigration matters, write *Ask-visalaw@visalaw.com*. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only

intended to provide general information. You should consult with your own attorney before acting on information you see here.
* * *
1) Question:

I came to the U.S. on a visa, but stayed past the time given me on the I-94. My father is supposed to be sworn in as a U.S. citizen in December. I turn 21 in January. Will I be able to apply for a green card in the U.S. if my father files the paperwork for me before I turn 21?

Answer:

As a general rule, you must be in status in order to be eligible to receive a green card in the U.S. One of the exceptions to this rule is for an Immediate Relative who was inspected and legally admitted or paroled when they last entered the U.S. An Immediate Relative is the spouse, or unmarried child who is under 21, of a U.S. citizen.

Under the old rules, an Immediate Relative child would lose their status as an Immediate Relative if they turned 21 before becoming a permanent resident. However, under the Child Status Protection Act, if a U.S. citizen files an immigrant petition for their unmarried child before their 21st birthday, the child will remain an Immediate Relative, as long as they stay single, even if USCIS does not grant them status as a permanent resident until after their 21st birthday. The same holds true of a permanent resident who files for their child and then naturalizes, becoming a U.S. citizen, before the child's 21st birthday.

So your father does not have to wait until he becomes a U.S. citizen before filing the immigrant petition. As long as you remain single; the immigrant petition is filed before you turn 21; and your father is sworn in as a U.S. citizen before you turn 21, then you should be eligible to apply for a green card, as an immediate relative, without leaving the U.S.

2) Question:

My father is a U.S. citizen. He filed an immigrant petition for my sister in 2002. Since then, my sister has come to the U.S. on an H-1B visa. Her company filed an immigrant petition for her and she filed a green card based on this petition. She is waiting for the green card application to be approved. Recently my father received a letter from the National Visa Center telling him that he can start processing for my sister's visa application. What do we do?

Answer:

Your father can write to the National Visa Center and tell them that your sister will be applying for a green card (Adjustment of Status) in the U.S. They will transfer her case back to USCIS.

Whether your sister will need to do anything further depends on whether a visa is available for the immigrant petition that was filed by her company. If the priority date for the company's petition is current under the DOS Visa Bulletin, then she can just wait for USCIS to grant her permanent residence.

If a visa is not currently available for that petition, and the priority date for her father's petition is now current under the Visa Bulletin, then she now has the option to file a new application for Adjustment of Status based upon her father's immigrant petition. But it is a good idea for her to consult with an immigration law attorney to make sure that her father's petition is still valid and that there is no reason to stay with the employment-based application for adjustment of status before going forward with this option.

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4. Border and Enforcement News:

Immigrant deaths in Arizona desert near record

The Associated Press reports that the number of deaths among immigrants crossing the Arizona border from Mexico has increased at an alarming rate in July. The bodies of 40 illegally present immigrants were brought to the office of Dr. Bruce Parks, the Pima county Medical Examiner. Dr. Parks says his office is storing roughly 250 bodies and has been forced to use a refrigerated truck to store some of them.

Authorities attribute the high number of deaths to above-average temperatures and tighter border security that pushes immigrants to more remote and dangerous terrain. These deaths occur despite public service announcements warning of the dangers of desert heat, humanitarian groups that maintain aid stations for immigrants in distress, and 20 Border Patrol rescue beacons that distressed immigrants can activate in remote areas.

http://www.trivalleycentral.com/articles/2010/07/21/arizona_city_independent/news/doc4c45d83c3f06d566586474.txt
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Mexico sends human rights inspectors to border

The Washington Post reports that Mexico's National Human Rights commission announced that it will send inspectors to U.S. border crossings to monitor deportations and ensure migrants are treated properly. The commission issued a statement claiming that the implementation of Arizona Law SB1017 threatened 'migrants' full exercise of their human rights.

Interior Secretary Francisco Blake of Mexico met with U.S. ambassador Carlos Pascual on July 26th to express his support for the Obama administration's challenge to the law. In addition, he emphasized that Mexico wants a proper investigation of the deaths of two Mexican citizens in incidents involving U.S Border Patrol officers in May and June.

http://www.washingtonpost.com/wp-dyn/content/article/2010/07/25/AR2010072501790.html
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U.S. Consulate in Ciudad Juarez closes for security

The Associated Press reports that the United States shutdown its consulate in the Mexican border city of Ciudad Juarez for a security review. The decision comes just

months after drug gangs killed three people tied to the consulate. The U.S. Embassy announced that the consulate will 'remain closed until the security review is completed.'

The consulate at Ciudad Juarez is the only place where Mexicans applying for U.S. residency can go and the embassy said it would have to reschedule pending appointments for visa applications. They warned that medical clinics where applicants are required to receive exams 'may also close on short notice.'

Ciudad Juarez has been a battleground between warring drug cartels and more than 4,000 people have been killed their since 2009. In May, U.S. consulate employee Lesley Enriquez, her husband, and Jorge Alberto Salcido, the husband of a Mexican employee of the consulate, were killed by gunmen.

http://www.washingtonpost.com/wp-dyn/content/article/2010/07/29/AR2010072906525_pf.html
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US to reopen consulate in Mexican border city

The Associated Press reports that the U.S. consulate in the Mexican border city of Ciudad Juarez will reopen after being closed for two days due to an unidentified security threat. A U.S. Embassy spokesman refused comment on the findings of the security review or what specifically prompted the sudden shutdown of the consulate.

