Siskind's Immigration Bulletin – August 14, 2009

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1. Openers

Dear Readers:

It has now been nearly two years since the Senate voted to kill an immigration reform package and the hopes of ever dealing with the mess that is our immigration system seemed over for the foreseeable future.

But a lot has changed in 23 months. Most importantly, there was an election in 2008 that dramatically changed the politics on the issue. There are ten more Democrats in the Senate and nearly 30 more in the House. And there is a Democratic President that likely owes his win to Hispanic voters turning out in large numbers to deliver several states that traditionally have voted Republican.

And there is a public that seems to be ready for a solution despite a tough economy where one might expect anti-immigrant sentiment to be growing. Public opinion polls show that the public overwhelmingly supports an immigration reform package. More interestingly, a hopeful sign is that immigration has dropped from the second most important issue to Americans in 2007 to twelfth in the latest polls. That's important because that ranking traditionally only rises when people are growingly anti-immigrant. When the ranking is low, it means members of Congress can make tougher decisions without worrying as much about the political impact.

Since the President was elected, a big question has been when immigration reform will be taken up again. Some have suggested that reform would have to wait until after either the 2010 or 2012 elections when the economy has recovered. Others have suggested that the President's political capital and the number of Democrats in Congress will probably be lower after the next election so it would be better to deal with this issue now. Furthermore, Hispanic voters could be angered if the Democrats don't move on this issue soon.

The latter argument appears to be winning out and a number of recent statements by congressional leaders and the holding of a major "summit" at the White House on immigration reform suggest that we're going to see a major effort to deal with immigration reform in this session of Congress.

Senator Majority Leader Reid has stated several times that he's got the votes to pass a reform bill and that he's prepared to make this one of his major priorities this year. Congresswoman Pelosi also expressed optimism and recently noted that she was prepared to move on an immigration bill right after the Senate. And President Obama noted in his statement after the summit that we need to move on a reform bill soon.

And now Senator Schumer, the Chairman of the Senate Immigration Subcommittee, has just stated that he will introduce the immigration reform bill before Labor Day. This will mean markup sessions in September and perhaps October and then a debate in the fall. Of course, this could be pushed back if the health care bill currently in the news is still dominating the debate.

But the optimists out there seem to have something to smile about right now. And this is despite some recent news that made the restrictionists happy including the vote to permanently reauthorize the E-Verify program last week. One thing that has

changed in the last two years is a steady stream of news that efforts to control the border are producing results and enforcement efforts in the worksite are now serious and having an impact on employers' compliance with immigration laws. And that makes it a lot easier for the public to accept broader immigration reform proposals.

Don't get me wrong. The fight for immigration reform this fall will be brutal. But I'm just excited that it's going to happen this year and am looking forward to working hard for its passage.

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Just a reminder that our next free teleconference will take place August 19th at 4 pm eastern/3 pm central/2 pm mountain/1 pm pacific. The program's title is Understanding E-Verify" and you can sign up at http://www.visalaw.com/teleconform.html . If you can't make the call, you can listen to the recording (also free) at http://visalaw.podbean.com.

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We also wanted to let you know that we've introduced a new blog from our lawyer Ari Sauer. Many of you know him as Ari the Immigration Answer Man from our popular teleconferences and Ari is answering reader questions on his new place on our web site. You can find the blog at http://www.visalaw.com/faq/faq.html . And we're using those answers in our Ask Visalaw column.

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Finally, as always, we welcome your feedback. If you are interested in becoming a Siskind Susser client, please call our office at 901-682-6455 and request a consultation. We are a national immigration law firm and work on a broad range of immigration matters for clients locating across the country.

Kind regards,

Greg Siskind

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2. The ABC's of Immigration, Employer Compliance Series – Unfair Immigration Practices

What are the Immigration and Reform and Control Act anti-discrimination and document abuse rules?

While employers need to be diligent about complying with IRCA's employment verification rules, they should not be so overzealous that they end up penalizing qualified employees. IRCA also has anti-discrimination rules that can result in an employer facing stiff sanctions. Employers of more than three employees are covered by the IRCA anti-discrimination rules (as opposed to the 15 or more employees required by Title VII of the Civil Rights Act). IRCA protects most U.S. citizens, permanent residents, temporary residents or asylees, and refugees from discrimination on the basis of national origin or citizenship status if the person is authorized to work. Aliens illegally in the U.S. are not protected.

Under IRCA, employers may not refuse to hire someone because of their national origin or citizenship status and they may not discharge employees on those grounds either. The employer is also barred from requesting specific documents in completing an I-9 Form and cannot refuse to accept documents that appear genuine on their face. But note that an employer must be shown to have had the intent to discriminate.

Employers can separately be sanctioned based on legislation passed in 1990 if they request more or different documents than required by the I-9 rules. Employers originally were held strictly liable for violations under this category, but in 1996 legislation was passed requiring a showing that employers intended to discriminate.

How is enforcement responsibility split between the Department of Justice's Office of Special Counsel and the Equal Employment Opportunity Commission?

The OSC and the EEOC split jurisdiction over national origin discrimination charges.

EEOC handles matters involving employers with 15 or more employees while OSC has responsibility for smaller employers with between 4 and 14 employees. OSC covers national origin claims involving intentional acts of discrimination with respect to hiring, firing and recruitment. EEOC has broader jurisdiction under Title VII of the Civil Rights Act.

OSC has exclusive jurisdiction to rule on citizenship and immigration status discrimination claims against employers with four or more employees. OSC also has jurisdiction over document abuse claims for employers with four or more employees.

How is a complaint made for an Immigration and Reform and Control Act anti-discrimination violation?

OSC accepts charges filed by individuals or their representatives who believe they have been the victims of employment discrimination. DHS officers may also file charges.

Discrimination charges must be filed with six months of the alleged discriminatory acts. After the claim is filed, OSC has ten days to notify the employer and then with either file a complaint with an ALJ within 120 days or notify the charging party that it will not file a complaint. The charging party may independently file a complaint with an ALJ within 90 days of getting this notice from OSC. OSC may also reverse its decision and file a complaint within this 90 day period. The judge then will have a hearing and issue a decision or the parties may independently reach a settlement agreement.

What is "document abuse"?

