

# LitwinLaw Update

April 1, 2011

## Headlines:

- **1. USCIS Begins Accepting H-1B Petitions** - As of April 1, 2011, USCIS has begun accepting H-1B petitions subject to the FY 2012 cap of 65,000.
- **2. New Validation Instrument for Business Enterprises Giving Off Bad VIBE** – Unfortunately, the VIBE system, which is based on publicly available information, too often contains inaccuracies, is unreliable, and requires a significant effort to update. But, this tool is apparently being given great weight by USCIS.
- **3. USCIS Launches E-Verify Self Check** - This new voluntary service enables individuals to check their own employment eligibility status at no charge.
- **4. USCIS Proposes Rule on Registration Requirement for H-1B Petitioners** - The rule, which would not take effect until next year, proposes to require employers seeking to petition for H-1B cap-subject workers to first file electronic registrations during a designated registration period.
- **5. USCIS Updates I-129 Instructions Re TARP** - Additional requirements under the Employ American Workers Act no longer apply to any H-1B petition requesting an employment start date of February 17, 2011, or later.
- **6. ICE Announces Prison Term for Employing Undocumented Workers** - A Missouri woman was sentenced to a year in prison for transporting, harboring, and hiring undocumented workers at the Chinese restaurant she managed.
- **7. New Mumbai U.S. Consulate To Open Later in 2011; H and L Interviews Limited in Meantime** - New H and L interviews may be scheduled at other U.S. Consulates in India or at the U.S. Embassy in New Delhi.
- **8. USCIS Announces Relief for Japanese, Pacific Nationals Stranded in U.S. Following Quake, Tsunami** - Those who have exceeded or are about to exceed their authorized stay in the U.S. may be permitted up to an additional 30 days to depart.

- **9. USCIS Provides Interim EADs To Some Salvadorans** - USCIS mailed approximately 4,500 interim EADs to Salvadorans who have not yet received a final action on their re-registration applications.
- **10. USCIS To Permanently Close Vietnam Office on March 31** - As of March 25, applications and petitions previously accepted by the USCIS Ho Chi Minh City Field Office may be filed with the U.S. Department of State Consular Section there.
- **11. Obama Won't Support DOMA in Court Challenges: Business Immigration Implications** - President Obama has determined that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional and will no longer defend it in court.
- **12. Congress Passes 'CIRAF' Bill in Dead of Night on April 1** - The new "Comprehensive Immigration Reform April Fools" bill basically lets everyone in, then kicks them all out within 30 days.

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#### **Details...**

##### **1. USCIS Begins Accepting H-1B Petitions**

As of April 1, 2011, U.S. Citizenship and Immigration Services (USCIS) has begun accepting H-1B petitions subject to the fiscal year (FY) 2012 cap of 65,000. Cases will be considered accepted on the date USCIS receives a properly filed petition for which the correct fee has been submitted, not the date that the petition is postmarked.

USCIS will monitor the number of H-1B petitions received and will announce when the H-1B cap has been met. If USCIS receives more petitions than it can accept, it may on the date the cap is met (the "final receipt date") randomly select the number of petitions that will be considered for final inclusion within the cap. USCIS will reject petitions that are subject to the cap and are not selected, as well as petitions received after it has the necessary number of petitions needed to meet the cap.

The first 20,000 H-1B petitions filed on behalf of individuals with U.S. master's degrees or higher are exempt from the cap. Certain other petitions also are exempt from the congressionally mandated cap. Exempt petitions include those for which the beneficiaries will work at:

- institutions of higher education or related or affiliated nonprofit entities;
- nonprofit research organizations; or
- governmental research organizations.

Petitions filed on behalf of beneficiaries who will work only in Guam or the Commonwealth of the Northern Marianas Islands are exempt from the cap until December 31, 2014. Employers may continue to file petitions for these cap-exempt H-1B categories for beneficiaries who will start work during FYs 2011 or 2012.

