

Immigration Inbox: News You Can Use

U.S. Immigration:

1. *FY 2013 H-1B Petitions Coming In Fast* – As of May 25, 2012, 65,900 cap-subject H-1B petitions have been filed
2. *India, China EB-2 Green-Card Category Retrogresses Dramatically* – As predicted for May, 2012 the India and China EB-2 priority dates have retrogressed dramatically, from May 1, 2010, to August 15, 2007
3. *Fact Sheet on Permanent Labor Certification Program Statistics* - The Office of Foreign Labor Certification (OFLC) in the Department of Labor (DOL) has issued the fourth in a series of permanent labor certification program statistics fact sheets
4. *DOL's OFLC Issues New FAQ on H-1B, H-1B1, and E-3 Programs* – The new FAQ answers a variety of questions
5. *New H-1B, H-1B1, E-3 Resources for Employers* - The DOL provides new resources for employers
6. *State Department Beefs Up Consular Services in Brazil, Plans Two New Consulates* – To address immediate growth in demand, the Department of State is sending dozens of consular officers to Brazilian posts to adjudicate visa applications
7. *U.S. Customs & Border Protection (CBP) Issues Proposed Rule Allowing More U.S. Returning Residents To File Single Customs Declaration for Members of Family* – CBP proposes to include foster children, stepchildren, half-siblings, legal wards, other dependents, domestic partners, and others in its definition of “members of a family residing in one household”
8. *CBP Adds ‘Trusted Traveler’ Enrollment Centers in Minnesota, North Dakota* – CBP has added International Falls and Warroad, Minnesota, and Pembina, North Dakota, to its “trusted traveler” enrollment centers for Global Entry, NEXUS, and FAST

Seyfarth Workforce Authorization Team (SWATeam)

1. *DOL Changes Effective Date of 2012 H-2B Final Rule; Preliminary Injunction Granted* – On April 26, 2012, a federal judge granted a preliminary injunction, applicable nationwide, against implementing the new H-2B program rule for 60 days
2. *DOL Revises H-2A and H-2B Forms* – All H-2A and H-2B applications must be submitted using the revised form; Appendix A.2 remains unaffected
3. *Seyfarth lawyers submit comments to U.S. Citizenship and Immigration Services (USCIS) on proposed two-page Form I-9 (Employment Eligibility Verification)*. A copy of the comments, submitted on behalf of the Alliance of Business Immigration Lawyers, can be accessed below

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U.S. Immigration

1. FY 2013 H-1B Petitions Coming In Fast

According to U.S. Citizenship and Immigration Services, over 65,900 cap-subject H-1B petitions have been filed as of May 25, 2012. Of these, 48,400 apply to the basic 65,000-person H-1B quota, and 17,500 to the 20,000 "U.S. masters or higher degree" allocation. If this keeps up, the H-1B cap could be reached quickly. Employers should file early and allow time for the labor condition application process. Contact your Seyfarth Shaw Immigration attorney now for guidance and help with the process. For the latest statistics, [click here](#).

2. India, China EB-2 Green Card Category Retrogresses Dramatically

As predicted for May, the India and China EB-2 priority dates have retrogressed dramatically, from May 1, 2010, to August 15, 2007. Priority dates for those countries are not expected to advance again until October 1, 2012, at the earliest, when the new federal fiscal year begins. If an I-485 Application for Adjustment of Status was filed while the person's priority date was current, it will remain pending until the priority date is current again. Because the I-485 will remain pending, the applicant can continue to apply for interim benefits, such as work authorization and advance parole, while the priority date is retrogressed. The May bulletin from the Department of State's Visa Office is [available here](#).

3. Fact Sheet on Permanent Labor Certification Program Statistics

The Department of Labor's Office of Foreign Labor Certification has issued the fourth in a series of permanent labor certification program statistics fact sheets. This fact sheet presents statistics on applications submitted during fiscal year 2012. It notes that thus far in FY 2012, the Department has received 28,750 cases and processed 20,980. It has certified 15,720 cases, denied 3,980, and withdrawn 1,280. The fact sheet is [available here](#).