"Document abuse" refers to discriminatory practices related to the verification of employment eligibility in the Form I-9 process. Employers who treat individuals differently based on national origin or citizenship commit document abuse when they engage in one of four types of activity:

- improperly requesting employees produce more documentation than is required to show identity and employment authorization
- improperly asking employees to produce a particular document to show identity or employment eligibility
- improperly rejecting documents that appear to be genuine and belonging to the employee
- improperly treating groups of applicants differently (e.g. based on looking or sounding foreign) when the complete the Form I-9

All individuals authorized to be employed can file a claim under the document abuse rules if an employer has four or more employees.

What is "citizenship status discrimination"?

Citizenship or immigration status discrimination refers to when a person or entity discriminates against any individual (other than an unauthorized immigrant) with respect to the hiring, or recruitment, or referral for a fee, of the individual for employment of the firing of the individual from employment because of the individual's citizenship or immigration status.

What is "national origin discrimination"?

National origin discrimination refers to when a person or entity discriminates against any individual (other than an unauthorized immigrant) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment of the firing of the individual from employment because of the individual's national origin.

What are examples of prohibited practices?

DHS lists various examples of prohibited practices in the M-274 Handbook for Employers:

a. Setting different employment eligibility verification standards or require different documents based on national origin or citizenship status. One example would be requiring non-U.S. citizens to present DHS-issued documents like "green cards"
b. Requesting to see employment eligibility verification documents before hire and completion of the Form I-9 because an employee appears foreign or the employee indicates that he or she is not a U.S. citizen.
c. Refusing to accept a document or hire an individual because an acceptable document has a future expiration date.
d. Requiring an employee during re-verification to present a new unexpired EAD if the employee presented an employment document during the initial verification. Note: This appears to contradict earlier statements from legacy INS and in at least one court case stating that an employer may have a responsibility to ask an employee whether employment authorization has been extended. An employer should consult with counsel in such situation.
e. Limiting jobs to U.S. citizens unless a job is limited to citizens by law.
f. Asking to see a document with an employee's alien or admission number when completing section 1 of Form I-9.

g. Asking a lawful permanent resident to re-verify employment eligibility because the person's "green card" has expired.

Are employees protected from retaliation if they complain about discrimination?

Yes. Employers cannot retaliate against an employee who files a charge with OSC or the EEOC. The employee is also protected if he or she is witness or participant in an investigation or prosecution of a discrimination complaint or if the employee asserts rights under IRCA's anti-discrimination provisions or Title VII of the Civil Rights Act of 1964.

How does the Civil Rights Act of 1964 provide employees additional protections?

Title VII of the Civil Rights Act of 1964 bars employment discrimination based on national origin, race, color, religion, and sex. Only employers with fifteen or more employees for 20 or more weeks in the preceding or current calendar year are covered. Title VII covers discrimination in any aspect of employment.

What is the basis for regulating immigration-related unfair employment practices?

Section 274B of the INA specifically prohibits discrimination based on national origin or citizenship status.

Can employers discriminate against employees requiring visa sponsorship?

Non-immigrant aliens, whether work authorized or not, aliens not in legal status in the U.S. and others requiring visa sponsorship are not protected by the anti-discrimination provisions in IRCA. However, Title VII of the Civil Rights Act of 1964 offers some protections to these individuals in so far as employers who appear to be inconsistent in who they consider for sponsorship and who they don't may be found to have engaged in national origin discrimination under that law.

Can employers discriminate against employees with an expiring Employment Authorization Document?

No. Generally the existence of a future expiration date should not be considered in determining whether a person is qualified for a position and considering a future employment authorization expiration date may be considered employment discrimination. In other words, you may not refuse to hire a person because they only have temporary employment authorization. This does not, of course, preclude re-verification upon the expiration of employment authorization.

What information can be requested of an individual prior to the commencement of employment?

Employers who require applicants to complete Form I-9 prior to the beginning of employment need to be very careful because of the possibility of national origin discrimination. At a minimum, the employer should wait until an offer is extended and accepted before requesting completion of the I-9. After that, the employer can start the Form I-9 process. It is a smart practice to have a uniform policy regarding completion of the Form I-9 or if an exception is being made, there is a rational reason.

Who is a "protected individual" under Immigration and Reform and Control Act and can an employer discriminate against those not included?

"Protected individuals" under IRCA's anti-discrimination rules include anyone who is a U.S. citizen as well as individuals who fit in to the following categories:

- lawful permanent residents (green card holders)
- refugees
- certain beneficiaries of the 1986 legalization program (there are very, very few of these people left who have not become green card holders at this point)
- asylees

Employers are not required to consider applicants who are outside of this list under IRCA's anti-discrimination rules. Employers should be careful, however, to be consistent in applying the policy so as to avoid a finding that a particular group has been disparately treated. Such inconsistency could lead to a finding of national origin discrimination under the Civil Rights Act of 1964.

Can an employer maintain a policy of only employing U.S. citizens?

No. Employers must consider all protected individuals under IRCA. Discriminating against protected individuals under IRCA would be considered discrimination.

Can an employer require employees to post indemnity bonds against potential liability under the Immigration and Reform and Control Act?

No. Such a practice is specifically prohibited under DHS regulations. And that would include any other type of indemnification required by an employer against potential liability arising under IRCA. However, the regulations do say that an employer may still require an employee to agree to a "performance clause" where an employee unable to perform the job duties may be held accountable to the employer. Whether such a clause is enforceable or not is a question of contract and labor law, of course, and counsel should be consulted.

Can an employer not sure whether documents are valid for a new hire request Department of Homeland Security verification of the status of the employee?

Only employers participating in E-Verify can validate the status of an employee through DHS. Employers are permitted, however, to contact DHS if the employer

has a reason to believe that the employee's documentation is suspicious. If DHS believed the matter to be worth pursuing, ICE could follow up to investigate the matter. Employers who contact DHS about documents they believe to be invalid would not be liable for discrimination if they genuinely believed the documents to be potentially invalid and the employer was not singling out an employee on the basis of appearing or sounding foreign.

Note that an employer *can* contact SSA to verify the validity of an SSN. Information on this online service can be found at www.ssa.gov/bso/services.htm.

Who may file a complaint under the Immigration and Reform and Control Act against an employer for violations of the employer sanctions rules?

Any person having knowledge of a violation or potential violation of IRCA may submit a signed, written complaint in person or by mail to the local DHS office having jurisdiction over the employer.