Petitions filed on behalf of current H-1B workers who have been counted previously against the cap do not count toward the H-1B cap. USCIS will continue to process petitions filed to:

- extend the amount of time a current H-1B worker may remain in the United States;
- change the terms of employment for current H-1B workers;
- allow current H-1B workers to change employers; and
- allow current H-1B workers to work concurrently in a second H-1B position.

In the last few years the H-1B cap has not been reached for several months. It will be interesting to see when the cap is reached this year, given the improving economy.

The notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31f803aea7ace210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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## **2. New Validation Instrument for Business Enterprises Giving Off Bad VIBE**

U.S. Citizenship and Immigration Services (USCIS) has begun "beta-testing" the Validation Instrument for Business Enterprises (VIBE) System, which is run by Dun & Bradstreet. VIBE allows USCIS to receive commercially available information about companies or organizations filing certain employment-based petitions. If the U.S. business entity's information on the petition is inconsistent with what is in VIBE, USCIS issues a request for evidence (RFE).

Some attorneys have reported that the VIBE system, which is based on publicly available information, too often contains inaccuracies, is unreliable, and requires a significant effort to update.

VIBE allows USCIS to electronically receive commercially available information about a petitioning company or organization, including:

- Business activities, such as type of business (North American Industry Classification System code), trade payment information and status (active or inactive)
- Financial standing, including sales volume and credit standing
- Number of employees, including on site and globally
- Relationships with other entities, including foreign affiliates
- Status; for example, whether it is a single entity, branch, subsidiary, or headquarters
- Ownership and legal status, such as LLC, partnership, or corporation
- Company executives
- Date of establishment as a business entity
- Current physical address

A USCIS officer reviews all information received through VIBE along with the evidence submitted by the petitioner. Adjudicators use information from VIBE to verify the petitioner's qualifications. For example, if a petitioner seeks L-1 status for a beneficiary, VIBE will help adjudicators confirm that the petitioner has a foreign affiliate, a requirement for granting L-1 status. In cases where petitioners must establish ability to pay, information from VIBE will assist in confirming the petitioner's financial viability.

USCIS said it will not deny a petition based upon information from VIBE without first giving a petitioner "the opportunity to respond to USCIS' concerns." USCIS will issue an RFE or a Notice of Intent to Deny (NOID) "if it is necessary to resolve relevant inconsistencies or other issues that emerge upon review of information supplied by VIBE that are material to the benefit requested." The Immigration Services Officer (ISO) will make a final decision "based on the totality of the circumstances," the agency said. However, early experience seems to indicate that an RFE will be issued where there is conflicting information, no matter how much evidence is submitted. Hence, the need to be sure that a company's D & B listing is updated and current.

### ***Immigrant Classifications Included in VIBE***

The following I-140 employment-based immigrant classifications are included in VIBE:

- E12 Outstanding professor or researcher
- E13 Multinational executive or manager
- E21 Member of professions holding an advanced degree or an alien of exceptional ability (with the exception of National Interest Waiver petitions)
- E31 Skilled Worker
- E32 Professional
- EW3 Unskilled/Other Worker

Additionally, the following I-360 employment-based immigrant classifications are included in VIBE:

- SD1 Minister of Religion
- SR1 Non-minister in a religious occupation or vocation

### ***Nonimmigrant Classifications Included in VIBE***

The following I-129 employment-based nonimmigrant classifications are also included in VIBE:

- E-1 Treaty Trader
- E-2 Treaty Investor
- E-3 Member of specialty occupation who is a national of the Commonwealth of Australia
- H-1B Specialty occupation worker
- H-1B1 Specialty occupation worker from Chile or Singapore
- H-1B2 Worker performing services related to a Department of Defense (DOD) cooperative research and development project or co-production project
- H-1B3 Fashion model of distinguished merit and ability

- H-2A Temporary or seasonal agricultural worker
- H-2B Temporary non-agricultural worker
- H-3 Trainee or special education exchange visitor
- L-1A Intracompany transferee in a managerial or executive position
- L-1B Intracompany transferee in a position utilizing specialized knowledge
- LZ Blanket L petition
- Q-1 International cultural exchange visitor
- R-1 Religious worker
- TN North American Free Trade Agreement (NAFTA) professional from Canada or Mexico