4. Office of Foreign Labor Certification Issues New FAQ on H-1B, H-1B1, and E-3 Programs

The Department of Labor's Office of Foreign Labor Certification issued a new frequently asked questions (FAQ) document on March 27, 2012. The FAQ answers the following questions: Is there a fee to file a Labor Condition Application (LCA) with the Department of Labor for the H-1B, H-1B1, or E-3 programs? How do I change my iCERT System account access information? How do I enter an untitled custom survey on the LCA? Where can I obtain a list of acceptable prevailing wage source surveys for Section G of the ETA Form 9035/9035E?

The FAQ is [available here](#).

5. New H-1B, H-1B1, E-3 Resources for Employers

The Department of Labor's Office of Foreign Labor Certification has posted a contact list for the H-1B, H-1B1, and E-3 programs to assist employers with their applications. "Helpful Resources" is [available here](#).

6. DOS Beefs Up Consular Services in Brazil, Plans Two New Consulates

The Department of State plans to open two new consulates in Belo Horizonte and Porto Alegre, Brazil, which the White House said are important economic and cultural centers for the states of Minas Gerais and Rio Grande do Sul.

In remarks to the U.S.-Brazil Partnership for the 21st Century, Secretary of State Hillary Clinton said the openings are intended to "make it easier to get those visas, easier to travel, knock down some of the barriers that have been put up, and continue to promote people-to-people contact." It was not clear from the official statements when the consulates would open, but reports suggested they may not begin operations until 2014.

To address immediate growth in demand, the Department of State is sending dozens of consular officers to Brazilian posts to adjudicate visa applications. Between August and December 2011, the Department sent 82 temporary duty officers to Brazil, who issued more than 135,000 visas to Brazilian travelers. The Department of State is doubling the number of diplomats performing consular work in Brazil over the next year.

The Department is also implementing a pilot program in which consular officers may waive in-person interviews for certain qualified individuals, such as those renewing their visas within 48 months of the expiration of their previous visas, and Brazilians below the age of 16 and those age 66 and older. Because security is paramount, consular officers may interview any visa applicant in any category. Nonetheless, the Department said that this program "will benefit thousands of Brazilians who want to visit the United States."

According to a White House statement released on April 9, 2012, Brazil now ranks as the fourth largest source of overseas visitors, with 1.5 million visits to the United States in 2011, representing a 26 percent increase from 2010. Visa issuances to Brazilians tripled between 2006 and 2011, and are on pace for significant gains in 2012, the White House noted. As of February, visa processing was up 57 percent in 2012 from the same time frame in 2011. The Department of Commerce forecasted that 2.8 million Brazilians will travel to the United States in 2016, an increase of 87 percent from 2011. Visa interview wait times have dropped dramatically in Brazil, and now average just two weeks or less in Brasilia, Recife, and Rio de Janeiro, and 35 days or fewer in Sao Paulo.

Secretary Clinton's remarks are [available here](#).

The White House statement is [available here](#).

A related fact sheet is [available here](#).

7. CBP Proposed Rule Allows More U.S. Returning Residents To File Single Customs Declaration for Members of Family

U.S. Customs and Border Protection (CBP) has issued a proposed rule to expand the definition of "members of a family residing in one household" to allow more U.S. returning residents to file a family customs declaration for articles acquired abroad. CBP said it anticipates that this proposed change will reduce the amount of paperwork required during inspection and therefore facilitate passenger processing. CBP believes that this proposed change also will more accurately reflect relationships between members of the public who are traveling together as a family.

CBP proposes to include foster children, stepchildren, half-siblings, legal wards, other dependents, and individuals with an in loco parentis or guardianship relationship within the definition of "members of a family residing in one household." CBP also proposes that the definition include two adult individuals in a committed relationship wherein the partners share financial assets and obligations, and are not married to or a partner of anyone else, including but not limited to long-time

companions and couples in civil unions or domestic partnerships. CBP proposes to add these relationships to the definition and refer to them as “domestic relationships.” The proposed term “domestic relationship” would not extend to roommates or other cohabitants not otherwise meeting the above definition. Additionally, the proposed changes would not alter the requirements that, to file a family declaration, members of a family residing in one household must live together in one household at their last permanent residence and intend to live together in one household after their arrival in the United States. Written comments must be submitted by May 29, 2012.