What is the procedure to file a complaint under the Immigration and Reform and Control Act against an employer for violation of the anti-discrimination rules? What about a complaint under Title VII?

The complaint must detail the allegations, identify the parties and list the relevant dates of the alleged violations. The complaint must be filed within 180 days of the alleged discriminatory act.

Individuals who believe they have been the victim of discrimination prohibited by IRCA can also call the Department of Justice's OSC employee hotline at 800-255-7688 or visit their web site at www.usdoj.gov/crt/osc/ for more information and to download a charge form. OSC also has a telephone intervention program where employers and employees can speak with an OSC representative and attempt to resolve a matter without resorting to the formal complaint process. The employer telephone number for this service is 800-255-8155 and the employee number is 800-255-7688.

Individuals seeking to file a complaint under Title VII of the Civil Rights Act of 1964 can call the EEOC at 800-USA-EEOC or go to www.eeoc.gov.

How does the Office of Special Counsel for Immigration Related Unfair Employment Practices investigate complaints?

First, OSC must determine if the claim may have merit. If OSC decides to investigate a complaint, it will notify the employer in writing about the opening of an investigation and it will request in writing information and documentation relating to the complaint. The documents may be subpoenaed if an employer refuses to cooperate.

OSC has 120 days to determine if the charge is true and whether to bring a complaint. If it makes this determination, it will issue a Notice of Intent to Fine or, instead, a Warning Notice. It can also send a letter to the complaining party during that 120 day period indicating it will not file a complaint.

The charging party may file a complaint directly with the Chief Administrative Hearing Officer within 90 days of getting the notification from OSC that it is not pursuing the case.

Employers who wish to contest the fine must file a written request for a hearing before a hearing officer or judge.

How many complaints does Office of Special Counsel for Immigration Related Unfair Employment Practices receive each year?

In 2007, OSC received 277 charges that it reviewed. OSC also handled 21,000 hotline calls. One half of all charges were voluntarily resolved.

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3. Ask Visalaw.com

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.

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USCIS mistakenly withdrew my I-140 petition. How do I correct the mistake?

QUESTION- My I-140 was approved in 2006 and still working with sponsoring company.
Now my attorney got withdrawal/termination decision on my I-140, saying that my company requested the withdrawal of my I-140. My company or my attorney never send withdrawal letter for my I-140. However, my company sent withdrawal letters for some 12 other cases.
Could you please suggest how to correct USCIS mistake? Do we have to file Motion to Re-Open on my I-140?

ANSWER- Your attorney should file a Motion to Reopen, and include affidavits from them and from the signatory of the I-140 attesting to the fact that they did not send in a request to pull the I-140.

While it may be that USCIS might reopen on their own motion based on the letter from your attorney, you only have 33 days to file a MTR. If USCIS does not reopen on their own motion and you do not file a MTR within 33 days, then you have lost the chance to file a MTR, and have no authority to appeal the Services decision not to reopen on their own motion.

So you definitely want to file a MTR. It is worth the filing fee.

Of course , before you file a MTR and pay the filing fees, you want to make sure that

you company didn't accidentally send in a letter requesting your I-140 be withdrawn along with the other 12. It would have been an easy mistake to have made. If that is the case, I would say it is unlikely that USCIS would reopen.

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I have been charged with Solicitation of a Prostitute. How will this affect my immigration status?

QUESTION- I am a Canadian citizen and I have been charged with the crime of Solicitation of a Prostitute. This is the first time I have been charged with a crime. I have been offered a sentence of six months probation if I plead guilty. If I accept this agreement will it affect my immigration status?

ANSWER- The first question, in determining the consequences of this, or any other criminal conviction, is whether it is a Crime Involving Moral Turpitude (CIMT). CIMT's can result in a foreign national being denied entry into the U.S.; ineligible for a change or extension of nonimmigrant status; ineligible to adjust status to become a Permanent Resident; and can make the foreign national subject to removal from the U.S. even if they are otherwise in a legal status. Prostitution is a CIMT. Therefore it is highly likely that a USCIS adjudicator or an Immigration Judge would determine that Solicitation of a Prostitute is a CIMT.

However, CIMT's are forgiven when they fall under the Petty Offense Exception. A CIMT falls under the Petty Offense Exception where the maximum punishment that can be given for the crime is one year or less and the foreign national is not sentenced to imprisonment for more than 6 months. Keep in mind that in some cases the Judge will issue a sentence of imprisonment for more than 6 months and then suspend the jail time. When this happens, even though the foreign national is imprisoned for less than 6 months, the sentence is for more than six months of imprisonment, and therefore the conviction does not fall within the Petty Offense Exception. On the other hand, if the foreign national is sentenced to no jail time, but is sentenced to more than six months of probation, and the maximum penalty is a year or less, the conviction falls within the Petty Offense Exception.

The Petty Offense Exception only applies where the foreign national has only one conviction for a CIMT. If the foreign national has been convicted for more than one CIMT's the Petty Offense Exception does save them.

Generally speaking, Solicitation of Prostitution is a misdemeanor which usually means the maximum punishment is less than a year. As a result, a punishment of a fine and a period of probation with no jail time would generally fall within the Petty Offense Exception for CIMT's. However, laws governing criminal convictions vary between states, so this may not be true everywhere.

Another exception for CIMT is where the foreign national was under 18 at the time they committed the crime. Ins such a case, the CIMT would be forgiven after 5 years from the date of the crime or the date they were released confinement, whichever was later. However, just like the Petty Offense Exception, this exception only applies where the foreign national has only been convicted of one CIMT.

Where a foreign national is convicted of a CIMT, and these exceptions are not available, there are waivers of the consequences of a criminal conviction. However,

that topic will have to be covered in a future posting.

A criminal conviction, even one that is not a CIMT, can result in a longer wait to be eligible for naturalization to U.S. citizenship.

The laws governing the consequences of criminal convictions for non-citizens are very complicated. Therefore it is important for any non-citizen who is charged with a crime to hire a criminal law attorney and have their criminal law attorney consult with an experienced immigration law attorney before accepting any plea bargain.