***Classifications Not Included in VIBE***

The following employment-based classifications are not included in VIBE currently "due to the very unique eligibility requirements for these classifications":

- E11 Individuals of extraordinary ability
- E21 National interest waiver
- EB-5 Immigrant investor
- O Individuals with extraordinary ability or achievement (including essential support personnel)
- P Internationally recognized athletes and entertainment groups, performers under a reciprocal exchange program, and artists or entertainers under a culturally unique program (including essential support personnel)

Our firm recommends that clients check their profile and make sure that the major areas (company address for example) are correct to avoid RFEs in the future. Contact your attorney for guidance.

USCIS said it encourages petitioners to bring to the agency's attention any questions related to RFEs or NOIDs involving information USCIS received

through VIBE, as well as suggestions for improving the program, by e-mailing [VIBE-Feedback@dhs.gov](mailto:VIBE-Feedback@dhs.gov).

For more on VIBE, see

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=521d735652f9d210VgnVCM100000082ca60aRCRD&vgnnextchannel=521d735652f9d210VgnVCM100000082ca60aRCRD>.

### **3. USCIS Launches E-Verify Self Check**

U.S. Citizenship and Immigration Services (USCIS) launched "E-Verify Self Check" on March 21, 2011. The voluntary service enables individuals to check their own employment eligibility status at no charge. USCIS is releasing E-Verify Self Check in phases, with the first phase accessible only to users who maintain an address and are physically located in Arizona, Idaho, Colorado, Mississippi, Virginia, or the District of Columbia.

For more on E-Verify Self Check, including a link to the system, see

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=2ec07cd67450d210VgnVCM100000082ca60aRCRD&vgnnextchannel=2ec07cd67450d210VgnVCM100000082ca60aRCRD>. A

related blog and video are available at

<http://blog.uscis.gov/2011/03/introducing-e-verify-self-check-online.html>. A

transcript of the press conference on this topic is available at

[http://www.uscis.gov/USCIS/News/Transcript\\_SelfCheckSecrtry.pdf](http://www.uscis.gov/USCIS/News/Transcript_SelfCheckSecrtry.pdf). A fact sheet is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9feb59984b9de210VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2791daff2df110VgnVCM1000004718190aRCRD>.

### **4. USCIS Proposes Rule on Registration Requirement for H-1B Petitioners**

The Department of Homeland Security has proposed to amend its regulations on petitions filed on behalf of H-1B workers subject to annual numerical limitations or exempt from numerical limitations by virtue of having earned a U.S. master's or higher degree. The rule proposes to require employers seeking to petition for H-1B cap-subject workers to first file electronic registrations with U.S. Citizenship and Immigration Services (USCIS) during a designated registration period.

USCIS estimated that the proposed rule could save U.S. businesses more than \$23 million over the next 10 years by minimizing administrative burdens and related expenses. The agency said the registration system would save employers the effort and expense of filing H-1B petitions, as well

as labor condition applications, for workers who would be unable to obtain visas under the statutory cap. USCIS estimated that the registration process would take 30 minutes to complete.

Under the proposed rule, if USCIS anticipates that the H-1B cap will not be reached by the first day upon which H-1B petitions may be filed for a particular fiscal year, USCIS would notify all registered employers that they are eligible to file H-1B petitions on behalf of the beneficiaries named in the selected registrations. USCIS would continue to accept and select registrations until the H-1B cap is reached. On the other hand, if USCIS anticipates that the H-1B cap will be reached by the first day upon which H-1B petitions may be filed for a particular fiscal year, USCIS would close the registration before such date and randomly select a sufficient number of timely filed registrations to meet the applicable cap.