The proposed rule is [available here](#).

8. CBP Adds ‘Trusted Traveler’ Enrollment Centers in Minnesota, North Dakota

U.S. Customs and Border Protection has added International Falls and Warroad, Minnesota, and Pembina, North Dakota, to its “trusted traveler” enrollment centers for Global Entry, NEXUS, and FAST. These programs are compliant with Western Hemisphere Travel Initiative (WHTI) requirements that U.S. and Canadian citizens entering the United States from Canada, the Caribbean, Bermuda, or Mexico by air, land, or sea have a WHTI-compliant document. The announcement is [available here](#).

Seyfarth Workforce Authorization Team (SWATeam)

1. DOL Changes Effective Date of 2012 H-2B Final Rule; Preliminary Injunction Granted

On February 21, 2012, the Department of Labor published a final rule amending the H-2B program regulations and providing for an effective date of April 23, 2012, which is 60 days after the date of publication of the final rule. An injunction has temporarily blocked implementation, however. The Department said that applications postmarked on or after April 27, 2012, would be adjudicated in accordance with the requirements described in the final rule. Any application filed under the current regulation that is postmarked on or after April 27, 2012, will be returned, and the employer (and its agent or attorney) informed of the need to file a new application in accordance with the provisions of the new H-2B final rule. The Department also noted that employers who file H-2B applications with a start date of need before October 1, 2013, do not need to obtain the pre-approved H-2B registration under 20 CFR 655.15, and the Department will continue to adjudicate temporary need by reviewing the employer’s statement of temporary need in Section B of the ETA Form 9142. Employers with H-2B applications postmarked on or after April 27, 2012, with a start date of need on or after October 1, 2013, must comply with all the requirements contained in the registration process unless the Office of Foreign Labor Certification publishes additional guidance in the Federal Register.

Meanwhile, on April 26, 2012, Judge M. Casey Rogers of the Northern District of Florida granted a preliminary injunction, applicable nationwide, against implementing the new program rule for 60 days. The U.S. Chamber of Commerce and others had filed suit on behalf of landscaping and forestry businesses in the U.S. District Court in Pensacola, Florida, arguing that the Department of Labor overstepped its authority by requiring companies to provide immigrant workers hired for low-skilled jobs wage guarantees and travel reimbursements. The Chamber said that such policies will drive up costs for landscape companies and should be issued by the Department of Homeland Security rather than Labor. Congress has blocked implementation of the related wage rule until September 30, 2012.

A group of business advocacy associations has filed a similar suit in federal court in Philadelphia against the Department’s H-2B wage rule. The issues are whether the Department must consider employer hardship and economic concerns during regulatory formulation, and whether the Department has jurisdiction to issue H-2B regulations.

U.S. Citizenship and Immigration Services has postponed a stakeholder engagement scheduled for May 2, 2012, on “Temporary Need in the H-2B Context.” A new date has not yet been set. Employers with questions about the H-2B process may e-mail them to h-2B.regulation@dol.gov. The Department said it will provide responses in the form of Frequently Asked

Questions (FAQs) on its website. The new guidance, issued before the preliminary injunction, is [available here](#).

2. DOL Revises H-2A and H-2B Forms

The Department of Labor has revised the ETA Form 9142, Appendix B.1 and associated instructions, in connection with the H-2B 2012 final rule. Employers filing H-2B applications under the 2012 final rule are supposed to use the revised ETA Form 9142 and Appendix B.1 starting with applications postmarked on or after April 27, 2012, the Department said in an announcement. Given the federal court injunction mentioned in the prior article, however, it is unclear whether the new forms should be used after April 27. The current ETA 9142 expired at the end of April. Therefore, all H-2A applications postmarked after April 30, 2012, must be submitted using the revised form. Appendix A.2 (H-2A only) remains unaffected and employers may continue to use it.