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4. Border and Enforcement News

Pledging an increase in accountability, the Obama administration announced this week its intentions to overhaul the nation's immigration detention system from a scattered network of local jails and private prisons to a centralized system designed specifically for civil detainees. According to *The Los Angeles Times*, the reform aims to establish greater control over a system that currently houses approximately 33,000 detainees a day and has been criticized as being unsafe and inhumane, lacking medical care that could have prevented 90 detainee deaths that have occurred since 2003.

'With these reforms, ICE will move away from our present, decentralized jail-oriented approach to a system that is wholly designed for and based on our civil detention needs,' U.S. Immigration and Customs Enforcement Assistant Secretary John Morton told reporters. 'The population that we detain is different than the traditional population that is detained in a prison or a jail setting.'

The federal immigration agency plans to review the use of 350 local jails, state prisons and private facilities, including more than a dozen in California. Within five years, officials said, detainees without criminal records probably would be held in fewer, less restrictive locations with more federal oversight.

To increase oversight, the immigration agency would place federal monitors in 23 large facilities, which house more than 40% of the detainees. The agency also plans to hire experts in healthcare administration and detention management, and someone to review medical complaints. 'We need a system that is open, transparent and accountable,' Morton said.

A crackdown on undocumented immigrants under the George W. Bush administration led to a dramatic increase in the detainee population, from 19,700 in fiscal year 2006 to 33,400 today. The budget for detention and deportation is nearly $2.5 billion, much of which is spent on contracts with private prison companies such as Corrections Corp. of America.

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The Associated Press reports that an overhauled federal program allowing local and state law enforcement officials to arrest and deport immigrants will focus on the most serious criminals and limit officers' police powers, the Homeland Security Department said last week. Government investigators said the previous program —

cited as an example of misguided immigration enforcement by the Bush administration — did not clearly spell out when and how officers could use their arrest authority.

The revamped program creates a consistent standard for state and local agencies and gives law enforcement tools "to identify and remove dangerous criminal aliens," said Homeland Security Secretary Janet Napolitano.

It also establishes a complaint process and requires participating agencies to provide language interpretation, the agency said. All participating officers are bound by federal civil rights regulations and nondiscrimination guidelines.

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An investigation by *The Associated Press* has revealed a sharp increase in the number of US Border Patrol agents charged with criminal corruption not seen before, as drug and immigrant smugglers have resorted to bribes to buy protection.

Based on Freedom of Information Act requests, interviews with sentenced agents and a review of court records, *AP* tallied corruption-related convictions against over 80 enforcement officials at all levels – federal, state, and local – since 2007, shortly after Mexican President Felipe Calderon declared war on the cartels that peddle up to $39 billion worth of drugs in the US annually.

“To get drugs into the United States the one you need to corrupt is the American authority, the American customs, the American police — not the Mexican. And that's a subject, by the way, which hasn't been addressed with sincerity,” the Mexican president said. “I'm waging my battle against corruption among Mexican authorities and we're risking everything to clean our house, but I think there also needs to be a good cleaning on the other side of the border.”

Not all corruption charges that turned up in AP's checks were related to drug trafficking. The researched cases involve agents helping smuggle immigrants, drugs or other contraband, taking wads of money or sexual favors in exchange — or simply allowing entry to someone whose paperwork isn't up to snuff, all part of the daily border traffic that has politicians demanding that the U.S.-Mexico border be secured.

Court records show corrupt officials along the 2,100-mile U.S.-Mexico border have included local police and elected sheriffs, and officers with such U.S. Department of Homeland Security agencies as Immigration and Customs Enforcement and Customs and Border Protection, which includes Border Patrol. Some have even been National Guardsmen temporarily called in to help while the Border Patrol expanded its ranks.

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The United States is safer now than it was prior to 9/11, according to Homeland Security Secretary Janet Napolitano. The former Arizona governor told *USA Today* that the U.S. always will live with the threat of terrorism -- from Al Qaeda, other groups and wannabes, but she said it has made strides toward stopping attacks in the past eight years. “Many of the things we have done would prevent all but a couple of the 9/11 terrorists from even being able to get into the country,” Napolitano said.

She also said the U.S.-Mexico border is far more secure than it was in the 1990s. "It is very, very difficult to cross the border," said Napolitano. "Not impossible, as the numbers show. But it is very, very difficult."

She said there has been a decline in both money being shipped out of the U.S. and the number of illegal immigrants apprehended. "I would say it's a combination of two things -- the declining economy and increased enforcement," said Napolitano.

As for critics of border security, she said, "Whenever I hear somebody say, 'The border's out of control. Nothing happens, there's a flood of illegal immigrants across the border,' I know that that's somebody who's just trying to gin people up."

A recent report from the Center for Immigration Studies said the number of illegal immigrants living in the United States is down 1.7 million from its peak of 12.5 million.

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5. News From the Courts

A federal judge ruled last week that a Dallas suburb illegally diminished the voting power of its growing number of Latino residents because of flaws in its current election system and ordered city officials to modify how they run municipal elections, *The Associated Press* reports. The ruling by U.S. District Court Judge Jorge A. Solis prevents the city of Irving from using an at-large system that allows political candidates to receive votes from across a broad geographic area rather than a specific district or precinct.

The ruling came in a voting rights lawsuit against Irving that alleged the at-large election system kept Hispanics from being elected to local government positions because they were outpaced by a majority of white voters voting for other candidates. The suit was filed in November 2007 on behalf of Manuel Benavidez, an Irving resident who has twice run unsuccessfully for the school board.

"My hope is that this case brings progress and hope to our community and to communities all across the country," Benavidez said after learning of the judge's decision. "This case is particularly important right now, because of the growing Latino population in the city of Irving."

The Dallas suburb had more than 191,000 residents — 31 percent of them Hispanic — during the 2000 Census. By 2006, the Census Bureau estimated nearly 42 percent of the city's population was Latino and a majority lived in the suburb's southern half. None of Irving's eight current city council members are Hispanic, and only one Latino candidate has won a seat on the council in the last 20 years.

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According to *The Phoenix Press,* the American Civil Liberties Union has filed a public records request asking the Obama administration to make public changes it is making to a federal immigration enforcement program that allows local police to arrest and process undocumented immigrants. U.S. Homeland Security Secretary Janet Napolitano recently announced the plans that would require new agreements

for local police, which could impact the Maricopa County Sheriff's Office, which has had a processing agreement in place with the federal government since 2007.