USCIS proposes to allow only those petitioners whose registrations are randomly selected to file H-1B petitions for the cap-subject prospective worker named in the registration. USCIS would create a waitlist containing some or all of the remaining registrations, based on USCIS statistical estimates of how many more registrations may be needed to fill the caps should the initial pool of selected registrations fall short. USCIS would notify the employers of those registrations placed on the waitlist when and if they are eligible to file an H-1B petition. Employers whose registrations were neither randomly selected to file petitions nor placed on the waitlist would receive notification that they were not selected to file petitions in that fiscal year.

USCIS said it anticipates that this new process "will reduce administrative burdens and associated costs on employers who currently must spend significant time and resources compiling the petition and supporting documentation for each potential beneficiary without certainty that the statutory cap has not been reached." The proposed mandatory registration process also "will alleviate administrative burdens on USCIS service centers that process H-1B petitions," the agency said.

Written comments must be submitted by May 2, 2011. This means that the final rule will not take effect until the 2012 H-1B filing season.

The proposed rule is available at <http://edocket.access.gpo.gov/2011/pdf/2011-4731.pdf>. The USCIS announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=ee87bbd04337e210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. A related fact sheet is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b02864337c77e210VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD>.

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## **5. USCIS Updates I-129 Instructions Re TARP**

Employers who received funds through the Troubled Asset Relief Program or under section 13 of the Federal Reserve Act ("covered funding") are no longer required to answer Question 1d in Part A of the H-1B Data Collection and Filing Fee Exemption Supplement. The Employ American Workers Act (EAWA) had mandated additional requirements on H-1B petitioners who received covered funding. These requirements ended on February 16, 2011. The additional requirements under EAWA no longer apply to any H-1B petition requesting an employment start date of February 17, 2011, or later.

The updated Form I-129, Petition for a Nonimmigrant Worker, is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f56e4154d7b3d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

## **6. ICE Announces Prison Term for Employing Undocumented Workers**

A Missouri woman was sentenced on March 22, 2011, to a year in prison for transporting, harboring, and hiring undocumented workers at the Chinese restaurant she managed. The sentence resulted from a worksite enforcement investigation conducted by U.S. Immigration and Customs Enforcement (ICE).

ICE reported that Hua Huang was sentenced in the Eastern District of Missouri "on two counts each of harboring, transporting, and employing illegal aliens, and one count each of structuring a financial transaction and conspiring to commit visa fraud." She pleaded guilty to the charges in December. Upon release from prison, Huang will also serve two years of supervised release with a six-month term of home confinement.

The investigation, which was initiated by the Poplar Bluff, Missouri, Police Department, began in February 2009. ICE joined the investigation in October 2009. The investigation revealed that between January 2009 and August 2010, Huang was manager of the China Buffet/Mongolian Grill in Poplar Bluff. During that time she regularly employed a number of undocumented workers from Mexico and China. The employees typically worked 12-hour shifts, six days a week, and were paid in cash amounts far less than minimum wage. Waiters and waitresses were typically paid in tips only.

State and federal taxes were not withheld. Cash sales for the restaurant routinely went unreported.

As a result of surveillance conducted by ICE agents and Poplar Bluff police officers, authorities determined that the workers were being housed or "boarded" in two residences owned by individuals and entities connected to the China Buffet/Mongolian Grill. Authorities observed that the workers were shuttled to and from work daily in a van operated by Ms. Huang or other employees of the business.

On August 4, 2010, federal search warrants were executed at several residences and the China Buffet/Mongolian Grill. During the execution of the search warrants, agents seized a 2008 Highlander sport utility vehicle, a 2005 Chevrolet passenger van, and \$34,000 in cash. The van was being operated by Ms. Huang to transport the workers to the China Buffet. As part of the prosecution, the vehicles, cash, and four separate pieces of real estate were ordered forfeited, with a total value of more than \$350,000.

In her guilty plea, Ms. Huang also admitted to structuring financial transactions to prevent a local bank from reporting those transactions.

The ICE announcement is available at <http://www.ice.gov/news/releases/1103/110322stlouis.htm>.