The consulate in Ciudad Juarez is the only location in Mexico that processes immigrant visa. In 2009, the consulate processed 124,145 immigrant visa applications and about 120,000 travel visas. The U.S. embassy said it would reschedule any missed appointments for visa applications through its call center.

http://www.washingtonpost.com/wp-dyn/content/article/2010/08/02/AR2010080204591.html
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5. News from the Courts:

Key parts of Arizona anti-immigration law blocked

Reuters reports that U.S. District Judge Susan Bolton blocked several key parts of Arizona's controversial immigration shortly before it was to take effect. The provisions blocked included requiring a police officer to determine the immigration status of a detained or arrested individual and requiring immigrants to carry their documentation with them at all times. The Justice Department argued that Arizona's law infringed on federal authority over immigration policy and Bolton agreed, finding that the 'United States is likely to suffer irreparable harm' if her court did not overturn certain sections of the law.

Arizona Governor Jan Brewer said she 'will soon file an expedited appeal' to reinstate the provisions, which could ultimately reach the Supreme Court. However, Peter

Spiro, a law professor at Temple University and former attorney in the State Department, said that the court's decision would take 'the wind out of the sails of anti-immigration efforts on the state level' and doesn't expect the blocked provision to ever go into effect.

http://www.reuters.com/assets/print?aid=USTRE66R45C20100728
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Nebraska city suspends immigration law, goes to court

The Washington Times reports that the city council of Fremont, Nebraska has suspended its voter-approved ban on hiring or renting property to illegally present immigrants by a unanimous vote. The city council hopes that delaying the ordinance will save the city money as it fights lawsuits brought by the American Civil Liberties Union and the Mexican American Legal Defense & Education Fund. They have hired Kansas-based attorney Kris Kobach, who drafted the ordinance and also helped write Arizona's new immigration law.

The Nebraska ordinance would require employers to use a federal online system to check a person's immigration status and for prospective property renters to apply for a $5 permit at City Hall. Those who said they were not citizens would have their legal status checked and would be forced to leave the property if they did not provide proper documentation.

http://www.washingtontimes.com/news/2010/jul/28/nebraska-city-suspends-immigration-law-goes-court/print/
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6. News Bytes:

Rage Against the Machine to plug Arizona boycott

The Associated Press reports that Rage Against the Machine will urge artists and musicians to boycott Arizona because of its controversial immigration law. The band's lead singer, Zach de la Rocha, announced that proceeds from a July 22nd concert in Los Angeles would go to organizations fighting against the law. The Sound Strike, the official name of the boycott, has attracted other popular artists such as Sonic Youth and Kanye West.

http://www.washingtonexaminer.com/lifestyle/rage-against-the-machine-to-play-concert-for-immigration-activists-promote-boycott-of-arizona-98891759.html
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Feds oppose merger of their challenge to Arizona immigration law with officer's lawsuit

The Los Angeles Times reports that lawyers for the U.S. Justice Department have denied the request of Phoenix police Officer David Salgado to consolidate their challenge to the new Arizona immigration law with his lawsuit. Salgado issued the request on the basis that the two cases are identical because they claim state law is

trumped by federal law and seek to keep the state law from being enforced. However, the Justice Department says it's challenging more sections of the law than Salgado and a merger would delay that challenge.

http://www.latimes.com/news/nationworld/nation/wire/sns-ap-us-immigration-justice-department,0,6014623.story
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Brewer finds little backing in move to fix bill instead of fighting foes

The Sierra Vista Herald (Sierra Vista, AZ) reports that Arizona legislative leaders from both parties oppose a proposal by Gov. Jan Brewer to revise SB 1017 rather than fight it in court. Republican House Speaker Kirk Adams is convinced that an appellate court will overturn the U.S. District Court's decision to block key provisions of the law. Democratic Assistant House Minority Leader Kyrsten Sinema says the only way her party would cooperate with a special session would be if it were to consider an outright repeal of SB 1017 and draft a completely new law.

The 9th U.S. Circuit Court of Appeals said it will hold a hearing in early November on Arizona's challenge the U.S. District Judge Susan Bolton's decision.

http://www.svherald.com/content/news/2010/07/31/brewer-finds-little-backing-move-fix-bill-instead-fighting-foes
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Boycott forces ClearHealth to relocate

The Arizona Republic reports that the medical company ClearHealth, which operates medical facilities in Los Angeles, San Jose, Oakland, and Boston, will move its headquarters from Chandler, AZ to Las Vegas, NV because it faced losing clients in the boycott of Arizona. David Uhlman, CEO of ClearHealth said he was competing for business in the Bay Area when an unidentified company told him its board of directors would not approve a contract with an Arizona-based company. Although Uhlman and his company have maintained a neutral stance on SB 1017, he claims potential financial losses due to the boycott represented 30 to 40 percent of ClearHealth's business and it could not continue to be based in Arizona.

http://www.azcentral.com/arizonarepublic/business/articles/2010/08/01/20100801bizboycott-forces-clearhealth-to-relocate-0802.html
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Virginia legal opinion supports check of immigration status

The Washington Post reports that Virginia Attorney General Ken Cuccinelli II issued a legal opinion authorizing law enforcement to check the immigration status of anyone stopped by police officers. The opinion was written in response to a letter written by Del. Bob Marshall of the Virginia House of Delegates asking Governor Bob McDonnell to issue an executive order that authorizes police to check an individual's immigration status when they make a stop. Marshall modeled his request to the governor after a 2008 executive order by Rhode Island Governor Donald Carcieri

calling for law enforcement officials to verify the immigration status of all non-citizens taken into custody or under investigation for any crime.