Maricopa County Sheriff Joe Arpaio has stirred controversy with raids on businesses, crime sweeps aimed at undocumented immigrants. The ACLU is suing the Arpaio's office in federal court, accusing officials of racial profiling in enforcement efforts. The U.S. Justice Department is conducting a civil rights investigation regarding Arpaio's tactics and whether they unfairly target Hispanics. The sheriff said earlier this month his office would not cooperate with the federal inquiry.

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Surging caseloads and a chronic lack of resources to handle them are taking a toll on judges in the nation's immigration courts, leaving them frustrated and demoralized, a new study has found.

According to *The New York Times, t*he study, published in a Georgetown University law journal, applied a psychological scale for testing professional stress and exhaustion to 96 immigration court judges who agreed to participate, just under half of all judges hearing immigration cases. The survey found that the strain on them was similar to that on prison wardens and hospital physicians, groups shown in comparable studies to experience exceptionally high stress.

Surprising the researchers, 59 immigration judges wrote comments on the survey questionnaire elaborating on why they felt discouraged. In the comments, which were reported anonymously, the judges spoke of an overwhelming volume of cases with insufficient time for careful review, a shortage of law clerks and language interpreters, and failing computers and equipment for recording hearings.

"We judges have to grovel like mangy street dogs" to win exemptions from unrealistic goals to complete cases, one judge commented. Another wrote of the "drip-drip-drip of Chinese water torture" from court administrators demanding more and faster decisions. A third judge cited "the persistent lack of sufficient time to be really prepared for the cases," while still another said simply, "There is not enough time to think."

Many of the cases immigration judges hear are from people seeking asylum in the United States, claiming they would face life-threatening persecution if they returned home. One judge said, "This job is supposed to be about doing justice, but the conditions under which we work make it more and more challenging to ensure that justice is done."

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6. News Bytes

President Barack Obama said last week that he expects Congress to overhaul the country's immigration system, an issue that fires up emotions on both sides of the political divide, by "early next year," according to *Reuters*. Speaking to Hispanic reporters at the White House, Obama said he hopes a bill for comprehensive immigration reform will be drafted by the end of this year.

Obama said he asked Homeland Secretary Janet Napolitano to meet regularly with lawmakers to systematically work through a number of controversial issues, such as how to handle the 12 million undocumented immigrants already in the United States and how to prevent future undocumented immigration.

"We have convened a meeting of all the relevant stakeholders, and Secretary Napolitano is working with the group to start creating the framework for a comprehensive immigration reform," the president said.

Congress failed in 2006 and 2007 to pass immigration reform despite a push by former Republican President George W. Bush. Earlier this year, Vice President Joe Biden said the U.S. economic slump and soaring unemployment made it a bad time to take on the issue.

Obama has been criticized for not following through on a campaign pledge to tackle the issue this year. He has urged the Democratic-controlled Congress to start pushing now to pass legislation.

Asked if an immigration bill would have enough votes to pass Congress, Obama said he did not know. He also noted as a further complication that next year is an election year. Obama joked that his opponents had another reason to block his immigration reform effort: "There are many members of the Republican Party who think now that I am illegal immigrant," he said, referencing a conservative movement alleging that Obama was born in Kenya.

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A recently announced ballot initiative for California seeks to end public benefits for undocumented immigrants, cut off welfare payments for their children and impose new rules for birth certificates. *The Los Angeles Times* reports that supporters of the initiative, recently unveiled by San Diego political activist Ted Hilton, hope to challenge the citizenship of children born in the United States to parents who are unauthorized to be in the country.

The 14th Amendment states that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside." Backers of the initiative argue that undocumented residents are not "subject to the jurisdiction" of the United States and that, as a result, their U.S.-born children should not be citizens.

Peter Schey, a Los Angeles attorney who successfully challenged Proposition 187, said courts would almost certainly strike down the measure. "This proposal . . . has no chance of surviving a constitutional challenge," he said. "It is plainly driven by racism and a desire to whip up xenophobia during difficult economic times for U.S. citizens."

Backers say, however, that they have carefully crafted the measure to avoid the legal pitfalls that doomed Proposition 187, which would have barred undocumented immigrants from receiving any public social services, education and nonemergency medical care. Voters approved it, 59% to 41%, but a federal judge ruled that the measure unconstitutionally usurped federal jurisdiction over immigration.

The measure's most controversial provisions would take aim at the U.S.-born children of undocumented immigrants. It would end state welfare to an estimated 48,000 households and 100,000 children, aid that now costs the state $640 million a year. Currently, children of undocumented immigrants can receive CalWorks benefits if their parents are poor enough to qualify for welfare. About 42% of child only' cases in the CalWorks program involve undocumented immigrant parents, state officials say. The measure would also cut off CalWorks payments to the children of citizens or legal residents who fail to meet eligibility requirements for state aid because they are unwilling to work, addicted to drugs or absent, among other reasons. The initiative would require that applicants for birth certificates verify their legal status. Those who could not would have to present official identification from a foreign government, a record of any publicly funded costs for delivering the child and other information before receiving their child's birth certificate, which would be marked with the notation 'foreign parent.'

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Reversing a hard-line stance taken by the Bush administration on the issue, the Obama administration has opened the way for foreign women who are victim of domestic beatings and sexual abuse to receive asylum to the US, *The New York Times* reports.

In addition to meeting other strict conditions for asylum, abused women will need to show that they are treated by their abuser as subordinates and little better than property, according to an immigration court filing by the administration, and that domestic abuse is widely tolerated in their country. They must show that they could not find protection from institutions at home or by moving to another place within their own country. The Department of Homeland Security did not immediately recommend asylum for the Mexican woman. But the department, in the unusual submission written by senior government lawyers, concluded in plain terms that 'it is possible' that the Mexican woman “and other applicants who have experienced domestic violence could qualify for asylum.”

Any applicant for asylum or refugee status in the United States must demonstrate a 'well-founded fear of persecution' because of race, religion, nationality, political opinion or 'membership in a particular social group.' The extended legal argument has been whether abused women could be part of any social group that would be eligible under those terms. Last year, 22,930 people won asylum in this country fleeing all types of persecution; the number has been decreasing in recent years.