## **7. New Mumbai U.S. Consulate To Open Later in 2011; H and L Interviews Limited in Meantime**

A new U.S. Consulate is being constructed for Mumbai, scheduled to open later in 2011. No new H and L appointments are being made at the current Mumbai Consulate, which has limited interview capabilities due to aging infrastructure. New H and L interviews may be scheduled at other U.S. Consulates in India or at the U.S. Embassy in New Delhi.

For more information, see <http://www.vfs-usa.co.in/USIndia/news.html>.

## **8. USCIS Announces Relief for Japanese, Pacific Nationals Stranded in U.S. Following Quake, Tsunami**

U.S. Citizenship and Immigration Services (USCIS) announced on March 11, 2011, the following relief for Japanese and other nationals from the Pacific stranded in the U.S. due to the earthquake and tsunami disasters in Japan:

This advisory is for Japanese and other foreign nationals from the Pacific stranded in the United States due to the earthquakes and tsunami devastation. If you have exceeded or are about to exceed

your authorized stay in the U.S. you may be permitted up to an additional 30 days to depart.

*Visitors traveling under the Visa Waiver Program (VWP):*

- If you are at an airport, contact the U.S. Customs and Border Protection office at the airport
- All others, please visit the [local U.S. Citizenship and Immigration Services office](#)

*Visitors traveling under a nonimmigrant visa:*

- Visit the [local U.S. Citizenship and Immigration Services office](#)
- Bring your passport, evidence that you are stranded (such as an itinerary for the cancelled flight), and your I-94 departure record

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89a8ce68596ae210VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

Additional immigration relief options are available on the Special Situations Web page at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f34d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=f34d3e4d77d73210VgnVCM100000082ca60aRCRD>.

## **9. USCIS Provides Interim EADs To Some Salvadorans**

U.S. Citizenship and Immigration Services (USCIS) announced on March 8, 2011, that it sent some existing Salvadoran temporary protected status (TPS) beneficiaries interim employment authorization documents (EADs) during the continued processing of their re-registration applications. USCIS mailed approximately 4,500 interim EADs to Salvadorans who have not yet received a final action on their re-registration applications.

Issuance of the interim EADs allows TPS beneficiaries to continue working while USCIS completes the processing of their re-registration applications. The original expiration date for Salvadoran EADs was September 9, 2010. USCIS had automatically extended this validity period to March 9, 2011.

USCIS has already processed over 208,000 Salvadoran re-registration applications for the current TPS extension period ending March 9, 2012.

Any re-registration applicant who receives an interim EAD must still respond to any USCIS requests for additional evidence, including requests for documents, or biometric or fingerprint appointments.

The USCIS announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1401a07eb269e210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

## **10. USCIS To Permanently Close Vietnam Office on March 31**

U.S. Citizenship and Immigration Services (USCIS) has announced that it will permanently close its field office in Ho Chi Minh City, Vietnam, on March 31, 2011. As of March 25, applications and petitions previously accepted by the USCIS Ho Chi Minh City Field Office may be filed with the U.S. Department of State Consular Section there. Where authorized, the Consular Section will assume responsibility for processing certain cases.

For details, including contact information for queries, see

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=48f1b3e38c19e210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

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## **11. Obama Won't Support DOMA in Court Challenges: Business Immigration Implications**

The Justice Department announced in February that based in part on the recommendation of Attorney General Eric Holder, President Barack Obama has determined that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional and will no longer defend it in court. This is because, facing litigation within the jurisdiction of a circuit court of appeals (the Second Circuit) that has never ruled on the appropriate standard of review to be applied to laws concerning sexual orientation, the administration determined that a heightened standard of review is appropriate, and that Section 3 of DOMA cannot withstand review under such a standard (although the Justice Department had previously argued that Section 3 could survive the looser rational-basis test applicable under the precedent of some courts of appeals).

Many people in same-sex marriages file business immigration applications because they have no alternative. Their applications may be backlogged due to numerical limitations. This issue is also important from a business

immigration perspective because many beneficiaries of both I-140 immigrant visa petitions and nonimmigrant visa petitions may be in same-sex marriages that have been legally recognized in other countries and some states within the U.S., but they cannot avail of derivative status, such as H-4 or L-2 (which also carries with it work authorization privileges) or even derivatively obtain permanent residence with the principal.