Cuccinelli's opinion differentiated between criminal violations of immigration law, such as crossing the border, and violations of civil immigration statutes, such as overstaying visas. In his opinion, law enforcement officials can arrest an individual in violation of criminal law but not those having violated a civil statute. He stressed that as long as officers have 'the requisite level of suspicion,' they may detain and question a person they suspect has committed a federal crime. However, Cuccinelli hopes to avoid legal trouble for his state by not mandating the police force to perform the checks.

http://www.washingtonpost.com/wp-dyn/content/article/2010/08/02/AR2010080205229.html?hpid=topnews
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Mexican guest workers, laid off, want BP's help

The New York Times reports that five Mexican housekeepers who worked at the Ramada Plaza Beach Resort in Fort Walton Beach, FL have lost their jobs as a result of the hotel's decline in business due to the Deepwater Horizon oil spill and are seeking compensation from BP. The oil spill has been especially detrimental for guest workers because under their H-2B visas, they can only work for the employer who arranged their visa and must leave the United States within 10 days of losing their job.

Saket Soni, executive director of the Alliance of Guestworkers for Dignity, is helping the laid-off housekeepers file claims with BP. The alliance has filed a petition with the Labor Department, requesting that it issue a formal policy directing employers in the spill zone to pay guest workers their full wages due under contract as well as transportation costs for their trip home.

http://www.nytimes.com/2010/08/06/us/06guest.html
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U.S. suspends new adoptions in Nepal

The Agence France-Presse reports that the United Stats has suspended adoptions of Nepalese children. The US Citizenship and Immigration Services (USCIS) and the State Department announced that they would 'suspend adjudication of new adoptions petitions and related visa issuances for children' listed as abandoned. They cited serious flaws in determining whether the children had been abandoned, including examples of altered birth certificates. Nepalese police and orphanage officials also complicated efforts by refusing to help confirm orphanage records.

http://www.google.com/hostednews/afp/article/ALeqM5jd4fgbFaPSLgZ0lcDMx6_z4MCLJw
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7. Washington Watch:

International Harmonization Act of 2010 passed by House of Representatives

The American Immigration Lawyers Association (AILA) reports that the House of Representatives passed the International Adoption Harmonization Act of 2010 by a voice vote on July 20th, 2010. This new legislation would allow for an adopted child to legally immigrate if the petition is filed before the child turns 18, raising the age limit from 16.

The bill, HR 5532, was sponsored by Immigration Subcommittee Chairwoman Zoe Lofgren (D-CA).

http://www.aila.org/content/default.aspx?docid=32677
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Senate GOP loses bid to derail Justice Department lawsuit against Arizona immigration law

The Los Angeles Times reports that Senate Democrats were able to stop a Republican effort led by Senator Jim DeMint (R-SC) to block the Justice Department from pursuing its lawsuit against Arizona's controversial immigration law.

DeMint hoped to add the measure as an amendment to legislation extending unemployment benefits for people who have been out of work for six months but his effort was defeated by a 55-43 vote.
http://www.latimes.com/news/nationworld/politics/wire/sns-ap-us-arizona-immigration-law,0,3210515.story
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House passes $600M for border security; Senate raises h-1B fees

The Hill reports that on July 28th the House of Representatives passed legislation that grants funding for more U.S. Border Security agents along the border with Mexico. The legislation would provide $701 million for hiring over 1,200 Border patrol agents, 500 Customs and Border Patrol agents, and other necessary resources for border security.

In July, the House passed the funds as part of an appropriations bill, but the Senate detached it along with other domestic spending items. House Speaker Nancy Pelosi (D-CA) commended the legislation but blamed Republicans from blocking it in the Senate. Though it is unclear whether the Senate will pass the new legislation, this bill ensures that Congress will continue to debate a reform of the immigration system through the August recess.

Computer World reports that the U.S. Senate has approved an H-1B fee increase of $2000 per application for firms that have 50% of their employees on this visa in order to fund a $600 million 'emergency package' to improve security along the Mexican border. The fee increase will also affect the L-1 visa, but it is unclear whether it would apply only to those firms that are also H-1B dependent. The $2000 increase may be added to the $320 H-1B filing fee and add-on fees that include a $500 anti-fraud fee that is required for any new H-1B or L-1 visa user and a fee for training U.S. workers that ranges from $750 to $1500.

The legislation was introduced by U.S. Senators Charles Schumer (D-NY) and Claire McCaskill (D-MO) and passed by unanimous consent, but must be reconciled with the House's $600 million spending bill that does not include the fee increase.