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The U.S. government said Thursday that it resumed accepting applications for the H-2B foreign temporary worker visa after receiving far fewer petitions from U.S. employers than anticipated, *The Wall Street Journal* reports. The congressionally mandated annual cap for H-2B visas is 66,000, and the government has issued only 40,640 this fiscal year, which ends Sept. 30.

“Because of the low visa issuance rate, [U.S. Citizenship and Immigration Services] is reopening the filing period to allow employers to file additional petitions for qualified H-2B temporary foreign nonagricultural workers,” the agency said in a statement.

The H-2B program enables U.S. employers to bring foreign nationals to the U.S. to fill temporary nonagricultural positions for which there is a shortage of available workers. Typically, H-2B workers fill labor needs in areas such as construction, health care, landscaping, food service and hospitality. Normally, the number of applications for temporary work visas from U.S. employers far outstrips the amount available, but the recession has reduced demand.

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The number of petitions from employers trying to bring foreigners to work permanently in the U.S. has declined dramatically over the last two years, an *Associated Press* review of government data has found. With the nation facing a deep recession and high unemployment, the government has received about half the number of employer-sponsored applications for work-based green cards in fiscal years 2008 and 2009 than it did in each of the previous years.

There were almost 235,000 applications submitted in fiscal 2007, almost 104,000 the following year, and fewer than 36,000 through the first eight months of fiscal 2009, according to data obtained by the AP.

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7. Washington Watch

The past few weeks have been filled with a number of legislative, regulatory and enforcement developments relating to employer immigration compliance and will certainly be remembered as one of the most important weeks in the history of immigration enforcement.

Here's a quick review.

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The month of July with the announcement by ICE that an I-9 audit found that nearly a third of the 6,000 workers employed by popular clothing retailer American Apparel appear to lack authorization to work in the United States.

Later in the day, DHS issues a bombshell announcement – ICE will audit the I-9s of 652 businesses across the country. That is more than the total investigations that took place in 2009. The companies were not chosen randomly. According to ICE, they were chosen based on leads and information obtained through investigative means. Last April, DHS Secretary Napolitano noted that enforcement efforts will shift from worksite raids to audits and investigations targeting employers and this is one of the first major signs of the seriousness of the White House in carrying out its announced strategy.

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ICE announced that well known company Krispy Kreme has been fined $40,000 after it found the company employed dozens of illegally present immigrants at a plant in Cincinnati, Kentucky.

Senator Charles Schumer (D-NY), the chair of the Senate's Immigration Subcommittee told the Associated Press that he will introduce the long-anticipated comprehensive immigration reform legislative package before Labor Day, suggesting that the bill will, in fact, will be debated in the near term. The bill will have major repercussions for American employers including provisions to legalize millions of unlawfully present workers and major new employer compliance rules (such as a requirement that all employers in the country use e-Verify). A major open issue is how the bill will deal with the future flow of immigrants to the country.

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The White House announces decisions on two major rules issued by the Bush Administration that are currently tied up in the courts. First, the White House indicated that it intends to implement a rule mandating federal contractors use the E-Verify electronic employment verification system. The rule is now set to take effect September 8th. One of the issues that has caused the rule to be challenged in the courts is a requirement that existing employees who are working on a contract be run through E-Verify. The normal E-Verify rules require only new hires be run through the system. A rumored compromise by the Administration on this issue remains unaddressed by the Administration in its announcement.

The White House also announced that it is rescinding the controversial social security no-match rule which outlines specific procedures for employers to follow after receiving such letters and the penalty for not following the procedures is a potential finding of knowingly hiring unauthorized workers. Some estimate that as many as four million people are working on false social security numbers so the potential impact of the rule could be massive.

Later in the day, the Senate approves the first of three important E-Verify amendments to the Department of Homeland Security spending bill for fiscal year 2010. Senator Jeff Sessions (R-AL) introduced Amendment 1373 which permanently reauthorizes the E-Verify program and codifies the federal contractor E-Verify regulation. Senator Schumer attempted to table the amendment. That effort failed by a 44 to 53 margin and the amendment then passed by voice vote. The underlying spending bill already had a three year extension for E-Verify, but critics of the amendment expressed concerns that a permanent program would not receive the same level of oversight as a pilot program. The contractor provision seemed a little less important after the White House announcement, but it also contained a provision specifying that existing employees working on contracts are to be put through the system. This seemingly weakens the plaintiffs' lawsuit challenging the regulation and may tie the White House's hands as far as negotiating on that issue.

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Senator David Vitter (R-LA), is successful in getting a positive voice vote on Amendment 1375 to the DHS spending bill. The amendment would bar DHS from using its budget to revoke the federal contractor or no-match rules. The first part appears to be largely moot as the White House indicated it will move forward to implement the contractor rule. But the second part runs contrary to the White House

announcement from the 8th. The White House would seem to have the upper hand, however, since the amendment only bars spending 2010 budget money to rescind the no-match rule. The rule will likely be rescinded in the next few weeks, however, so it should not need 2010 money to make it happen. This could explain the timing of the White House announcement.

Finally, Senator Chuck Grassley (R-IA) succeeded in getting a positive voice vote on an amendment that will give employers the option to run current employees through E-Verify instead of only new hires.

Within minutes of the announcement of the passage of Senator Grassley's amendment, the spending bill was passed by the Senate.

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8. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- Cornyn to Obama: Move Immigration Faster
- Mayorkas Confirmed as USCIS Director
- Obama Announcement Keeps the Accelerator on Immigration Reform
- US Chamber Seeks Supreme Court Review of Arizona Employer Sanctions Law
- Visa Data Busts Myths
- Graham Likely to Replace McCain as GOP Champion of Immigration Reform
- Perm Mandamus Case Decision and Judgment
- ICE Targets Another Donut Company
- Top DHS Official to Meet Hunger Strikers in New Orleans
- Two Notarios Indicted In New York
- GOP's Efforts to Court Hispanic Voters Dealt Blow by Martinez' Early Departure
- Obama Administration Announces Plan to Reform ICE Detention System
- Sheriff Joe Under the Gun
- CNN Blocks Media Matters' Dobbs Ad from Running
- PBS' Frontline Does Postville Follow Up
- Groups Protest Conditions at Louisiana Detention Facility
- McCain: Obama Needs to Court Hispanics if it Hopes to Ever Regain Majority Status
- AP: Dobbs Becoming Publicity Nightmare for CNN