The new forms are [available here](#).

3. Seyfarth lawyers submit comments to USCIS on proposed two-page Form I-9 (Employment Eligibility Verification)

Nicole Kersey, Director of Seyfarth's Immigration Compliance Center, and Seyfarth Partner Angelo A. Paparelli participated with members of the Alliance of Business Immigration Lawyers in providing USCIS with comments on the agency's proposed two-page Form I-9. A copy of the comments is [available here](#). Information on Seyfarth's Immigration Compliance Center is [available here](#). A relevant blog post, Instruct Us Again on the Immigration Rules, by Angelo is available below.

Seyfarth Immigration Events and News

Seyfarth Shaw's Immigration Practice Honored with 2012 Chambers Global Ranking

Seyfarth Shaw's Business Immigration practice has been honored with a 2012 Global Ranking by the Chambers USA Rankings of Law Firms. For the second year in a row, Seyfarth partner Angelo A. Paparelli received Chambers' highest rating as a "star individual." Chambers is a leading publisher of directories of the legal profession. Seyfarth is honored to be recognized again as a leading business immigration practice by this well-recognized institution.

Speaking Engagements

Attorney John Quill spoke on the topic of the PERM Labor Certification process at the Massachusetts Continuing Legal Education's (MCLE) 11th Annual Immigration Law Conference, to be held on May 18, 2012 in Boston, MA.

Attorney Angelo Paparelli spoke on May 18, 2012 at the University of California, Irvine, in a presentation to scholars and students about the immigration opportunities and risks facing them as they progress in their careers.

In addition, Angelo Paparelli has posted several new blog entries on his *Nation of Immigrants* public policy blog:

With Hope Springing Eternally, ACUS Is Working on Immigration Again

Angelo reports on the return of the Administrative Conference of the United States (ACUS) and its proposals to reform the immigration removal process and make hearings more cost effective and fair.

Seyfarth Shaw — Immigration Inbox

Rendering unto the Immigration Caesars

In recognition of Public Service Recognition Week, Angelo salutes USCIS Director, Alejandro Mayorkas, for making the agency more transparent and engaging to the public and in a hoped-for resistance to pressure by Senators Grassley and Durbin to restrict the L-1B visa category.

Guest Post: What Fried Okra, F.A.O. Schwartz, Staplers, and Immigration Have in Common

Nici Kersey offers an autobiographical post that explains how (to her own surprise) she became an immigration lawyer. Hint: It has something to do with farm workers.

Instruct us Again on the Immigration Rules

Angelo shines a spotlight on the USCIS policy of creating rules without regulatory scrutiny in areas such as the I-9 Form and the policy of unannounced FDNS site visits.

When Possible, Treat Immigrants As Criminal Defendants, Not As Criminals

Criminal suspects are guaranteed rights that people charged with violating the immigration laws can only envy. Because of the legal charade that *removal proceedings are "civil" and not "criminal" in nature*, that deportation is not "punishment," foreign citizens whose immigration status is challenged at a removal hearing before an immigration judge are not granted basic rights.

Immigration-Agency Lawbreaking Revealed: USCIS's EB-5 "Tenant-Occupancy" Scandal

Readers of *Nation of Immigrants* are familiar with the opaque, contradictory, and *frequently inane* ways in which the Homeland Security Department's immigration-benefits bureau, USCIS, has interpreted America's immigration laws. Legislation on the EB-5 job creation program passed in 2002 (that is not a typo) mandated that implementing regulations be published within 120 days. Nearly 10 years later, the lack of regulations has predictably resulted in disastrous results, as Angelo Paparelli and guest blogger, Brandon Meyer, report.

Immigration Protectionism Costs America Billions

A number of economic experts agree that restrictionist U.S. immigration policies are not just *bars to global services trade*. They also impair our ability to compete successfully in the world's marketplace for services.

By: *Angelo Paparelli, Liz Wheeler and John Quill*

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