Outsourcing companies with a majority of employees holding H-1B visas such as IT service industry groups Logic Planet Inc. and TechService Alliance are challenging the USCIS over its interpretation of the H-1B rules. However, experts do not believe the fee increase is enough to offset the cost savings of hiring a guest worker over an American worker.

http://www.computerworld.com/s/article/9180240/Senate_raises_H_1B_fees_to_fund_border_security

http://thehill.com/blogs/blog-briefing-room/news/111599-house-passes-701m-for-border-security-

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Memo outlines potential administrative alternatives to legislative immigration reform

The Washington Times reports that a government memo said the Obama administration is considering "a non-legislative" form of comprehensive immigration reform. Anticipating that Congress might not pass reform legislation this year, four senior officials from the U.S. Citizen and Immigration Services (USCIS) drafted a memo suggesting how USCIS can give permanent resident status to large numbers of illegally present immigrants. Addressed to USCIS Director Alejandro Mayorkas, the memo lists tools the administration has to 'reduce threat of removal' for many illegally present immigrants. The memo states that 'USCIS can extend benefits and/or protections to many individuals and groups by issuing new guidance and regulations, exercising discretion with regard to parole-in-place, deferred action and the issuance of Notices to Appear.'

Anti-immigration voices were quick to react. The memo was obtained by Iowa Senator Charles Grassley (R-IA) who characterized the memo as proof of the administration's plan to 'circumvent Congress and unilaterally execute a backdoor amnesty plan.' Rosemary Jenks, government relations manager for NumbersUSA, an organization that advocates for stricter immigration quotas, claimed that Democratic leaders have intentionally allowed comprehensive immigration reform to falter in Congress with hopes of implementing the plan outlined in the memo after the November elections.

Chris Bentley, a spokesman for USCIS, clarified that the memo was simply a proposal meant to spark discussion rather than a final decision. He emphasized that the Department of Homeland Security still believes that 'comprehensive bipartisan legislation' is the best method for initiating immigration reform. He also stressed that the organization would not grant 'deferred action or humanitarian parole' to the entire population of illegally present immigrants but would target specific groups such as students covered by the DREAM Act.

http://www.washingtontimes.com/news/2010/jul/29/memo-outlines-backdoor-amnesty-plan-for-obama/

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Graham does about-face on immigration

The Miami Herald reports that Sen. Lindsey Graham (R-SC) has discussed with other senators a constitutional amendment that would deny American citizenship to children born in the United States to illegally present immigrants. This idea is a reversal from the leading role he played in the 2007 failed Senate effort to enact comprehensive immigration reform that included a path to legal residency.

Similar bills attempting to eradicate 'birthright citizenship' have never advanced far and Graham believes a constitutional amendment would be required. Graham says his goal is to create incentives to come to the United States legally and is pushing to increase the number of foreign employees that companies can sponsor under several government work-visa programs.

Mark Krikorain, an analyst for the Center for Immigration Studies in Washington, said that eliminating 'birthright citizenship' would actually increase the number of illegally present immigrants in the US. Each year nearly 300,000 children are born to illegally present immigrants and they would not be granted citizenship if Graham's constitutional amendment were to be ratified.

The Hill reports that Senate Minority Leader Mitch McConnell (R-KY) and Senate Minority Whip Jon Kyl (R-AZ) have also proppsed holding a hearing on the amendment. Rep. Lamar Smith (R-TX) introduced legislation with 93 co-sponsors to deny citizenship to children of undocumented immigrants.

http://www.miamiherald.com/2010/07/29/1752817/graham-does-about-face-on-immigration.html

http://thehill.com/homenews/senate/112287--mcconnell-congress-ought-to-take-a-look-at-alteringimmigration-law
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Feingold nixes GOP request for hearings into 14th amendment

The Washington Post reports that Senator Russ Feingold (D-WI), chairman of the Constitution Subcommittee, will not honor Republicans request for a hearing into revising the 14th amendment so that the children of illegally present immigrants would not be guaranteed citizenship. Sen. Feingold says he believes that bipartisan legislation addressing comprehensive immigration form is a better and more realistic course of action that a constitutional amendment.

Republicans may turn to Senator Patrick Leahy (D-VT) who is chairman of the Judiciary Committee and has the authority to go ahead with the hearings despite Feingold's opposition.