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

- E-Verify Out on August 16th
- Arizona Sheriff Raids Maricopa County Office
- Business Groups Urge Congress to Address Concerns Regarding E-Verify in DHS Spending Bill
- Carolina Poultry Plant's Workforce Changing as Prosecution Looms
- Huntsville, AL Considering E-Verify Mandate
- Napolitano: DHS Plans to Conduct More I-9 Audits
- BusinessWeek Offers Tips on I-9 Compliance
- NC not Likely to Pass E-Verify Mandate this Year
- ICE Remains Fixated on Donut Industry
- SC Officials Won't Start Enforcing E-Verify Mandate Until Summer 2010
- IT Industry Eyeing Potential E-Verify Biometric Requirement
- Rhode Island State Senator Optimistic that E-Verify Mandate will Pass Soon

- Michigan County Mandates Contractors Use E-Verify
- Washington and Oregon Farmers to Get I-9 Training
- SHRM Urges Virginia Commission to Reject Mandatory E-Verify

Visalaw Healthcare Immigration Blog

- Deadline to File Motions to Reopen Nears in PT/OT Cases
- Cuban Doctors Retrain for New Health Care Jobs in the US
- Immigrants Cancer Rates Rise After Coming to US
- Inclusion of Illegally Present Immigrants in Health Care Bill Latest Source of Controversy
- Jury Sides with Florida Hospital in Removal of Guatemalan Patient
- Immigrants Factor in to Health Care Reform Debate
- Filipino Nurses Lose Bias Claim

Visalaw Investor Immigration Blog

- California City, Regional Center Face Off in Contract Breach Case
- Green Cards Draw Investors to Florida
- First Investors Approved for New California Regional Center
- Victorville, CA Approves Regional Center
- Nevada Center Recruiting EB-5 Investors in Thailand
- Idaho Governor Calls for State to Secure EB-5 Regional Center
- EB-5 Investments Fund $20M Expansion at Jay Peak Ski Resort
- CSC Identifying Pending EB-5 Adjustment Cases Affected by Sunset
- Vermont News Coverage of EB-5 Hearing in Senate

Visalaw Fashion, Sports, & Entertainment Blog

- Baseball Player, Horse Groomer Face Deportation Over Criminal Charges
- USCIS Issues Memo Clarifying that P-1S Support Personnel Can Be Here Longer than 10 Years
- DOL Releases FAQ for H-2B Entertainment Cases
- BusinessWeek Reports on O-1 Visas
- Immigration Status Prevents Wrestling Star from Attending College

Visalaw International Blog

- China: US Grads Flocking to China for Job Opportunities
- Canada: Immigration and Hockey: The End of Sports as We Know Them?
- Canada: New Transit Without Visa Program
- Canada: IRB Decision Puzzling

The Immigration Law Firm Management Blog

- 2009 Innovaction Awards Announced
- Reducing the Size of Scanned PDF Documents
- Microsoft Office 2010
- Outsource the Scanning of Your E-Mail
- Marketing Tip: Get Your Logo Online

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9. State Department Visa Bulletin for August 2009

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.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. 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., 25,620. The dependent area limit is set at 2%, or 7,320.

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, 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 Charge-ability Areas Except Those Listed**	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
1st	08JAN03	08JAN03	08JAN03	01JAN91	15SEP93
2A	15JAN05	15JAN05	15JAN05	22SEP02	15JAN05
2B	01MAY01	01MAY01	01MAY01	08MAY92	01MAY98
3rd	01NOV00	01NOV00	01NOV00	01JUL91	08AUG91
4th	22DEC98	22DEC98	22DEC98	01AUG95	08SEP86

***NOTE:** For **July**, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 22SEP02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 22SEP02 and earlier than 15JAN05. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability Areas Except Those Listed	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
Employment-Based					
1st	C	C	C	C	C
2nd	C	01OCT03	01OCT03	C	C
3rd	U	U	U	U	U
Other Workers	U	U	U	U	U
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	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-2009 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-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this 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: 22,750 Ethiopia 22,800 Nigeria 15,650
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
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-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants

after that dates. Similarly, spouses and children accompanying or following to join DV-2009 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 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-2009 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: Egypt 22,900 Ethiopia 23,900
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
OCEANIA	CURRENT	
SOUTH AMERICA, and the CARIBBEAN	CURRENT	

D. SEPTEMBER VISA AVAILABILITY

Heavy applicant demand for numbers in the Employment Fourth preference is likely to require the establishment of a cut-off date, or the preference becoming "Unavailable" for September. This action would be necessary to keep visa issuances with the annual preference numerical limits. The preference can be expected to return to a "Current" status for October, the first month of the new fiscal year.

E. DETERMINATION OF THE NUMERICAL LIMITS ON IMMIGRANTS REQUIRED UNDER THE TERMS OF THE IMMIGRATION AND NATIONALITY ACT

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 Citizenship 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 June 9th, CIS provided the required data to VO.

The Department of State has determined the family and employment preference numerical limits for FY-2009 in accordance with the terms of Section 201 of the INA. These numerical limitations for FY-2009 are as follows:

Worldwide Family-Sponsored preference limit: 226,000
Worldwide Employment-Based preference limit: 140,000

Under INA Section 202(A), the per-country limit is fixed at 7% of the family and employment annual limits. For FY-2009 the per country limit is 25,620. The dependent area annual limit is 2%, or 7,320

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

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10. Green Card Diversity Lottery Results for 2010 (DV-2010)

The Kentucky Consular Center in Williamsburg, Kentucky has registered and notified the winners of the DV-2010 diversity lottery. The diversity lottery was conducted under the terms of section 203(c) of the Immigration and Nationality Act and makes available *50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. Approximately 102,800 applicants have been registered and notified and may now make an application for an immigrant visa. Since it is likely that some of the first *50,000 persons registered will not pursue their cases to visa issuance, this larger figure should insure that all DV-2009 numbers will be used during fiscal year 2010 (October 1, 2009 until September 30, 2010).

Applicants registered for the DV-2010 program were selected at random from over 13.6 million qualified entries received during the 60-day application period that ran from noon on October 2, 2008, until noon, December 1, 2008. The visas have been apportioned among six geographic regions with a maximum of seven percent available to persons born in any single country. During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years. Those selected will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letter and must fully complete the information requested.