Such people, along with their employers, should be advised about the paradigm shift in the administration's position on DOMA, and the potential to challenge existing Department of Homeland Security (DHS) policy in litigation, which the Department of Justice will no longer oppose. Even if an affected individual chooses not to litigate, it is expected that someone will eventually challenge DHS policy, and if it succeeds, which is more likely now than ever before, it will benefit everyone in the same situation.

On the other hand, given the uncertainty regarding the timing and nature of final judicial action on this subject, it would be extremely risky for same-sex married couples to affirmatively seek immigration benefits in reliance on this announcement. It could even be risky for same-sex couples to marry in reliance on the announcement, if the current status of one of the spouses depends on showing a foreign residence and no intent to abandon it (such as with a B-1/B-2 visitor or F-1 student).

For more on this issue, see

<http://cyrusmehta.blogspot.com/2011/02/potential-immigration-implications-for.html>. The Attorney General's statement is available at <http://www.justice.gov/opa/pr/2011/February/11-ag-222.html>.

## **12. Congress Passes 'CIRAF' Bill in Dead of Night on April 1**

In an apparent effort to avoid debate, the House of Representatives and Senate both passed the "Comprehensive Immigration Reform April Fools" bill, or CIRAF, not to be confused with GIRAFFE (and pronounced "Siraf," which is often followed by *Gesundheit*). On April 1, 2011, the bill was passed in a whirlwind late-night session fueled by Hawaiian pizza and Kenyan kabobs. Afterwards, various members of Congress fanned out across the District of Columbia searching for bars to hit, either to celebrate or to brace themselves for the ensuing public reaction, which was expected to be pretty intense.

The new bill basically lets everyone in, then kicks them all out within 30 days. "This bill achieves the right balance between enforcement and benefits," President Barack Obama said. "There is something for everyone in this legislation and therefore nobody should get mad at me. I am really a very nice guy," he noted, flashing his trademark smile. The President added

that he would sign the bill just as soon as he is able to verify the U.S. citizenship of each member of Congress via an original birth certificate. Certified copies have been deemed unacceptable as proof of citizenship.

Joe the Plumber, the current favorite for the 2012 Republican presidential nomination, was unavailable for comment. *Drudgereport.com* reported a rumor that he was stuck in detention after a short trip to Arizona, after which he was stopped for being "foreign-looking."

## **New Publications and Items of Interest**

Data on EB-5 approvals and Regional Center filings. U.S. Citizenship and Immigration Services (USCIS) released its latest data on EB-5 filings and Regional Centers (RCs) at its March 17, 2011, EB-5 Stakeholders Meeting held at the California Service Center. USCIS figures show a steep increase in the number of RC filings and EB-5 visa approvals in the first quarter of fiscal year 2011. A PowerPoint presentation and other information from the Stakeholders Meeting are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=68da76be729ce210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD>.

Executive summary of EB-5 investor quarterly engagement. On March 17, 2011, the U.S. Citizenship and Immigration Services (USCIS) Service Center Operations (SCOPS) Directorate and the Office of Public Engagement (OPE) released an executive summary of their December 16, 2010, EB-5 Investor Quarterly Engagement. In addition to providing various updates on statistics, processing times, and the recently instituted EB-5-related forms, USCIS responded to input received from the public before the engagement.

The executive summary is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=4c68d1f2465ae210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD>. The PowerPoint presentation and other related information and links are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=858206489ec6a210VgnVCM100000082ca60aRCRD&vgnnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD>.

Solicitation for grant applications to operate national farmworker jobs training program. The Department of Labor's Employment and Training Administration announced a grant competition for operating the National Farmworker Jobs Program (NFJP). The fiscal year 2011 appropriations request for this program is \$78,410,000, to be allocated among state service

delivery areas for operation of NFJP. The notice, which was published on March 17, 2011, is available at <http://edocket.access.gpo.gov/2011/pdf/2011-6245.pdf>.