http://voices.washingtonpost.com/plum-line/2010/08/feingold_nixes_gop_request_for.html
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8. Updates from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- PROPORTIONAL CONSEQUENCES
- HOUSE PASSES BORDER BILL
- 10 REASONS AMENDING THE CONSTITUTION TO BAR BIRTHRIGHT CITIZENSHIP IS A TERRIBLE IDEA
- ANTIS NEXT TARGET: PUBLIC SCHOOL EDUCATION FOR ALL CHILDREN
- WHITE HOUSE STOPS STUDENT DEPORTATIONS
- BOEHNER FAVORS MOVING ON 14TH AMENDMENT HEARINGS
- MCCONNELL: WE DON'T REALLY WANT TO SCRAP THE 14TH AMENDMENT (WINK WINK)
- FOREIGN DOCTORS IN US OUTPERFORM THEIR AMERICAN-BORN COUNTERPARTS
- SENATE BORDER BUDGET BILL PAYS FOR ENFORCEMENT WITH NEW H-1B AND L-1 FEES
- ONE FIFTH OF ONE PERCENT
- FEINGOLD TO GOP: DROP DEAD
- ANOTHER SHARK JUMPING SIGN
- SHERIFF JOE SHOWDOWN |
- IMMIGRATION HUMOR: THE DAILY SHOW AND THE 14TH AMENDMENT
- ANOTHER SIGN THE GOP HAS JUMPED THE SHARK
- VIRGINIA AG THUMBS NOSE AT ARIZONA
- EDEN'S RUN 5-K - AUGUST 22 - MEMPHIS, TN
- WOLGIN: DON'T FORGET TO DEAL WITH LEGAL IMMIGRATION REFORM
- LADY GAGA TO TURN ARIZONA SHOW INTO A PROTEST AGAINST ARIZONA LAW
- IMMIGRANT OF THE DAY: JUSTIN BIEBER - POP STAR
- HOW WE KNOW IT'S TIME TO DECLARE CIR DEAD
- IMMIGRANT OF THE DAY: SIMON CHO - OLYMPIC SPEED SKATER
- 9TH CIRCUIT WON'T EXPEDITE CONSIDERING OVERTURNING OF ARIZONA INJUNCTION
- LEAKED MEMO SHOWS MAYORKAS PUSHING FOR MAJOR IMMIGRATION POLICY CHANGES
- WHY THE ARIZONA RULING IS GOOD FOR DEMOCRATS
- CALL FOR PHYSICAL THERAPIST PLAINTIFFS
- DHS WEIGHS IN ON BOLTON'S DECISION
- WHAT THE DECISION DOES?
- JUDGE BLOCKS CONTROVERSIAL SECTIONS OF ARIZONA LAW
- TWO-THIRDS OF ARIZONA EMPLOYERS IGNORING E-VERIFY MANDATE
- ARIZONA JUDGE'S DECISION EXPECTED IN NEXT FEW HOURS
- IMMIGRATION: A DESERT MIRAGE FOR REPUBLICANS
- AILA SUES USCIS TO FORCE AGENCY TO OPEN UP ON H-1B PROCESS
- WHAT IF ICE REFUSES TO COOPERATE?
- IMMIGRANT OF THE DAY: IRIS GOMEZ - AUTHOR, LAWYER
- JUDGE CONSIDERING PARTIAL INJUNCTION IN ARIZONA CASE
- EIGHT MORE UTAH STATE EMPLOYEES ADDED TO HIT LIST
- IMMIGRANT OF THE DAY: IGNACIA MOYA - MATRIARCH
- ARIZONA FILES BRIEF TO BLOCK INJUNCTION
- FIRST COURT ARGUMENTS HEARD OVER ARIZONA LAW
- REID CONSIDERING DREAM ACT VOTE BEFORE ELECTION
- ACLU SUES FREMONT, NEBRASKA OVER ANTI-IMMIGRANT ORDINANCE
- 2010 USCIS OMBUDSMAN REPORT TO CONGRESS

- BREAKING: UTAH BLACKLIST AUTHORS IDENTIFIED
- SENATORS PROPOSE LEGISLATION TO BAR ARIZONA LAWSUIT
- SHERIFF JOE'S JURISDICTION ONLY AREA WHERE CRIME IS UP IN ARIZONA
- "CONCERNED CITIZENS" START TURNING IN THEIR NEIGHBORS IN UTAH
- AUGUST VISA BULLETIN SHOWS BIG ADVANCES

The SSB I-9, E-Verify, & Employer Immigration Compliance Blog

- DENVER LATEST CITY TO MANDATE E-VERIFY FOR CONTRACTORS
- YORBA LINDA, CA CONSIDERING JUMPING ON THE E-VERIFY BANDWAGON
- CANYON LAKE, CA CONSIDERING E-VERIFY MANDATE
- CENTRALIA, WA MOVES FORWARD ON E-VERIFY LAW
- FREEMONT BACKS DOWN ON IMPLEMENTING NEW SANCTIONS LAW
- NEW ELECTRONIC I-P REGS RELEASED
- EMPLOYERS TARGETED BY ICE IN NEW JERSEY
- FLORIDA AG PUSHING GOVERNOR TO MANDATE E-VERIFY USE
- DENVER CONSIDERING E-VERIFY MANDATE
- ICE TO GIVE EMPLOYERS BONUS DAY IN MEETING I-9 DEADLINES

Visalaw Healthcare Immigration Blog

- PHYSICAL THERAPISTS FROM SEVERAL COUNTIES TO BE BARRED FROM TAKING U.S. LICENSING EXAM
- FILIPINO PT'S VENTING OVER NEW TEST POLICY

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9. State Department Visa Bulletin: August 2010

Number 23
Volume IX
Washington, D.C.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **August**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by July **9th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

2. The fiscal year 2010 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2010 limit for employment-based preference immigrants calculated under INA 201 is 150,657. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 26,366 for FY-2010. The dependent area limit is set at 2%, or 7,533.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, DOMINICAN REPUBLIC, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	01AUG05	01AUG05	01AUG05	01AUG05	15NOV92	01JAN96
2A	01MAR09	01MAR09	01MAR08	01MAR09	01MAR08	01MAR09
2B	01JAN04	01JAN04	01JAN04	01JAN04	15JUN92	01AUG01
3rd	01JAN02	01JAN02	01JAN02	01JAN02	01MAR92	01MAY94
4th	01JUN01	01JUN01	01JUN01	01JUN01	01JAN94	01APR90

*NOTE: For August, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01MAR08. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT the DOMINICAN REPUBLIC and MEXICO** with priority dates beginning 01MAR08 and earlier than 01MAR09. (All 2A numbers provided for the DOMINICAN REPUBLIC AND MEXICO are exempt from the per-country limit; there are no 2A numbers for the DOMINICAN REPUBLIC AND MEXICO subject to per-country limit.)

Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01MAR06	C	01MAR06	C	C

3rd	01JUN04	22SEP03	01JUN04	01JAN02	U	01JUN04
Other Workers	15MAY02	15MAY02	15MAY02	01JAN02	U	15MAY02
4th	C	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C	C
5th	C	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2010 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **August**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	64,300	Except: Egypt: 26,000 Ethiopia: 25,625 Nigeria: 22,000
ASIA	28,700	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	5	
OCEANIA	CURRENT	
SOUTH AMERICA, and the CARIBBEAN	CURRENT	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2010 program ends as of September 30, 2010. DV visas may not be issued to DV-2010 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2010 principals are only entitled to derivative DV status until September 30, 2010. DV visa availability through the very end of FY-2010 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN SEPTEMBER

For **September**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	CURRENT	Except: Ethiopia: 26,350
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
OCEANIA	CURRENT	
SOUTH AMERICA, and the	CURRENT	

CARIBBEAN		

D. RETROGRESSION OF THE MEXICO FAMILY FOURTH PREFERENCE CUT-OFF DATE

It has been necessary to retrogress the Mexico Family Fourth preference cut-off date to keep visa issuances within the annual numerical limitations set by law. It is anticipated that for October, the first month of the new fiscal year, this preference will return to the latest cut-off date reached during FY-2010.

E. APPLICABILITY OF INA SECTION 202(a)(5)(A)AS IT RELATES TO THE ALLOCATION OF "OTHERWISE UNUSED" NUMBERS

INA Section 202(a)(5)(A), added by the American Competitiveness in the 21st Century Act (AC21), provides that if total demand will be insufficient to use all available numbers in a particular Employment preference category in a calendar quarter, then the otherwise unused numbers may be made available without regard to the annual per-country limits. This provision helps to assure that all available Employment preference numbers may be used. In recent years, the application of Section 202(a)(5)(A) has occasionally allowed oversubscribed countries such as China-mainland born and India to utilize large quantities of Employment First and Second preference numbers that would have otherwise gone unused.

For example, let us assume that 11,600 Employment Second preference numbers are available in a calendar quarter. There is heavy Employment Second preference demand by China-mainland born and India applicants; however, each country is oversubscribed and would ordinarily be limited to about 800 of the available numbers due to the prorating provisions of INA Section 202(e). Applicants from other countries that have not yet reached their per-country limit have reported a total demand of 6,500 numbers. After taking the worldwide demand into account, it is determined that as a result of the China-mainland born and India per-country limits only 8,100 of the total available Employment Second preference numbers would be used in that quarter. In this instance, the otherwise unused 3,500 numbers could then be made available to China-mainland born and India regardless of their per-country limits. Should that occur, the same cut-off date would be applied to each country, since numbers must be provided strictly in priority date order regardless of chargeability. In this instance, greater number use by one country would indicate a higher rate of demand by applicants from that country with earlier priority dates.

F. DETERMINATION OF THE NUMERICAL LIMITS ON IMMIGRANTS REQUIRED UNDER THE TERMS OF THE IMMIGRATION AND NATIONALITY ACT (INA)

The State Department is required to make a determination of the worldwide numerical limitations, as outlined in Section 201(c) and (d) of the INA, on an annual basis. These calculations are based in part on data provided by U.S. Citizen and Immigration Services (CIS) regarding the number of immediate relative adjustments in the preceding year and the number of aliens paroled into the United States under Section 212(d)(5) in the second preceding year. Without this information, it is impossible to make an official determination of the annual limits. To avoid delays in processing while waiting for the CIS data, the Visa Office (VO) bases allocations on

the minimum annual limits outlined in Section 201 of the INA. On July 7th, CIS provided the required data to VO.

The Department of State has determined the Family and Employment preference numerical limits for FY-2010 in accordance with the terms of Section 201 of the INA. These numerical limitations for FY-2010 are as follows:

Worldwide Family-Sponsored preference limit: 226,000
Worldwide Employment-Based preference limit: 150,657

Under INA Section 202(A), the per-country limit is fixed at 7% of the family and employment annual limits. For FY-2010 the per-country limit is 26,366. The dependent area annual limit is 2%, or 7,533.

G. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin.

To be **placed on** the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:
Subscribe Visa-Bulletin *First name/Last name*
(example: Subscribe Visa-Bulletin Sally Doe)

To be **removed from** the Department of State's E-mail subscription list for the "Visa Bulletin", **send an e-mail message to the following E-mail address**:

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

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10. Commentary: Ten Reasons to Oppose the Repeal of Birthright Citizenship