Registrants living legally in the United States who wish to apply for adjustment of their status must contact the Bureau of Citizenship and Immigration Services for information on the requirements and procedures. Once the total *50,000 visa numbers have been used, the program for fiscal year 2010 will end. Selected applicants who do not receive visas by September 30, 2010 will derive no further benefit from their DV-2010 registration. Similarly, spouses and children accompanying or following to join DV-2010 principal applicants are only entitled to derivative diversity visa status until September 30, 2010.

Only participants in the DV-2010 program who were selected for further processing have been notified. Those who have not received notification were not selected. They may try for the upcoming DV-2011 lottery if they wish. The dates for the registration period for the DV-2011 lottery program will be widely publicized during August 2010.

* The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulated that up to 5,000 of the 55,000 annually-allocated diversity visas be made available for use under the NACARA program. The reduction of the limit of available visas to 50,000 began with DV-2000.

The following is the statistical breakdown by foreign-state chargeability of those registered for the DV-2009 program:

AFRICA		
ALGERIA 1,957	ETHIOPIA 5,200	NIGER 56
ANGOLA 46	GABON 19	NIGERIA 6,006
BENIN 369	GAMBIA, THE 108	RWANDA 178
BOTSWANA 23	GHANA 8,752	SAO TOME AND PRINCIPE 0
BURKINA FASO 184	GUINEA 737	SENEGAL 520
BURUNDI 83	GUINEA-BISSAU 8	SEYCHELLES 4
CAMEROON 3,719	KENYA 4,619	SIERRA LEONE 3,898
CAPE VERDE 6	LESOTHO 2	SOMALIA 229
CENTRAL AFRICAN REP. 20	LIBERIA 2,172	SOUTH AFRICA 863
CHAD 27	LIBYA 152	SUDAN 1,084
COMOROS 9	MADAGASCAR 31	SWAZILAND 11
CONGO 92	MALAWI 50	TANZANIA 221
CONGO, DEMOCRATIC REPUBLIC OF THE 1,817	MALI 129	TOGO 827
COTE D'IVOIRE 658	MAURITANIA 20	TUNISIA 1645
DJIBOUTI 33	MAURITIUS 78	UGANDA 396
EGYPT 4,201	MOROCCO 3,124	ZAMBIA 93
EQUATORIAL GUINEA 15	MOZAMBIQUE 8	ZIMBABWE 170
ERITREA 799	NAMIBIA 16	

ASIA		
AFGHANISTAN 345	ISRAEL 99	OMAN 2
BAHRAIN 15	JAPAN 302	QATAR 13

BANGLADESH 6,001	JORDAN 143	SAUDI ARABIA 104
BHUTAN 2	NORTH KOREA 3	SINGAPORE 37
BRUNEI 0	KUWAIT 70	SRI LANKA 650
BURMA 473	LAOS 3	SYRIA 98
CAMBODIA 359	LEBANON 181	THAILAND 368
HONG KONG SPECIAL ADMIN. REGION 49	MALAYSIA 60	TAIWAN 54
INDONESIA 277	MALDIVES 0	TIMOR-LESTE 0
IRAN 2,773	MONGOLIA 144	UNITED ARAB EMIRATES 30
IRAQ 142	NEPAL 2,132	YEMEN 72

EUROPE		
ALBANIA 2,311	GREECE 48	NORWAY 60
ANDORRA 6	HUNGARY 192	PORTUGAL 51 Macau 17
ARMENIA 1,332	ICELAND 36	ROMANIA 674
AUSTRIA 181	IRELAND 167	RUSSIA 1,912
AZERBAIJAN 324	ITALY 470	SERBIA 367
BELARUS 1,178	KAZAKHSTAN 343	SLOVAKIA 108
BELGIUM 117	KYRGYZSTAN 205	SLOVENIA 19
BOSNIA & HERZEGOVINA 72	LATVIA 90	SPAIN 169
BULGARIA 842	LIECHTENSTEIN 0	SWEDEN 163
CROATIA 74	LITHUANIA 195	SWITZERLAND 185
CYPRUS 23	LUXEMBOURG 2	TAJIKISTAN 178

CZECH REPUBLIC 116	MACEDONIA, FORMER YUGOSLAV REP. OF 272	TURKEY 2,826
DENMARK 74 Greenland 2	MALTA 7	TURKMENISTAN 108
ESTONIA 66	MOLDOVA 724	UKRAINE 5,499
FINLAND 83	MONACO 0	UZBEKISTAN 4,059
FRANCE 703 French Guiana 4 French Polynesia 8 French Southern & Antarctic Lands 0 Guadeloupe 13 Martinique 4 Reunion 5	MONTENEGRO 13	VATICAN CITY 0
GEORGIA 648	NETHERLANDS 200 Aruba 16 Netherlands Antilles 22	
GERMANY 2,188	NORTHERN IRELAND 31	

NORTH AMERICA
BAHAMAS, THE 18

OCEANIA		
AUSTRALIA 705 Christmas Islands 2	NAURU 3	SOLOMON ISLANDS 3
FIJI 674	NEW ZEALAND 258 Cook Islands 0 Niue 16	TONGA 80
KIRIBATI 1	PALAU 12	TUVALU 1
MARSHALL ISLANDS 0	PAPUA NEW GUINEA 15	VANUATU 7
MICRONESIA, FEDERATED STATES OF 0	SAMOA 0	WESTERN SAMOA 26

SOUTH AMERICA, CENTRAL AMERICA, AND THE CARIBBEAN		
ANTIGUA AND BARBUDA 9	DOMINICA 18	SAINT KITTS AND NEVIS 6
ARGENTINA 188	GRENADA 9	SAINT LUCIA 19
BARBADOS 29	GUYANA 41	SAINT VINCENT AND THE GRENADINES 9
BELIZE 10	HONDURAS 82	SURINAME 10
BOLIVIA 142	NICARAGUA 50	TRINIDAD AND TOBAGO 226
CHILE 53	PANAMA 39	URUGUAY 17
COSTA RICA 74	PARAGUAY 29	VENEZUELA 624
CUBA 298		

Natives of the following countries were not eligible to participate in DV-2010: Brazil, Canada, China (mainland-born, excluding Hong Kong S.A.R., and Taiwan), Columbia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, The Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.