Consular interview preparation video. A short video, available at no charge from "path2usa.com," explains how to prepare for a consular interview and what to expect. See <http://www.youtube.com/watch?v=vgX7dGyziCI>.

GAO on export controls. The U.S. Government Accountability Office (GAO) has published *Export Controls: Improvements Needed to Prevent Unauthorized Technology Releases to Foreign Nationals in the United States*. The report notes that four factors together may indicate the risk that foreign nationals could gain unauthorized access to controlled dual-use technology. First, foreign businesspeople, scientists, engineers, and others have gained unauthorized access in the United States to controlled dual-use technologies. Second, during fiscal years 2004 through 2009, the Department of Commerce suspended the export privileges of three violators and fined 14 U.S. companies about \$2.3 million for allowing foreign nationals unauthorized access to controlled technologies. Third, Commerce's screening of overseas visa applications for potential unlicensed deemed exports dropped from 54,000 in fiscal year 2001 to 150 in fiscal year 2009. Fourth, from fiscal years 2004 to 2009, the United States issued about 1.05 million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern, while Commerce issued deemed export licenses authorizing transfers of technology to about 3,200 foreign nationals from these countries. The report notes that Commerce and U.S. Immigration and Customs Enforcement have not implemented prior recommended changes to the deemed export licensing process, and that confusion remains. As a result, employers may not be aware of deemed export licensing requirements and how to obtain the licenses required.

The report (GAO-11-354) is available at <http://www.gao.gov/products/GAO-11-354>.

OIG report on WHTI. The Department of Homeland Security's Office of Inspector General has published *Customs and Border Protection Needs to Improve Its Inspection Process for the Western Hemisphere Travel Initiative*. The report finds that generally, U.S. Customs and Border Protection (CBP) has successfully implemented the Western Hemisphere Travel Initiative (WHTI) in the air environment, reporting high compliance rates among air passengers. The new documentation requirements have improved CBP officers' ability to validate the identity and citizenship of compliant air passengers, allowing officers to spend more time inspecting travelers without passports.

The report notes, however, that there is inadequate assurance that CBP officers verified the identity and citizenship of all individuals who failed to provide a passport or other WHTI-compliant documentation; CBP officers did not always document the basis for their decisions to admit air passengers who were noncompliant with the new document requirements. Also, they did not always follow CBP policy for referring all such noncompliant passengers to a secondary inspection area for a more thorough review. The report says that these shortfalls may be attributed to inadequate officer training and oversight, and a lack of guidance. "Failure to establish the identities and citizenship of all air passengers is a vulnerability that could be exploited by individuals intent on harming this country," the report warns, making four recommendations to improve the agency's implementation of the WHTI's new documentation requirements. The report also includes the CBP's responses to the OIG's recommendations.

The OIG's report is available at [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_11-43\\_Feb11.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_11-43_Feb11.pdf).

Advisory committee on free trade and labor issues. The National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements has been reestablished. The committee will provide its views to the Secretary of Labor through the Department of Labor's Bureau of International Labor Affairs. The committee will include 12 members, four representing the labor community, four representing the business community, and four representing the public.

The Bureau of International Labor Affairs serves as the U.S. point of contact for various U.S. free trade agreements. The committee also may be asked to provide advice on the implementation of labor provisions of other free trade agreements to which the U.S. may be a party or become a party. The committee will be asked to provide advice on issues within the scope of the North American Agreement on Labor Cooperation and the labor provisions of the free trade agreements, including cooperative activities and the labor cooperation mechanism of each free trade agreement. Members of the Committee will not be compensated for their services or reimbursed for travel expenses.

The announcement is available at <http://edocket.access.gpo.gov/2011/pdf/2011-5637.pdf>.

## **Government Agency Links**

*Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:*

USCIS Service Center processing times online:  
<https://egov.uscis.gov/cris/processTimesDisplay.do>

Department of Labor processing times and information on backlogs:  
<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:  
[http://travel.state.gov/visa/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/bulletin/bulletin_1360.html)