By Greg Siskind

One of the greatest accomplishments of the Republican Party was actually one of its earliest. After winning the Civil War and freeing the slaves, the Grand Old Party worked to pass the 14th Amendment to the Constitution, the bedrock of civil rights protections in the US that has served as a model to democracies around the world. The 14th Amendment was so significant that the GOP's touts this in its list of greatest accomplishments (http://www.gop.com/index.php/learn/accomplishment/).
So it is, of course, shocking that in the days following the defeat of the Arizona law by a judge in that state, a number of Republican Senators have come forth calling for the repeal of the 14th Amendment's provisions on birthright citizenship.
The 14th Amendment guarantees that all children born in the US (with narrow exceptions for children born to diplomats) are US citizens. While some have argued that the 14th Amendment doesn't clearly protect birthright citizenship, this has been established law for more than a century. The Supreme Court removed any doubt of this in the 1898 United States for Wong Kim Ark case where by a 6-2 majority, the Supreme Court held that

> *The fourteenth amendment reaffirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or bon on public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single exception of children of members of the Indian tribes owing direct allegiance to their several tribes… To hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of citizens or subject of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treats as citizens of the United States.*

Nearly three decades ago, the Supreme Court relied on Wing Kim Ark in the case of Plyler v. Doe to make clear that the 14th Amendment applies to ALL persons born in the US, whether their parents are legally present or not.
Extremists have been complaining about so-called "anchor babies" for some time. To listen to them one would assume that millions of these children are growing up in America today or will one day choose to exercise their citizenship rights and enter the US. Few except politicians on the fringe were willing to support the extremists. But in the last several days, a number of Republican lawmakers, including House Minority Leader Boehner and Senate Minority Leader McConnell have lost their inhibitions and are openly calling for hearings on a Constitutional Amendment.
Once the shock of the suggestion wears off, it does pay to at least think about some of the basic reasons why we need to steer clear of an Amendment. Here are a number of reasons why.

1. This is a "solution in search of a problem."

To hear Lindsey Graham and his allies description of "drop and leave" Americans understandably might assume that there are millions of people coming to the US to have kids. Is there really any truth to this allegation?

The anti-14th Amendment folks simultaneously talk about two groups of individuals when discussing amending the Constitution. One is the group of mothers that is illegally present in the US having children and the second are mothers who come on so-called "birth tourism" packages legally to the US so they can claim citizenship for their kids.

On the first issue, there is little evidence that a significant number of mothers illegally enter the US for the purpose of having children. The burden of proof should be on proponents of tinkering with one of the cornerstones of American democracy. Before changing the Constitution, we should have clear evidence that there is a problem rather than the anecdotes of politicians pushing an anti-immigrant agenda.

It is true that many mothers here illegally do have children, but their purpose for being in the US is generally to work or to be with a family member who is the breadwinner. This is probably the group that Graham is targeting and he should be honest in saying that the goal is to punish people who are here illegally and to disenfranchise their children as opposed to stopping a mythical "drop and leave" crisis.

As for maternity tourism, there is actual real evidence to which we can look that shows that this problem is miniscule. According to the Center for Health Care Statistics, fewer than 7,500 births out of an annual 4,000,000 births are to mothers who report residing outside the country. And some of those mothers are US citizens residing abroad as part of the community of 6,000,000 Americans who live overseas.

And perhaps the reason so few mothers come to the US just to have a child is because the immigration benefits are not what Republicans would have people believe. Children born in the United States cannot sponsor their parents for immigration benefits until after they turn 21 years of age.

Nevertheless, to the extent that there is a "maternity tourism" industry, the better approach to dealing with this is to enforce our existing laws that bar the use of visitor visas for such a purpose. Targeting companies and individuals engaged in this type of visa fraud would go a long way to curtailing this sort of activity.

2. Ending birthright citizenship would not end illegal immigration.

There is no evidence that immigrants come to the United States to have children. They come for jobs. Taking away birthright citizenship would not change this. What would happen is the number of illegally present immigrants would increase dramatically as many children of illegal immigrants are added to the ranks of the illegally present and who knows how many others would be added to the list of the undocumented because they are unable to prove citizenship even if they are entitled to it.

3. Implementing a drastic change to the 14th Amendment would be enormously difficult to administer and hugely expensive.

Because US citizenship laws are so complex and all Americans would no longer have the most basic proof of citizenship - the birth certificate - available, most would have to go through a legal process that would be expensive for the government and the individual. The government would need to hire thousands of lawyers and other examiners and individuals would also need thousands of new lawyers to help with this process once we get through years of litigation to determine how we actually define citizenship and what is a fair way to prove it.

4. Where exactly do you draw the line?

One of the biggest potential problems with looking at something of this sort is figuring out which population to target. Just the children of illegally present immigrants? What about when one of the parents is a citizen and one is an illegally present immigrant? What about when the parents are unmarried. Does it matter if the father is the citizen as opposed to the mother. If not, in situations where the mother is not legally present and she is not married to the US citizen father, the mother would need to first prove the paternity of the child, something that could be difficult or impossible particularly for individuals without the means to sue for paternity. Should it make a difference if the legally present parent is a lawful permanent resident and not a citizen? How about a legally present non-immigrant?

If the target is broader and we're going after anyone whose parents are not permanent residents or citizens, does it matter what type of non-immigrant status the person holds? Should a tourist be treated differently than a student or a non-immigrant work visa holder? What about people working on non-immigrant visas but waiting on long lines for permanent residency such as Indian and Chinese advance degree holders?

5. The citizenship of millions of Americans would suddenly come in to doubt.

If birth in the United States is no longer proof of citizenship, a great number of people would have difficulty proving they are entitled to citizenship. People would face extraordinary administrative obstacles and be forced to hire lawyers to prove entitlement to citizenship. Waits for passports would be extremely lengthy since for all people it would be the main way to prove they are American. Right now there is no registry of US citizens and people generally rely on proving their birth in the US to demonstrate citizenship. One survey by the Brennan Center at New York University found that more than 13 million people would not be easily able to prove their citizenship.

Many other questions would also naturally arise. What about the grandchildren of illegal immigrants? As noted above, figuring out what to do when one of the parents is legal and the other not raises a number of questions over how citizenship is transmitted in the absence of birthright acquisition. If citizenship is not defined by being born in the US, then how does one acquire citizenship? For most African Americans, citizenship was likely originally acquired in their families because of the 14th Amendment itself. Are only individuals who immigrated going to qualify? What about Native Americans?

Lest you think that it is being far-fetched to assume that the proponents of the amendment wouldn't apply the rule retroactively, think again. Just this week, Tom Tancredo, the leading anti-immigrant voice in the GOP, told CNN

(http://edition.cnn.com/TRANSCRIPTS/1008/08/cnr.02.html) the Amendment should be written to apply retroactively to everyone in the US.

A Pandora's Box if there ever was one.

6. The American system of assimilating immigrants that has worked successfully for generations would be put under serious threat by creating a permanent two-tiered society with a permanent new underclass.

Taking away citizenship from the children of immigrants would mean more than just not being able to cast votes in elections. It means no attending public schools, no drivers licenses, no in state tuition, no ability to work legally and so on. Instead, we would have a class of individuals with no real connection to any country other than the US and no ability to become productive participants in our society. This new stateless class would be forced to live in the shadows. For some, they won't be deportable because their parents' countries are not legally obligated to take them. This new stateless group of individuals would be stuck in a limbo of not being able to participate in American society but having no other country to which to go as an alternative. Such individuals would be vulnerable to exploitation and criminal activity.

7. It's a slap in the face to African Americans

After the Civil War, there were many, including President Andrew Johnson, who were prepared to continue to deny citizenship to slaves and their newly freed children because they were not "ready" to take on the responsibilities of citizenship. The Fourteenth Amendment guaranteed that no class of individuals would ever have to show they were up to snuff when it came to deserving citizenship and it is the Fourteenth Amendment that has been the basis of major civil rights progress in the area of voter rights, equal access to justice, protection against workplace discrimination, etc.

The idea of scrapping birthright citizenship has been the cornerstone of nativist and racist organizations for some time and the fact that supposedly mainstream Republicans have suddenly started discussing this topic in polite company doesn't make it less offensive. The sacrifice of countless individuals who gave their lives to win these rights is not honored by even having this discussion.

8. Birthright citizenship is in the Constitution precisely to avoid "the tyranny of the masses."

The 14th Amendment is in place precisely to protect individuals from politicians with their own interests in mind as well as the sentiments of the time. The Constitution has only been amended 17 times since the Bill of Rights and never to take away civil rights from any class of people. The framers of the 14th Amendment made birthright citizenship an "inalienable" right and tampering with this really places in to question whether the our American system of rights and freedoms has been a failure.

9. Where do they stop?

The 14th Amendment has been in place since just after the Civil War and no Congress has ever opened the door to cutting out groups from its protection. Today the discussion involves the children of those illegally in the US. Some proposals seek to bar the children of anyone but lawful permanent residents and US citizens. But

what is to say that we don't then move to stripping out other children of those who do not "deserve" to have their children awarded US citizenship. Perhaps deny birthright citizenship to the children of those with criminal records? How about the children of same sex couples? What about where the parents express "anti-American" views? The folks pushing to repeal the 14th Amendment birthright citizenship rules are doing so to punish the behavior of the parents. Once we open the door, is it really that hard to envision pushing to add more and more groups?

10. Do we really want to start deporting babies?

That's essentially what this proposal means. Is this really something our society has the stomach to do and is this really what Americans want to spend our tax dollars pursuing?

Even having a serious debate about this subject has the potential to tear society apart and the grownups in the GOP need to seize control and make it clear that the party does not endorse the idea. Aside from being the morally right thing to do, it's also smart politics. At this point, the GOP is on the verge of so offending Hispanic voters in order to appease a tiny segment of the public that they risk losing the trust of Hispanics for generations.

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11. HHS Releases New Poverty Guidelines

The Department of Health and Human Services (HHS) has released an update of the HHS poverty guidelines to account for last year's decrease in prices as measured by the Consumer Price Index. The guidelines are important in immigration applications because applicants' sponsors must show they make 125% of the applicable poverty guideline.

2010 Poverty Guidelines for the 48 Contiguous States and the District of Columbia:

Size of family unit	Poverty guideline
1	$10,830
2	$14,570
3	$18,310
4	$22,050
5	$25,790
6	$29,530
7	$33,270
8	$37,010

Family units with more than eight members should add $3,740 for each additional member.

2010 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$13,530
2	$18,210

3	$22,890
4	$27,570
5	$32,250
6	$36,930
7	$41,610
8	$46,290

Family units with more than eight members should add $4,680 for each additional member.

2010 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$12,460
2	$16,760
3	$21,060
4	$25,360
5	$29,660
6	$33,960
7	$38,260
8	$42,560

Family units with more than eight members should add $4,300 for each additional member.
